§ 6-l. High-cost home loans. 1. Definitions. The following definitions apply for the purposes of this section:

(a) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.

(b) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the federal reserve board (as said act and regulations are amended from time to time).

(c) "Bona fide loan discount points" means loan discount points knowingly paid by the borrower funded through any source, for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided that the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions. For purposes of this section, it shall be presumed that a point is a bona fide loan discount point if it reduces the interest rate by a minimum of twenty-five basis points provided all other terms of the loan remain the same.

(d) A "High-cost home loan" means a home loan in which the terms of the loan exceed one or more of the thresholds as defined in paragraph (g) of this subdivision.

(e) "Home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction or a loan made or fully or partially guaranteed by the state of New York mortgage agency, in which:

(i) The principal amount of the loan at origination does not exceed the conforming loan size limit (including any applicable special limit for jumbo mortgages) for a comparable dwelling as established from time to time by the federal national mortgage association;

(ii) The borrower is a natural person;

(iii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) The loan is secured by a mortgage or deed of trust on real estate improved by a one to four family dwelling, or by a condominium unit, or

by any certificate of stock or other evidence of ownership in, and a proprietary lease from, a corporation, partnership or other entity formed for the purpose of cooperative ownership of real estate, in either case used or occupied or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons and which is or will be occupied by the borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

(f) "Points and fees" means:

(i) All items listed in 15 U.S.C. § 1605(a)(1) through (4), except interest or the time-price differential;

(ii) All charges for items listed under § 226.4(c)(7) of title 12 of the code of federal regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees";

(iii) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction, not otherwise included in subparagraphs (i) and (ii) of this paragraph;

(iv) The cost of all premiums financed by the lender, directly or indirectly, for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, or any payments financed by the lender directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(g) "Thresholds" means:

(i) For a first lien mortgage loan, the annual percentage rate of the home loan at consummation of the transaction exceeds eight percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender; or for a subordinate mortgage lien, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds nine percentage points

over the yield on treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for extension of credit is received by the lender; as determined by the following rules: if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate which applies after the initial or introductory period; or

(ii) The total points and fees exceed: five percent of the total loan amount if the total loan amount is fifty thousand dollars or more; or six percent of the total loan amount if the total loan amount is fifty thousand dollars or more and the loan is a purchase money loan guaranteed by the federal housing administration or the veterans administration; or the greater of six percent of the total loan amount or fifteen hundred dollars, if the total loan amount is less than fifty thousand dollars; provided, the following discount points shall be excluded from the calculation of the total points and fees payable by the borrower:

(1) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point the yield on United States treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month immediately preceding the month in which the application is received;

(2) Any and all bona fide loan discount points funded directly or indirectly through a grant from a federal, state or local government agency or 501(c)(3) organization.

(h) "Total loan amount" means the principal of the loan minus those points and fees as defined in paragraph (f) of this subdivision that are included in the principal amount.

(i) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of this chapter or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of this chapter.

2. Limitations and prohibited practices for high-cost home loans. A high-cost home loan shall be subject to the following limitations:

(a) No call provisions. No high-cost home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

(b) No balloon payments. No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, unless such balloon payment becomes due and payable at least fifteen years after the loan's origination. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(c) No negative amortization. No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase. A loan is considered to have such a schedule if the borrower is given the option to make regular periodic payments that cause the principal balance to increase, even if the borrower is also given the option to make regular periodic payments that do not cause the principal balance to increase. This paragraph shall not prohibit negative amortization as a result of a temporary forbearance sought by a borrower.

(d) No increased interest rate. No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents; provided that the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(e) Limitation on advance payments. No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(f) No modification or deferral fees. A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan if, after the modification, renewal, extension or amendment, the loan is still a high-cost loan or, if no longer a high-cost home loan,

the annual percentage rate has not been decreased by at least two percentage points. For purposes of this paragraph, fees shall not include interest that is otherwise payable and consistent with the provisions of the loan documents. This paragraph shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing high-cost home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for high-cost home loans.

(g) No oppressive mandatory arbitration clauses. No high-cost home loan may be subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers.

(h) No financing of insurance or other products sold in connection with the loan. No high-cost home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance premiums, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, or any product or service that is not necessary or related to the high-cost home loan such as auto club memberships or credit report monitoring, but not including fees paid to the lender, broker, or closing agent, fees related to the recording of the mortgage, title insurance or other settlement fees. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed.

(i) No "loan flipping". No lender or mortgage broker making or arranging a high-cost home loan may engage in the unfair act or practice of "loan flipping". "Loan flipping" is making a home loan to a borrower that refinances an existing home loan when the new loan does not have a tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's situation.

(j) No refinancing of special mortgages. No lender or mortgage broker making or arranging a high-cost home loan may refinance an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit

organization, which either bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage, unless the lender is provided prior to loan closing documentation by a HUD approved housing counselor or the lender who originally made the special mortgage that a borrower has received home loan counseling in which the advantages and disadvantages of the refinancing has been received.

(k) No lending without due regard to repayment ability. A lender or mortgage broker shall not make or arrange a high-cost home loan without due regard to repayment ability, based upon consideration of the resident borrower or borrowers' current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan), as verified by detailed documentation of all sources of income and corroborated by independent verification. However, a lender making a high-cost home loan shall benefit from a rebuttable presumption that the loan was made with due regard to repayment ability if the lender demonstrates that at the time the loan is consummated, the resident borrower or borrowers' total monthly debts, including amounts owed under the loan, do not exceed fifty percent of the resident borrower or borrowers' monthly gross income; and the lender follows the residual income guidelines established in 38 C.F.R. § 36.4337(e) and VA Form 26-6393.

(l) (i) No lending without counseling disclosure and list of counselors. A lender or mortgage broker must deliver, place in the mail, fax or electronically transmit the following notice in at least twelve point type to the borrower at the time of application: "You should consider financial counseling prior to executing loan documents. The enclosed list of counselors is provided by the New York State Department of Financial Services". In the event of a telephone application, the disclosures must be made immediately after receipt of the application by telephone. Such disclosure shall be on a separate form. In order to utilize an electronic transmission, the lender or broker must first obtain either written or electronically transmitted

permission from the borrower. A list of approved counselors, available from the New York state department of financial servcies, shall be provided to the borrower by the lender or the mortgage broker at the time that this disclosure is given.

(ii) A lender or mortgage broker shall not make or arrange a high-cost home loan unless either the lender or mortgage broker has given the following notice in writing to the borrower within three days after determining that the loan is a high-cost home loan, but no less than ten days before closing:

"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, which pursuant to New York State Law is a High-Cost Home Loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

You should shop around and compare loan rates and fees. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or mortgage broker you select. Higher rates and fees may be related to the individual circumstances of a particular consumer's application.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. The enclosed list of counselors is provided by the New York State Department of Financial Services.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts.

If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors."

(m) Financing of points and fees. In making a high-cost home loan, a lender shall not, directly or indirectly, finance any points and fees as defined in paragraph (f) of subdivision one of this section, in an amount that exceeds three percent of the principal amount of the loan.

(n) Restrictions on home improvement contracts. A lender shall not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan other than: by an instrument payable to the borrower or jointly to the borrower and the contractor; or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(o) No encouragement of default. In making or arranging a high-cost home loan, a lender or mortgage broker shall not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of such existing loan or debt.

(p) Prohibited payments to mortgage brokers. In making or arranging a high-cost home loan, no lender or mortgage broker shall accept or give any fee, kickback, thing of value, portion, split or percentage of charges, other than as payment for goods or facilities that were actually furnished or services that were actually performed. Such payment must be reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.

(q) No points and fees when a lender refinances its own high-cost home loan with a new high-cost home loan. A lender shall not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the lender or an affiliate of the lender.

(r) No prepayment penalties. Notwithstanding paragraph b of

subdivision three of section 5-501 of the general obligations law, no prepayment penalties or fees shall be charged or collected on a high-cost home loan. A prepayment penalty in a high-cost home loan shall be unenforceable.

(s) No yield spread premiums. In connection with the making or brokering of a home loan, no person may provide, and no mortgage broker or mortgage lender may receive, directly or indirectly, any compensation that is based on, or varies with, the terms of any home loan. This paragraph shall not prohibit compensation based on the principal balance of the loan.

(t) Mandatory escrow of taxes and insurance. No high-cost home loan shall be made after July first, two thousand ten unless the lender requires and collects the monthly escrow of property taxes and hazard insurance. With respect to a high-cost home loan, a borrower may waive escrow requirements by notifying the lender in writing after one year from consummation of the loan. The provisions of this paragraph shall not apply to a high-cost home loan that is a subordinate lien when the taxes and insurance are escrowed through another home loan or where the borrower can demonstrate a record of twelve months of timely payments of taxes and insurance on a previous home loan.

(u) Mandatory disclosure of taxes and insurance payments. With respect to a high-cost home loan, the first time a borrower is informed of the anticipated or actual periodic payment amount in connection with a first-lien residential mortgage loan for a specific property, the lender or mortgage broker shall inform the borrower that an additional amount will be due for taxes and insurance and shall disclose to the borrower as soon as reasonably possible the approximate amount of the initial periodic payment for property taxes and hazard insurance.

(v) No teaser rates. No lender or mortgage broker shall make or arrange a high-cost home loan which has an initial or introductory rate with a duration of less than six months.

2-a. (a) High-cost home loan mortgages shall include a legend on top of the mortgage in twelve-point type stating that the mortgage is a high-cost home loan subject to this section.

(b) The lender shall report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit

bureau at least annually during such period as the lender holds or services the high-cost home loan.

3. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by any subterfuge, including but not limited to splitting or dividing any loan transaction into separate parts for the purpose of evading the provisions of this section.

4. A lender of a high-cost home loan that, when acting in good faith, fails to comply with the provisions of this section, will not be deemed to have violated this section if the lender establishes that either:

(a) Within thirty days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan is no longer a high-cost home loan subject to the provisions of this section; or

(b) The compliance failure resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors and, within sixty days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan is no longer a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

5. The attorney general, the superintendent, or any party to a

high-cost home loan may enforce the provisions of this section.

6. A private action against the lender or mortgage broker pursuant to this section must be commenced within six years of origination of the high-cost home loan.

7. Any person found by a preponderance of the evidence to have violated this section shall be liable to the borrower for the following:

(a) actual damages, including consequential and incidental damages; and

(b) statutory damages as follows (i) all of the interest, earned or unearned, points and fees, and closing costs charged on the loan shall be forfeited and any amounts paid shall be refunded; except that this element of statutory damages shall not be awarded for violations of:

(1) paragraph (i) of subdivision two of this section regarding loan flipping; and

(2) paragraph (k) of subdivision two of this section regarding ensuring the borrower's ability to repay the loan, so long as the lender demonstrates that at the time of the loan, it verified by detailed documentation all sources of the borrower's income and corroborated it with independent verification; or

(ii) five thousand dollars per violation or twice the amount of points and fees and closing costs as defined in this section, whichever is greater, for violations of:

(1) paragraph (i) of subdivision two of this section regarding loan flipping; and

(2) paragraph (k) of subdivision two of this section regarding ensuring the borrower's ability to repay the loan, where the borrower is not entitled to relief under subparagraph (i) of this paragraph.

8. A court may also award reasonable attorneys' fees to a prevailing borrower.

9. A borrower may be granted injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with this section.

10. Upon a finding by the court of an intentional violation by the lender of this section, or regulation thereunder, the home loan agreement shall be rendered void, and the lender shall have no right to collect, receive or retain any principal, interest, or other charges whatsoever with respect to the loan, and the borrower may recover any payments made under the agreement.

11. Upon a judicial finding that a high-cost home loan violates any provision of this section, whether such violation is raised as an affirmative claim or as a defense, the loan transaction may be rescinded. Such remedy of rescission shall be available as a defense without time limitation.

12. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower of a high-cost home loan.

13. In any action by an assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure, a borrower may assert any claims in recoupment and defenses to payment under the provisions of this section and with respect to the loan, without time limitations, that the borrower could assert against the original lender of the loan.

14. The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid, or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees.