§ 595-a. Regulation of mortgage brokers, mortgage bankers and exempt organizations. 1. Establishment of grounds to impose a fine or penalty. In addition to such other rules, regulations and policies as the superintendent of financial services may prescribe to effectuate the purposes of this article, the superintendent of financial services shall promulgate regulations and policies governing the establishment of grounds to impose a fine or penalty with respect to the activities of a mortgage banker, mortgage broker or exempt organization. Such regulation shall encompass the following:

(a) The misrepresentation of material facts or the making of false promises likely to influence, persuade, or induce an applicant for a mortgage loan or mortgagor to take a mortgage loan, or pursuing a course of misrepresentation or false promises through agents or otherwise;

(b) The misrepresentation, or concealment of any material factors, terms or conditions of a transaction to which he is a party, including the receipt of payment from a third party, pertinent to an applicant for a mortgage loan or a mortgagor;

(c) The failure to disburse funds in accordance with a written commitment or agreement to make a mortgage loan;

(d) The failure to account for or deliver to any person any personal property obtained in connection with a mortgage loan such as money, fund, deposit, check, draft, mortgage, or other document, or thing of value, which has come into his hands, and which is not his property, or which he is not in law or equity entitled to retain;

(e) The improper refusal to issue a satisfaction of mortgage;

(f) Engaging in any transaction, practice, or course of business which operates a fraud upon any person in connection with the purchase or sale of any mortgage loan;

(g) Violation of section six-j of this chapter; and

(h) Making a mortgage loan, or indirectly or directly providing for the making of a mortgage loan, to an equity purchaser, as defined in section two hundred sixty-five-a of the real property law, if the mortgage banker, mortgage broker or exempt organization had knowledge that the equity purchaser was not complying with the provisions of section two hundred sixty-five-a of the real property law with respect to such transaction.

2. Restrictions on advertising. In addition to such other rules, regulations and policies as the superintendent of financial services may promulgate to effectuate the purposes of this article, the superintendent of financial services shall prescribe regulations governing the advertising of mortgage loans, including, without limitation, the following requirements:

(a) All advertisements by a mortgage broker, mortgage banker or exempt organization shall contain the name and an office address of such entity, which in the case of licensees and registrants shall conform to a name and address on record with the department of financial services;

(b) No licensed mortgage broker or mortgage banker shall advertise its services in any media, whether print or electronic, without the words "registered mortgage broker" or "licensed mortgage banker" or similar words therein;

(c) No mortgage broker, mortgage banker or exempt organization shall advertise information concerning mortgage loans, including rates, margins, discounts, points, fees, commissions or other material information, including material limitations on such loans, unless such entity is able to make such mortgage loans available to a reasonable number of qualified applicants;

(d) All advertisements by mortgage brokers must include language indicating that such brokers may not make loans; and

(e) The term "advertisement" shall not include promotional material containing fifteen words or less which does not contain references to specific rates, points, discounts, fees, material loan factors, etc., such as imprinted pencils, pens or balloons.

3. Required disclosures. In addition to such other rules, regulations and policies as the superintendent of financial services may promulgate to effectuate the purposes of this article, the superintendent of financial services shall promulgate regulations governing the disclosure required to be made to applicants for a mortgage loan, including, without limitation, the following requirements:

(a) Each mortgage broker, mortgage banker and exempt organization shall provide to each applicant for a mortgage loan at or before the time of application a disclosure of the fees payable at the time of application and the conditions under which such fees may be refundable,

and such other disclosures as shall be required by the superintendent of financial services;

(b) Each mortgage banker and exempt organization shall make available to each applicant for a mortgage loan at or before the time a commitment to make a mortgage loan is given a written disclosure, the fees to be paid in connection with the commitment and the loan, or the manner in which such fees shall be determined and the conditions under which such fees may be refundable, and such other disclosures as may be required by the superintendent of financial services; and

(c) In each lock-in agreement it shall issue, every mortgage banker and exempt organization shall include a list of all documents typically required to be produced and conditions typically required to be satisfied for closing of a mortgage loan based on information provided by the applicant. In each commitment it shall issue, every mortgage banker and exempt organization shall include a list of all documents foreseeably required to be produced and conditions foreseeably required to be satisfied for closing of a mortgage loan based on information provided by the applicant. In addition, no later than twelve business days prior to the expiration of any lock-in period or commitment period, a mortgage banker or exempt organization shall mail to each applicant for a mortgage loan a notice indicating the date of such expiration together with a request that the applicant contact the lender immediately to discuss the conditions precedent to the closing of such loan; and

(d) Each mortgage broker, mortgage banker and exempt organization shall provide such other disclosure as the superintendent of financial services shall determine by regulation are appropriate to carry out the purposes of this article.

4. Restrictions on tying. (a) No mortgage banker, mortgage broker or exempt organization shall, as a condition for the approval of a mortgage loan, require the use of a particular title insurance company, title insurance agency or title insurance agent or, for any other type of insurance, require the use of a particular insurer, agent or broker.

(b) A bank, trust company, savings bank, savings and loan association or national bank which operates in compliance with the provisions of paragraph (e) of subdivision seven of section twelve-a of this chapter

and paragraph two of subdivision (a) of section two thousand five hundred two of the insurance law shall be deemed to be in compliance with this subdivision.

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.