CHAPTER 369

AN ACT in relation to banking corporations, and individuals, partnerships, unincorporated associations and corporations under the supervision of the banking department, constituting chapter two of the consolidated laws.

Became a law April 16, 1914, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 2 OF THE CONSOLIDATED LAWS.

BANKING LAW.

Article I. Short title; definitions; miscellaneous provisions (§§ 1--9-z).

II. Department of financial services; superintendent of financial services; supervisory and regulatory powers (§§ 10-45).

II-AA. ATM Safety Act (§§ 75-a--75-o).

II-B. Financial frauds (§ 78).

2-C. Community bank deposit program (§§ 85-87)

III. Banks and trust companies (§§ 94--140-a).

III-A. Bank holding companies; control of banking companies (§§ 141-147).

3-B. Subsidiary trust companies (§§ 150-155).

IV. Private bankers (§§ 160-181).

IV-A. Public accommodation offices of banks, trust companies, savings banks, savings and loan associations and foreign banking corporations (§§ 190-195).

V. Foreign banking corporations and national banks (§§ 200-209).

V-A. New York Business Development Corporation (§§ 210-220).

V-B. License for a foreign banking corporation to maintain a representative (§§ 221-a--221-k).

5-C. Interstate branching (§§ 222--227-c).

5-D. Small business investment companies (§§ 228-a--228-f).

VI. Savings banks (§§ 229--260-b).

VI-B. Fund for insuring deposits in savings banks and/or otherwise protecting depositors (§§ 282--289-b).

VI-C. Mutual holding companies (§§ 290-294).
VIII. Safe deposit companies (§§ 317-330).
VIII-A. Safe deposit business (§§ 332-338).
IX. Licensed lenders (§§ 340-361).
IX-A. Licensed cashers of checks (§§ 366-374).
X. Savings and loan associations (§§ 375-413).
10-A. State savings and loan insurance fund (§§ 420--420-l).
X-B. Savings and loan bank of the state of New York (§§ 432-446).
X-C. Mutual holding companies (§§ 447--447-d).
XI. Credit unions (§§ 450--487-a).
11-A. Credit union insurance fund (§§ 490-a--490-j).
11-B. Sales finance companies (§§ 491-502).
12. (Enacted without article heading or schedule of sections) (§§ 507-520).
XII-A. Mutual trust investment companies (§§ 550-553).
XII-B. Insurance premium finance agencies (§§ 554-578-a).
12-C. Budget planners (§§ 579-587).
12-D. Licensed mortgage bankers (§§ 589-599).
12-E Licensed mortgage loan originators (§§ 599-a--599-r).
XIII. Merger; voluntary dissolution; superintendent's taking possession; reorganization; liquidation (§§ 600-634).
XIII-A. Licensees: superintendent's taking possession: conservation: liquidation (§§ 635-639).
XIII-B. Transmitters of money (§§ 640--652-b).
XIII-C. State transmitter of money insurance fund (§§ 653-659).
XIII-D. Misconduct relating to banking organizations (§§ 660--674-a).
XIII-E. Joint deposits and shares; unauthorized withdrawals; withdrawals from decedents' accounts (§§ 675-678).
XIII-F. Uniform special deposits act (§§ 680--680-p).
XIV. Laws repealed; construction; when to take effect (§§ 700-702).
14-A. Student loan services (§§ 710-725).
14-B. Buy-now-pay-later lenders (§§ 735-749).
XV. General provisions applicable to banking stock corporations, limited liability investment companies,

and limited liability trust companies (§§ 1001-8007).
XVI. General provisions applicable to banking non-stock corporations (§§ 9001-9019).

ARTICLE I.

SHORT TITLE; DEFINITIONS; MISCELLANEOUS PROVISIONS.

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§ 1. Short title. This chapter, together with amendments thereof, shall be known as the "banking law", and shall be applicable to all corporations, partnerships and individuals defined in the next section and to such other corporations, unincorporated associations, partnerships and individuals as shall subject themselves to special provisions thereof, or who shall, by violating any of its provisions, become subject to the penalties provided therein.

§ 2. Definitions. 1. Bank. The term, "bank," when used in this chapter, unless a different meaning appears from the context, means any corporation, other than a trust company, organized under or subject to the provisions of article three of this chapter.

2. Trust company. The term, "trust company," when used in this chapter, unless a different meaning appears from the context, means any corporation or limited liability trust company organized under or subject to the provisions of article three of this chapter, having, in addition to the other powers specified in such article, the fiduciary

powers specified therein. The definitions set forth in section two-b of this article shall be utilized when the provisions of this chapter are applied to the formation and operation of limited liability trust companies.

3. Private banker. The term, "private banker," when used in this chapter, means an individual or partnership duly authorized by the superintendent to engage in the business of a private banker pursuant to the provisions of article four of this chapter.

4. Savings bank. The term, "savings bank," when used in this chapter, means any corporation organized under or subject to the provisions of article six of this chapter. Such term shall include stock-form savings banks which shall be subject to the provisions of article six of this chapter to the extent not otherwise provided by the superintendent of financial services pursuant to regulations promulgated under section fourteen-e of this chapter.

6. Safe deposit company. The term, "safe deposit company," when used in this chapter, means any corporation organized under or subject to the provisions of article eight of this chapter.

7. Licensed lender. The term, "licensed lender," when used in this chapter, means any person or other entity duly authorized by the superintendent to engage in business pursuant to the provisions of article nine of this chapter. The terms, "licensee," and "licensees," when used in article nine of this chapter, mean a licensed lender or licensed lenders.

8. Savings and loan association. The term, "savings and loan association," when used in this chapter, means any corporation organized under or subject to the provisions of article ten of this chapter. Such term shall include stock-form savings and loan associations which shall be subject to the provisions of article ten of this chapter to the extent not otherwise provided by the superintendent of financial services pursuant to regulations promulgated under section fourteen-e of this chapter.

9. Credit union. The term, "credit union," when used in this chapter, means any corporation organized under article eleven of chapter six hundred eighty-nine of the laws of nineteen hundred nine, as amended by chapter five hundred eighty-two of the laws of nineteen hundred thirteen, or under article eleven of this chapter. Every such corporation shall be a non-stock corporation.

10. Investment company. The term, "investment company," when used in this chapter, means any corporation or limited liability investment company organized under or subject to the provisions of article twelve of this chapter. The definitions set forth in section two-a of this article shall be utilized when the provisions of this chapter are applied to the formation and operation of limited liability investment companies.

10-a. Mutual trust investment company. The term "mutual trust investment company" when used in this chapter, means an investment company as defined by an act of congress entitled the "Investment Company Act of 1940", approved August twenty-second, nineteen hundred forty, as amended, provided that (a) such company is organized under or subject to the provisions of article twelve-A of this chapter; and (b) all of the stock and shares, other than stock or shares required by law to qualify directors of such investment company, are or are to be owned by trust companies or national banks having trust powers and having their principal offices within the state of New York or their nominees or the nominees of such corporate fiduciaries and individual co-fiduciaries.

11. Banking organizations. The term, "banking organizations," when used in this chapter, means and includes all banks, trust companies, private bankers, savings banks, safe deposit companies, savings and loan associations, credit unions and investment companies.

12. Time deposits. The term, "time deposits," when used in this chapter, and except as provided otherwise by regulation of the superintendent of financial services, means all deposits the payment of

which cannot legally be required within fourteen days.

13. Demand deposits. The term, "demand deposits," when used in this chapter, and except as provided otherwise by regulation of the superintendent of financial services, means deposits payment of which can legally be required within fourteen days.

14. Net demand deposits. The term, "net demand deposits," when used in this chapter, means the total of all deposits, and of all amounts due to banking corporations and private bankers and of all amounts due on certified and officers' checks, letters of credit and travelers' checks sold for cash, and for unpaid dividends, less the following items:

(a) Time deposits;

(b) Amounts due on demand from banking corporations organized under the laws of the United States or any state of the United States and private bankers other than a federal reserve bank and reserve depositaries.

15. Reserves on hand. The term, "reserves on hand," when used in this chapter, means the reserves against deposits kept in the vault of any banking organization.

16. Reserves on deposit. The term, "reserves on deposit," when used in this chapter, means the reserves against deposits maintained with a federal reserve bank located in this state and with reserve depositaries by any banking organization, pursuant to the provisions of this chapter.

17. Total reserves. The term, "total reserves," when used in this chapter, means the aggregate of reserves on hand and reserves on deposit maintained pursuant to the provisions of this chapter.

18. Reserve depositary. The term, "reserve depositary," when used in this chapter, means a banking corporation or private banker designated by the superintendent as a depositary for reserves on deposit.

19. Stockholder. The term, "stockholder," when used in this chapter, unless otherwise qualified, means a person who appears by the books of a

stock corporation to be the owner and holder of one or more shares of the stock of such corporation.

20. Shareholder. The term, "shareholder," when used in this chapter, means a member of a mutual savings and loan association or a member of a credit union.

21. Population. The term, "population," when used in this chapter, means population as determined by the latest federal census; or when used in connection with the words "unincorporated village," as determined by the superintendent from the best available sources of information.

22. Capital stock. The term, "capital stock," when used in this chapter in connection with any stock corporation subject to this chapter, means the aggregate par value of all outstanding shares of every class.

24. Deed of trust. The term "mortgage", when used in this chapter, shall, unless the context otherwise requires, include a deed of trust securing a loan; provided, however, that in applying the recording provisions of this chapter in the case of any obligation secured by a deed of trust, such provisions shall be deemed to require only that such deed of trust be recorded in the name of the trustee or trustees thereunder.

25. Bond and mortgage. The term "bond and mortgage", when used in this chapter, in referring to investments in or loans secured by mortgages on real estate, shall, unless the context otherwise requires, include a note secured by such mortgage.

26. Minor or infant. The term, "minor" or "infant", when used in this chapter, shall mean a person who has not attained the age of eighteen years; provided, however, that such definition shall not be applicable to any provision relating to the New York Uniform Transfers to Minors Act.

27. Trust office. The term "trust office", when used in this chapter, means an office of a trust company at which the activities conducted are limited to one or more of the fiduciary activities permitted for a trust company under this chapter and such non-fiduciary activities as may be ancillary to those activities. A trust office shall not be considered to be a branch office pursuant to any other provisions of this chapter.

(28) Department. The term "department" means the department of financial services of this state.

(29) Superintendent. The term "superintendent" means the superintendent of financial services of this state.

30. Consummation of a mortgage loan. The term "consummation of a mortgage loan" means, for purposes of the act of congress entitled Truth in Lending Act and the regulations thereunder and the Real Estate Settlement Procedures Act of 1974, as amended, and the regulations thereunder, when the applicant for the mortgage loan executes the promissory note and mortgage including by electronic signature, in accordance with applicable federal and state laws, rules, and regulations.

31. Members of a borrower's social network. The term "members of a borrower's social network" means a group of individuals authorized by a borrower to be part of his or her social media communications and network.

§ 2-a. Limited liability investment company; definitions. When the provisions of this chapter are applied to the formation and operation of a limited liability investment company references to:

1. "Board of directors" shall include the managers charged with the management of a limited liability investment company as set forth in its articles of organization.

2. "By-laws" shall include the operating agreement of a limited liability investment company.

3. "Capital stock" shall include the cash and property the members of a limited liability investment company have contributed to the company, but shall not include promissory notes, or other obligations to contribute cash or property or to perform future services.

4. "Corporation" shall include an unincorporated investment company formed as a limited liability investment company pursuant to the provisions of article twelve of this chapter.

5. "Director" shall include one of the managers charged with the management of a limited liability investment company as set forth in its articles of organization.

6. "Dividend" shall include the distribution of a limited liability investment company's cash or other assets to its members.

7. "Incorporator" shall include the person or persons who is or are the organizer or organizers of a limited liability investment company.

8. "Organization certificate" shall include the articles of organization of a limited liability investment company.

9. "Share" shall include the equity interest of a member of a limited liability investment company as set forth in the company's articles of organization or, in the absence of such a provision, the equity interest represented by a member's right to a proportionate share of the profits of the company.

10. "Stock" shall include the equity interest represented by the percentage of the total votes a member may cast as set forth in the articles of organization of a limited liability investment company or, in the absence of such a provision, the equity interest represented by a member's right to a proportionate share of the profits of the company.

11. "Stockholder" shall include a member of a limited liability investment company who has an equity interest represented by his or her right to a proportionate share of the profits or capital of the company.

12. "Voting stock" shall include the definition of stock as set forth in this section.

§ 2-b. Limited liability trust companies; definitions. When the provisions of this chapter are applied to the formation and operation of a limited liability trust company references to:

1. "Board of directors" shall include the managers charged with the management of a limited liability trust company as set forth in its articles of organization.

2. "By-laws" shall include the operating agreement of a limited liability trust company.

3. "Capital stock" shall include the cash and property the members of a limited liability trust company have contributed to the company, but shall not include promissory notes or other obligations to contribute cash or property or to perform future services.

4. "Corporation" shall include an unincorporated trust company formed as a limited liability trust company pursuant to the provisions of article three of this chapter.

5. "Director" shall include one of the managers charged with the management of a limited liability trust company as set forth in its articles of organization.

6. "Dividend" shall include the distribution of a limited liability trust company's cash or other assets to its members.

7. "Incorporator" shall include the person or persons who is or are the organizer or organizers of a limited liability trust company.

8. "Organization certificate" shall include the articles of organization of a limited liability trust company.

9. "Share" shall include the equity interest of a member of a limited liability trust company as set forth in the company's articles of organization or, in the absence of such a provision, the equity interest represented by a member's right to a proportionate share of the profits of the company.

10. "Stock" shall include the equity interest represented by the percentage of the total votes a member may cast as set forth in the articles of organization of a limited liability trust company or, in the absence of such a provision, the equity interest represented by a member's right to a proportionate share of the profits of the company.

11. "Stockholder" shall include a member of a limited liability trust company who has an equity interest represented by his, her, or its right to a proportionate share of the profits or capital of the company.

12. "Voting stock" shall include the definition of stock as set forth in this section.

§ 4. Information to be given to social services officials, state department of social services, state department of mental hygiene, the mental hygiene legal service, representatives of boards of child welfare and children's court by banking organizations. 1. If requested by an authorized representative of the state department of mental hygiene, the mental hygiene legal service, or of the state department of social services, or by the authorities charged with the duty of administering laws relating to public assistance or care or hospital care at public expense in any town, city or county, the officials of any banking organization shall furnish to such representative such information as such officials have as to whether any inmate of any state institution, or any applicant for or any person who is or was a recipient of hospital care at public expense, or any applicant for or any person who is or was a recipient of any form of public assistance or care under the social services law, named in such request or the husband or wife, or other relative legally responsible for the support of such inmate, applicant,

or recipient has or had funds, securities or other property on deposit or in the custody of such banking organization, and the amount or probable value thereof.

2. If requested by an authorized representative of the state office of temporary and disability assistance, or a social services district child support enforcement unit established pursuant to section one hundred eleven-c of the social services law, the officials of any financial institution, as defined in paragraph one of subdivision (d) of section four hundred sixty-nine A of the federal social security act, shall enter into an agreement with the state office of temporary and disability assistance or a social services district child support enforcement unit to develop and operate a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution shall provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each individual who maintains a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account at such institution and who owes past-due support, as identified by the state office of temporary and disability assistance or a social services district child support enforcement unit by name and social security number or other taxpayer identification number. Nothing herein shall be deemed to limit the authority of a local social services district support collection unit pursuant to section one hundred eleven-h of the social services law.

3. No financial institution which discloses information pursuant to subdivision two of this section, or discloses any financial record to the state office of temporary and disability assistance or a child support enforcement unit of a social services district for the purpose of enforcing a child support obligation of such person, shall be liable under any law to any person for such disclosure, or for any other action taken in good faith to comply with subdivision two of this section.

§ 4-a. Banks to display signs. Every banking organization having as

its purpose or among its purposes the receipt of deposits, shall continuously display a sign, or signs, as prescribed by the superintendent of financial services, at each station or window within the state where deposits are usually and normally received in its principal place of business and in all its branches indicating whether deposits are insured, and if insured the name of the insurer and the extent to which each depositor is insured. Signs in non-insured banking organizations shall clearly and legibly state "DEPOSITS NOT INSURED", all in letters of the same size and character. No sign shall appear in any non-insured bank with regard to insurance or deposits except as herein prescribed.

§ 4-b. Advertising. Every such non-insured banking organization shall include in all its advertising within the state with reference to deposit accounts the statement substantially as follows: "DEPOSITS NOT INSURED". Where such advertising is printed the statement shall be of such size and print to be clearly legible, all letters in such statement being of the same size and character. No further reference shall be contained in the advertising of non-insured banking organizations with reference to the insurance of depositors which shall tend to be misleading in connection therewith. The non-English equivalent of the insurance statement may be used in any advertisement provided that the entire advertisement is in such language and that the translation has had the prior approval of the superintendent of financial services.

§ 4-c. Exemptions from certain provisions of chapter. Any uninsured banking organization whose assets are in excess of two hundred million dollars shall be exempt from compliance with the provisions of sections four-a, four-b and four-c of this chapter unless otherwise directed by the superintendent.

§ 5. Loans pursuant to the "Servicemen's Readjustment Act of 1944." 1. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, (i) any loan at

least twenty per centum of which is guaranteed under title three of an act of congress entitled the "Servicemen's Readjustment Act of 1944," may be made or invested in by any banking organization having the power to make loans, and the savings and loan bank of the state of New York, and (ii) any bank or trust company may make any loan made on the security of a loan or loans eligible under the preceding subparagraph (i), without regard to the limitations and restrictions of this chapter; provided however, that

(a) No such loan upon the security of real estate shall be made or invested in if the amount of such loan exceeds the appraised value of such real estate, as improved or to be improved by the application of the proceeds of such loan, or if the amount of such loan, when added to the amount unpaid upon prior mortgages, liens and encumbrances upon such real estate, exceeds such appraised value. Such appraised value shall be determined by an appraiser appointed pursuant to policies established by the board of directors or trustees of the corporation making or investing in such loan, or, in the case of a private banker, shall be determined by the private banker or by an appraiser appointed pursuant to policies established by such private banker;

(b) Each such loan, if secured by real property, shall be subject to the provisions of this chapter relating to the recording of mortgages and assignments of mortgages upon real property;

(bb) The requirements of the foregoing paragraphs (a) and (b) shall not apply when not less than ten such mortgages are assigned as security for a loan made under paragraph (ii), providing the term of such loan does not exceed twelve months;

(c) Each such loan shall be subject to the provisions of this chapter prescribing the maximum limits, in amount, of (1) loans in the aggregate to, or upon the net liability of, any one individual and (2) loans in the aggregate secured by real property;

(d) Each such loan made or invested in by a savings bank, a savings and loan association, or the savings and loan bank of the state of New York shall be subject to the following additional provisions: (1) a loan pursuant to section five hundred one, five hundred two or five hundred three of the "Servicemen's Readjustment Act of 1944," for the purpose of repairing, altering or improving a building or buildings, and a loan pursuant to section five hundred five (a) of such act, need not be

secured by a lien on real property, but all other loans pursuant to such act must be secured by a first lien on such property; and (2) in the case of each loan for the acquisition or benefit of, or secured by, real property, such real property must, if located without the state of New York, be located, in the case of a savings bank, within twenty-five miles of the principal office of such savings bank; in the case of a savings and loan association, within fifty miles of the principal office of such association; and, in the case of the savings and loan bank of the state of New York, within fifty miles of the principal office of such bank or the principal office of one of its member savings and loan associations; except that, if the amount of a loan secured by real property, after deducting therefrom the amount thereof which is guaranteed pursuant to such act, is in excess of two-thirds of the appraised value of such real property, as determined in accordance with paragraph (a) of this subdivision, such real property must be located within the state of New York and, in the case of a savings bank or a savings and loan association, within one hundred miles of the principal office of any such corporation which makes, and any such corporation which invests in, such loan; and except that, in the case of a loan pursuant to section five hundred five (a) of such act, the real property for the acquisition or benefit of which such loan is made may be located within the applicable and prescribed limits of this chapter as to the location of real property securing a loan insured by the federal housing commissioner.

(e) The authority provided in this subdivision to invest in any loan secured by real property guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944", shall include authority to acquire title to real property in connection with investing in an installment contract for the sale of real property, so guaranteed, where the purchaser under such contract is in possession and control of the property, and title is acquired by the banking organization solely as security for the obligations of the purchaser.

2. In complying with the provisions of this chapter which prescribe the maximum limits, in amount, of loans in the aggregate to, or upon the net liability of, any one individual, and loans in the aggregate secured by real property, a banking organization or the savings and loan bank of

the state of New York may deduct from the total amount of each loan made or invested in by it that portion of such loan which is guaranteed pursuant to the "Servicemen's Readjustment Act of 1944", and, in the case of each loan made or invested in by it which is secured by a loan which is guaranteed pursuant to said act, may deduct that portion which is equal to the portion of such security which is so guaranteed.

3. The foregoing provisions of this section shall not apply to loans insured pursuant to section five hundred eight of the "Servicemen's Readjustment Act of 1944," but the superintendent of financial services shall have power to authorize banking organizations and the savings and loan bank of the state of New York to make and invest in such loans upon such terms and conditions as it shall prescribe. Nothing contained in this section shall prevent loans guaranteed or insured pursuant to the "Servicemen's Readjustment Act of 1944" from being made or invested in under, and subject to the limitations and restrictions of, other provisions of this chapter.

§ 6. Investment in obligations of housing corporations indirectly guaranteed pursuant to the "Servicemen's Readjustment Act of 1944". Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, any bank, trust company or savings bank may invest in obligations of any corporation organized under any law of this state for the purpose of acquiring, constructing, owning, maintaining, operating, selling or conveying a housing project or projects (not including hotels but including accommodations for retail stores, shops, offices and other community services reasonably incident to such projects) located within this state, which obligations are (a) secured by a first mortgage lien on such project, or such part thereof, as was or is to be constructed or acquired out of the proceeds of such obligations, either directly or by issue under an indenture of mortgage from such corporation to a corporate trustee having its principal office in this state, and (b) guaranteed indirectly through the pledge as security therefor of obligations directly guaranteed under title three of an act of congress entitled the "Servicemen's Readjustment Act of 1944", in an aggregate

amount equal to at least thirty per centum of the principal amount of all sums advanced to such corporation under the loan instrument or indenture during the period of construction and, upon completion, to the extent of at least forty per centum of the principal amount of such obligations.

§ 6-a. Investment in obligations of certain persons sixty-five years of age or over incurred to satisfy real property tax indebtedness. 1. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper and notwithstanding any inconsistent provision of this chapter to the contrary, any bank, trust company, savings bank, savings and loan association, or life insurance company authorized to do business in this state may make loans described in subdivision two of this section.

2. Banking institutions described in subdivision one may make loans under this section to natural persons aged sixty-five or older subject to the following conditions:

(a) the principal amount of the loan shall not exceed the aggregate amount of all real property taxes, special ad valorem levies, and special assessments paid or owing by the borrower for the current or prior years or both with respect to real property owned individually or jointly by such borrower which constitutes the principal residence of such borrower; provided, however, that the loan agreement may provide for such principal amount to be modified to include the amount of additional real property taxes, special ad valorem levies, and special assessments pertaining to such property as they are incurred; and

(b) such loan shall be secured by a first or second mortgage on the property which mortgage expressly states in like or similar terms "this mortgage is given to secure a loan made pursuant to the provisions of section six-a of the banking law"; and

(c) the annual interest chargeable on such loan shall not exceed the allowable interest chargeable by such lender to any other person, not including a corporation, on an obligation secured by a first mortgage lien; and

(d) a loan which is undertaken pursuant to this section shall not be

payable until the sale or other disposition of such property, provided however that any borrower may discharge any indebtedness he has undertaken pursuant to the provisions of this section at any time without payment of any charges other than principal and interest.

3. Subject to regulations of the superintendent of financial services, banking institutions described in subdivision one of this section which make loans pursuant to this section may, pursuant to the loan agreement, utilize part or all of the proceeds of such loan to make direct payment of real property taxes, special ad valorem levies, and special assessments on the property which secures such loan. Any such institution which retains part or all of the proceeds of such loan for the purpose of making direct payment of such real property taxes, special ad valorem levies, and special assessments shall be liable to such borrower, upon failure to pay such taxes, levies, and assessments for the amount of such taxes, levies, and assessments plus penalties and interest imposed thereon.

4. Every banking institution which makes direct payment of real property taxes, special ad valorem levies, and special assessments pursuant to subdivision three shall at least annually provide to the borrower any paid bill it has received for the payment of such taxes, levies, and assessments. Such bill shall be contained in a succeeding loan statement as may be sent to such borrower. This section shall not apply to billings for real property taxes, special ad valorem levies, and special assessments transmitted by computer tape by a city with a population of one million or more persons.

§ 6-c. Application forms to be made available; certain cases. 1. Every banking organization which originates loans secured by real property located in this state shall provide at its principal place of business and at all its branches except automated teller machines, point-of-sale terminals or other similar facilities, application forms for such loans which forms shall be made available upon request.

2. Every such organization shall be required, in such manner as the

superintendent shall determine, to maintain a record of such application forms returned substantially completed and the last activity had with respect thereto.

3. Every such organization shall inform any person making inquiry regarding the origination of loans secured by real property located in this state that written loan application forms are available at its principal place of business and at all its branches except automated teller machines, point-of-sale terminals or other similar facilities.

4. For purposes of this section "a loan secured by real property" shall include any loan secured by a mortgage or other lien upon real property including a leasehold estate and any cooperative apartment loan subject to the provisions of subdivision five of section one hundred three, subdivision eight-a of section two hundred thirty-five or subdivision two-a of section three hundred eighty of this chapter.

§ 6-d. Requirement to state in writing reason for denial of mortgage loan. Every banking organization and licensed mortgage banker which originates mortgage loans secured by real property located within New York state which denies an application for such a loan or makes its approval of such a loan conditional upon the applicant's agreement to terms substantially different than those included in or contemplated by the submitted application shall be required to notify, in writing, any person or agent who returns a substantially completed written mortgage loan application form of the reasons for the denial or conditioned approval.

§ 6-e. Graduated payment mortgages authorized. Notwithstanding any inconsistent provision of this chapter or other law and in addition to any other power exercisable by it, every banking organization, licensed mortgage banker, national banking association, federal savings bank, federal savings and loan association and federal credit union shall have the power to offer graduated payment mortgages and loans which conform to the provisions of section two hundred seventy-nine of the real

property law, subject to the rules and regulations prescribed by the superintendent of financial services.

§ 6-f. Alternative mortgage instruments made by banks, trust companies, savings banks, savings and loan associations and credit unions. 1. Notwithstanding any inconsistent provision of this chapter or any other law of this state, the superintendent of financial services is authorized to adopt such rules or regulations as shall permit banks, trust companies, foreign banking corporations licensed to maintain a branch or agency in this state, savings banks, savings and loan associations, credit unions and persons and entities engaging in the business described in section five hundred ninety of this chapter to make residential mortgage loans and cooperative apartment unit loans which provide for (a) periodic readjustments of the rate of interest charged for the loan or successive terms of the loan or (b) terms of loan which are shorter than the term of the mortgage or (c) repayment of the principal amount of the loan by regular payments which are not equal in amount throughout the term of the mortgage or (d) the lender thereof to receive a share in the future appreciation of the property serving as security for the loan under the circumstances set forth in the following sentence or (e) any combination of paragraphs (a), (b), (c) and (d) of this subdivision, subject to the provisions of subdivision two of this section. Where the lender or holder of a residential mortgage loan or cooperative apartment unit loan enters into a written agreement with the borrower under which the lender or holder conditionally reduces an amount of principal of such loan in order to assist a borrower at risk of foreclosure to avoid such foreclosure, the lender or holder may enter into a written agreement (a "shared appreciation agreement") with the borrower under which the lender shall be entitled to share in the appreciation of the market value of the real property or cooperative shares and proprietary lease securing such loan between the effective date of such reduction in principal amount until the date when the property is sold, provided that the amount the lender is entitled to receive under such shared appreciation agreement shall be the lesser of (i) the amount of such reduction in principal, plus interest on such amount from the date of such reduction to the date of payment at the

same rate of interest as applies to the remaining principal amount of the residential mortgage loan, and (ii) fifty percent of the amount of such appreciation. Such amounts shall be payable when the mortgagor sells the residential real property or cooperative shares and proprietary lease that secure the loan. Such shared appreciation agreement shall expressly and conspicuously bear a legend at the top of the agreement in at least fourteen-point type which shall include the following: "In this agreement, you are giving away some of any future increase in value of your home. Please read carefully." For purposes of this subdivision, the appreciation of the property shall be measured as the difference, if positive, between the gross sales proceeds (net of any reasonable real estate commission) of the sale of the property and the value of the property at the time of the closing of the shared appreciation mortgage, as determined by an appraisal by an independent New York state licensed real estate appraiser. Recovery of such reduction in the principal amount shall not be deemed to be interest for any purpose of the laws of this state.

Any shared appreciation agreement shall be accompanied by a notice, which shall be on a separate page from the shared appreciation agreement and shall contain the following heading in bold, fourteen-point type: "Important disclosures about the contract in which you agree to give away a part of any future increase in value of your home. Please read carefully." The notice shall include the following disclosures:

(1) a statement that the lender will be entitled to share in any appreciation of the market value of the mortgaged property that occurs between the time of the loan modification and the time the property is sold, up to the amount of principal forborne plus interest on such amount at the applicable rate of interest on the mortgage but in no event more than fifty percent of the amount of such appreciation, and providing at least three examples of how such shared appreciation may affect the borrower at the time the borrower sells the mortgaged property, such examples to include (A) no appreciation in the value of the mortgaged property, (B) appreciation of twenty percent and (C) appreciation of fifty percent;

(2) a statement advising the borrower to seek independent counseling from a lawyer, a HUD-certified mortgage counselor or a tax advisor

regarding (A) the trade-off between a current reduction in the size of the mortgage, versus the promise to give up part of the future appreciation of the home, and (B) the tax consequences of the principal forgiveness and shared appreciation agreement, and providing a list of the names and contact information of five HUD-certified mortgage counselors in the county where the mortgaged property is located or, if there are fewer than five such counselors in that county, the list may include counselors in one or more neighboring counties;

(3) a statement on the potential effect of the shared appreciation agreement on any future refinancing of the mortgage and the potential effect of any prepayment or refinancing of the mortgage on the appreciation sharing agreement; and

(4) such other disclosures as the superintendent of financial services may require.

2. Any rules or regulations which are adopted by the superintendent of financial services pursuant to subdivision one of this section:

(a) shall provide for disclosures and notices to the borrower with respect to the terms and conditions of the loan and the mortgage, and the superintendent of financial services may require the adoption of uniform disclosure and notice forms for this purpose;

(b) shall provide for the conditions governing renewals of the term of the loan;

(c) shall not permit any uninsured loan secured by residential real property to be made in an amount exceeding ninety percent of the appraised value of the property; and

(d) shall not allow, with respect to any specific alternative mortgage instrument which permits a periodic readjustment of the rate charged on the loan, for a greater change in rate than that permitted under federal law or regulations to federally-chartered banking organizations located in this state for loans made pursuant to an equivalent alternative mortgage instrument.

§ 6-g. Override of certain provisions of United States Public Law 97-320. 1. The provisions of Title VIII of an act of congress entitled "Garn-St Germain Depository Institutions Act of 1982", United States

Public Law 97-320, and the preemption of state law provided in section 804 thereof, shall not apply with respect to residential real property and cooperative apartment unit alternative mortgage transactions subject to the laws of this state except as provided in this section.

2. With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation or on a residential manufactured home, a lender may not exercise its option pursuant to a "due-on-sale" clause upon:

(a) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(b) The granting of a leasehold interest of three years or less not containing an option to purchase;

(c) A transfer to a relative resulting from the death of a borrower;

(d) A transfer where the spouse or children of the borrower become an owner of the property;

(e) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or

(f) A transfer into an inter-vivos trust in which the borrower is and remains a beneficiary and that does not relate to a transfer of rights of occupancy in the property.

§ 6-h. Reverse mortgage loans authorized. Notwithstanding any inconsistent provision of law, in addition to any other power exercised by it, every authorized lender, as defined by section two hundred eighty or two hundred eighty-a of the real property law, shall have the power to offer reverse mortgage loans (1) which conform to the provisions of section two hundred eighty or two hundred eighty-a of the real property law and the rules and regulations promulgated by the superintendent of financial services; or (2) which conform to the requirements of the federal housing administration's home equity conversion mortgage insurance demonstration program for as long as such program exists as

provided for in section 1715Z-20 of title 12 of the United States Code. "Reverse mortgage" shall mean the mortgage, deed of trust or other security instrument relating to a particular reverse mortgage loan transaction.

The proceeds of a reverse mortgage shall not be considered as income for the purposes of section four hundred sixty-seven of the real property tax law; provided, however, that monies used to repay a reverse mortgage may not be deducted from income, and provided additionally that any interest or dividends realized from the investment of reverse mortgage proceeds shall be considered income.

§ 6-i. Mortgage loans. No person, partnership, corporation, banking organization, exempt organization as defined in section five hundred ninety of this chapter or other entity shall make a mortgage loan as defined in section five hundred ninety of this chapter except in conformity with the requirements of article twelve-D and in compliance with such rules and regulations as may be promulgated by the superintendent of financial services under this section. Nothing in this section shall be construed to limit or otherwise modify any otherwise applicable requirement of state or federal law.

§ 6-j. Proof of insurance. 1. No exempt organization, as defined in section five hundred ninety of this chapter, or licensed mortgage banker which originates mortgage loans shall, at the time of title closing for a loan secured by a one to four family residential real property, refuse to accept a binder, issued by an insurer, or a duly authorized representative of an insurer, licensed to do business in this state, as evidence that hazard insurance has been procured for the mortgaged premises. Nothing herein is intended to prohibit the mortgage banker or exempt organization from requiring the borrower to also furnish a receipt indicating that the annual or installment premium on such insurance policy has been paid.

2. As used in this section, "binder" means a written document (a)

which includes the name and address of the insured and any additional named insureds, mortgagees, or lienholders; a description of the property insured; a description of the nature and amount of coverage which shall be deemed to include the terms of the standard fire insurance policy except as conspicuously noted on the binder; the identity of the insurer and of the authorized representative executing the binder; the effective date of coverage; the binder number or the policy number where applicable to a policy extension, and (b) which temporarily obligates the insurer to provide that insurance coverage pending issuance of the insurance policy. The cancellation of such a binder shall be governed at the minimum by the provisions of the standard fire insurance policy and the provisions of the insurance law applicable thereto.

§ 6-k. Real property insurance escrow accounts. 1. Definitions. When used in this section: (a) "Mortgage investing institution" means any bank, trust company, national bank, savings bank, savings and loan association, federal savings bank, federal savings and loan association, private banker, credit union, federal credit union, investment company, pension fund, licensed mortgage banker or any other entity which maintains a real property insurance escrow account for real property located in this state.

(b) "Mortgagor" means a person having title to and occupying a one to four family residence which is located in this state and is subject to a mortgage.

(c) "Real property insurance" means a policy of insurance issued, or issued for delivery in this state, on a risk located or resident in this state insuring the following contingency: loss or damage (including but not limited to loss or damage on account of fire) to real property used predominantly for residential purposes and consists of not more than four dwelling units, other than motels or hotels.

(d) "Real property insurance escrow account" means an account established by contract between a mortgagor of real property improved by a one to four family residence and the mortgage investing institution having a mortgage thereon, into which the mortgage investing institution shall deposit money collected from the mortgagor for the purpose of

paying real property insurance premiums.

(e) "One to four family residence" means property used primarily for residential purposes for one to four families, including property held in condominium form of ownership, and which is occupied in whole or in part by the owner.

2. Duties and responsibilities of mortgage investing institutions. (a) Every mortgage investing institution shall make all payments for insurance for which they hold real property insurance escrow accounts in a timely manner.

(b) Every mortgage investing institution shall pay at least the minimum rate of interest on each real property insurance escrow account as prescribed therein.

(c) Every mortgage investing institution shall deposit funds from a real property insurance escrow account of a mortgagor in a banking institution whose deposits are insured by a federal agency or a licensed branch of a foreign banking corporation whose deposits are insured by a federal agency. Notwithstanding the foregoing provisions of this subdivision, the superintendent shall have the power to exempt from the requirements of this subdivision any banking organization which does not receive deposits or share accounts from the general public.

(d) A mortgage investing institution may debit a mortgagor's real property insurance escrow account for payments of insurance premiums only if actual payment for such premiums is made within twenty-one days after such debit.

(e) Every mortgage investing institution shall, at least annually, provide to the mortgagor an analysis of the real property insurance escrow account of the mortgagor. Such analysis shall contain, for the twelve month period covered by the analysis, at least: (1) interest earned; (2) the amount of insurance premiums paid from the real property insurance escrow account; and (3) the account balance as of the beginning of the period covered by the analysis and the ending account balance as of a specified date within forty-five days preceding the date of the analysis. In addition, the mortgage investing institution shall, upon request by the mortgagor, provide to the mortgagor the date or dates of the payment of insurance premiums from such real property insurance escrow account. The information required by this paragraph may

be provided in notices otherwise required by federal or state law, regulation or rule to be sent on at least an annual basis to the mortgagor, including but not limited to notices under title three-A of the real property tax law.

(f) The mortgage investing institution shall provide a written disclosure, in at least eight point bold face type, to the mortgagor with respect to the real property insurance escrow account. Such disclosure shall be provided at the time of the establishment of the real property insurance escrow account. In the case of accounts already in existence on the effective date of this act, such disclosure shall be provided to the mortgagor with the next annual analysis required by paragraph (e) of this subdivision. The disclosure shall contain substantially the following language:

(i) The mortgage investing institution is obligated to make all payments for real property insurance for which the real property insurance escrow account is maintained. If any such payments are not timely, the mortgage investing institution is responsible for making such payments including any penalties and interest and shall be liable for all damages to the mortgagor resulting from its failure to make timely payment.

(ii) In the event that a real property insurance premium notice is sent directly to the mortgagor by the insurer, the mortgagor shall have the obligation to promptly transmit such premium notice to the mortgage investing institution, or such other institution or agent as may be designated in writing by the mortgage investing institution, for payment. Failure to do so may jeopardize the mortgagor's insurance coverage and may excuse the mortgage investing institution from liability for failure to timely make such real property insurance payments.

(iii) The mortgagor is obligated to pay one-twelfth of the real property insurance premiums each month to the mortgage investing institution for deposit into the real property insurance escrow account, unless there is a deficiency or surplus in the account, in which case a greater or lesser amount may be required.

(iv) If the mortgage investing institution is subject to the provisions of paragraph (c) of this subdivision, the mortgage investing institution must deposit the escrow payments made by the mortgagor in a

banking institution or a licensed branch of a foreign banking corporation whose deposits are insured by a federal agency.

(g) Every mortgage investing institution shall provide written notice to a mortgagor no later than ten business days after the transfer to another mortgage investing institution of the right to receive all payments from the mortgagor, including payments made into the real property insurance escrow account, which notice shall include the name, address and telephone number of the mortgage investing institution to which such rights have been transferred. Upon request by the mortgagor, the mortgage investing institution shall advise the mortgagor of the amount of money in such account as of the date of such transfer. Every mortgage investing institution shall remain fully liable to pay any real property insurance premiums which are due and payable prior to the date of such transfer, and the mortgage investing institution to which such rights have been transferred shall be liable to pay any real property insurance premiums which are due and payable after the date of such transfer, unless otherwise agreed among the parties to the transfer.

(h) Every mortgage investing institution shall, no later than thirty days after the final payment of the mortgage loan, where the mortgagor retains ownership of the property, send to the mortgagor a written statement that shall include, but not be limited to the following information: (i) that the real property insurance escrow account has been or will be terminated (whichever is applicable); and (ii) that unless the mortgagor establishes a new real property insurance escrow account with a mortgage investing institution, the mortgagor will be obliged to pay to the appropriate insurer real property insurance premiums becoming due thereafter. The written notice shall also set forth the effective date of the termination and shall provide the name and address of each insurer and shall advise the mortgagor to contact such insurer for billing information.

3. Mailing or delivery of bills to mortgage investing institutions. A mortgagor who has entered into a real property insurance escrow account may designate, in writing, a mortgage investing institution, and its successors, agents or assigns to receive premium notices for real property insurance. The mortgage investing institution shall advise the insurer in writing within fifteen days after the termination of such

escrow account and shall inform the insurer that all future premium notices should be sent directly to the insured. The mortgage investing institution shall, upon the request of the insurer, provide any document that clearly evidences its authorization to receive insurance premium notices or obligation to pay real property insurance premiums.

4. Payments by mortgage investing institutions. A mortgage investing institution may pay the real property insurance premiums due on more than one parcel by a single instrument, provided that the mortgage investing institution also provides to the insurer a detailed list of the specific parcels to which the instrument is to be applied, each parcel identification number (if any) and the amount of the real property insurance premium to be paid with respect to each parcel.

5. Liabilities of mortgage investing institutions. (a) A mortgage investing institution which receives moneys from a mortgagor for deposit into a real property insurance escrow account shall be liable to such mortgagor, upon failure to pay such real property insurance premiums, for the amount of the real property insurance premiums plus penalties and interest imposed thereon.

(b) In addition to any other remedies permitted by law, a mortgagor whose real property insurance premiums are to be paid by means of a real property insurance escrow account pursuant to this section may bring an action against the mortgage investing institution maintaining such account for the mortgagor under the provisions of this subdivision if payments for real property insurance premiums have not been made for thirty days after the date such insurance premiums have become due and payable. If a court shall find, after considering the circumstances of the failure of a mortgage investing institution to pay the real property insurance premium of a mortgagor pursuant to an escrow agreement, that such failure was due to the negligence or intentional acts of the mortgage investing institution, its agent, or both, the court may award the mortgagor injunctive relief and liquidated damages in an amount equal to three times the real property insurance premium not paid, but in no event greater than six thousand dollars.

(c) A mortgage investing institution shall be liable to the mortgagor for all damages and shall bear all responsibility for failure to make

timely payment of insurance premiums.

(d) The mortgage investing institution shall have liability to the mortgagor under this subdivision only if:

(i) the mortgage investing institution, or such other institution or agent as designated in writing by the mortgage investing institution, has received the real property insurance premium notice; and

(ii) the mortgagor has made required payments for deposit into the real property insurance escrow account.

6. Separability. If any provision of this section or the application of such provision in certain circumstances shall be held invalid, the validity of the remainder of this section and its applicability to other circumstances shall not be affected.

§ 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.

§ 6-m. Subprime home loans. 1. Definitions. The following definitions apply for the purposes of this section:

(a) "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).

(b) "Fully indexed rate" means: (i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the "good faith estimate" required under 12 USC §2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate loan, the annual percentage rate on the loan disregarding any introductory rate or rates and any interest rate caps that limit how quickly the contractual interest rate may be reached calculated at the time the lender issues its commitment.

(c) "Subprime home loan" means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC §2601 et seq. The term "subprime home loan" excludes a transaction to finance the initial construction of a dwelling, i.e., a construction only loan, a temporary

or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit but shall include any loan, however structured, that thereafter is converted into a permanent loan.

(i) The comparable duration for a home loan shall be determined as follows: for an adjustable or variable home loan with an initial rate that is fixed for less than three years, the Freddie Mac survey result for a one-year adjustable rate mortgage; for an adjustable or variable home loan with an initial rate that is fixed for at least three years, the Freddie Mac survey result for a five-year hybrid adjustable rate mortgage; for a fixed rate home loan with a term of fifteen years or less, the Freddie Mac survey result for a fifteen-year fixed rate mortgage; and for a fixed rate home loan with a term of more than fifteen years, the Freddie Mac survey result for a thirty-year fixed rate mortgage. The superintendent may prescribe by regulation a different comparable duration standard as necessary or appropriate to reflect changes in the terms and types of mortgages included in the Freddie Mac survey.

(ii) Notwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if the superintendent determines that by statute, rule or regulation, different thresholds for determining underwriting standards for subprime loans become applicable to nationally chartered lending institutions, or the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary to achieve parity between such nationally chartered institutions and banking organizations, mortgage banks and mortgage brokers in this state or to alleviate such unduly negative effects. Such determination shall promptly be published on the website of the department of financial services.

(iii) Notwithstanding the thresholds set forth in this paragraph, if a home loan is insured by the federal housing administration, and if annual mortgage insurance premiums are collected by the federal housing administration for the maximum duration permitted under federal statute, and if such loan is not a Title 1 home improvement loan nor a home

equity conversion mortgage, then the term "subprime home loan" means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than two and a half percentage points for a first-lien loan, or by more than four and a half percentage points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC §2601 et seq.

(d) "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.

(e) "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.

(f) "Mortgage broker" means a mortgage broker as defined in paragraph (g) of subdivision one of section five hundred ninety of this chapter and a mortgage banker as defined in paragraph (f) of subdivision one of

section five hundred ninety of this chapter, when such mortgage banker solicits, processes, places or negotiates a mortgage loan for others.

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

(a) No call provisions. No subprime home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision shall 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 negative amortization. No subprime home loan may contain a payment schedule with regular periodic payments that cause or may 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.

(c) No increased interest rate. No subprime home loan may contain a provision which increases the interest rate after default. This provision shall 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.

(d) Limitation on advance payments. No subprime 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.

(e) No modification or deferral fees. A lender may not charge a borrower any fees to modify, renew, extend, or amend a subprime home loan or to defer any payment due under the terms of a suprime home loan if, after the modification, renewal, extension or amendment, the loan is still a subprime home loan or, if no longer a subprime 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 subprime home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for subprime home loans. This paragraph shall not apply if the existing subprime home loan is in default or is sixty or more days delinquent and the modification, renewal, extension, amendment or deferral is part of a work-out process.

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

(g) No financing of insurance or other products sold in connection with the loan. No subprime 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 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.

(h) No "loan flipping". No lender or mortgage broker making or arranging a subprime 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.

(i) No refinancing of special mortgages. No lender making a subprime 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 the borrower has received home loan counseling about the advantages and disadvantages of the refinancing.

(j) No lending without providing information on the availability of counseling. 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 of a subprime home loan 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 services, shall be provided to the borrower by the lender or the mortgage broker at the time that this disclosure is given.

(k) No encouragement of default. In making or arranging a subprime 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 the subprime home loan that refinances all or any portion of such existing loan or debt.

(l) Prohibited payments to mortgage bankers and brokers. In making or arranging a subprime home loan, no lender, mortgage banker 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.

(m) No prepayment penalties on subprime home loans. No prepayment penalties or fees shall be charged or collected on a subprime home loan. A prepayment penalty in a subprime home loan shall be unenforceable.

(n) 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.

(o) Mandatory escrow of taxes and insurance. No subprime 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 subprime 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 subprime 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.

(p) Mandatory disclosure of taxes and insurance payments. With respect to a subprime 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.

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

3. Certain loan provisions rendered void. Any provision in a subprime home loan that violates subdivision two of this section shall be rendered void.

4. Ability to repay. No lender or mortgage broker shall make or

arrange a subprime home loan unless the lender or mortgage broker reasonably and in good faith believes at the time of the loan closing that one or more of the borrowers, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If a lender or mortgage broker making or arranging a subprime home loan knows that one or more home loans secured by the same real property will be made contemporaneously to the same borrower with the subprime home loan being made or arranged by that lender or mortgage broker, the lender or mortgage broker making or arranging the subprime home loan must document the borrower's ability to repay the combined payments of all loans on the same real property.

(a) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan according to the loan terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the borrower's credit history, current and expected income, current obligations, employment status, and other financial resources other than the borrower's equity in the real property that secures repayment of the subprime home loan.

(b) In determining a borrower's ability to repay a subprime home loan, the lender or mortgage broker shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the borrower using tax returns, payroll receipts, bank records, reasonable alternative methods, or reasonable third-party verification.

(c) In determining a borrower's ability to repay a subprime home loan according to its terms when the loan has an adjustable rate feature, the lender or mortgage broker shall calculate the monthly payment amount for principal and interest by assuming (i) the loan proceeds are fully disbursed on the date of the loan closing, (ii) the loan is to be repaid in substantially equal monthly amortizing payments of principal and interest over the entire term of the loan, with no balloon payment, and (iii) the interest rate over the entire term of the loan is a fixed rate equal to the higher of the initial interest rate or the fully indexed rate at the time of the loan closing, without considering any initial discounted rate.

(d) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan may utilize reasonable commercially

recognized underwriting standards and methodologies, including automated underwriting systems, provided the standards and methodologies comply with the provisions of this section.

5. Required legend. Subprime home loan mortgages shall include a legend on top of the mortgage in twelve-point type stating that the mortgage is a subprime home loan subject to this section.

6. Evasion of statutory requirements. The provisions of this section shall apply to any person who 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.

7. Good faith errors. A lender of a subprime home loan that, when acting in good faith, fails to comply with the provisions of this section, shall not be deemed to have violated this section if, prior to the institution of any action and before the borrower is prejudiced, the lender notifies the borrower of the compliance failure, appropriate restitution is made, and whatever adjustments that are necessary are made to the loan to make the loan satisfy the requirements of this section.

8. Enforcement. The attorney general or the superintendent may enforce the provisions of this section.

9. Damages. Any person found by a preponderance of the evidence to have violated this section shall be liable to the borrower of a subprime home loan for actual damages.

10. Attorneys fees. A court may also award reasonable attorneys' fees to a prevailing borrower in a foreclosure action.

11. Equitable relief. 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.

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

13. Defense to foreclosure. In any action by a lender or assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure, a borrower may assert as a defense, any violation of this section.

14. Severability. 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 with respect to a home loan, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees.

§ 6-n. Responsibility of banks for mortgages being processed for modification. 1. If a mortgage that is the subject of an application for a modification of the mortgage terms is sold or transferred during the modification process, the bank or financial institution selling or transferring such mortgage shall provide the borrower with a written list of all documents relating to such application for modification that were provided to the bank or financial institution to which such mortgage was sold or transferred.

2. If a borrower has been approved in writing for a first lien loan modification or other modification to avoid foreclosure, and the servicing of such borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall assume all duties and obligations related to any previously approved first lien loan modification or other foreclosure prevention alternative in accordance with the provisions of this section.

*** § 6-o. Single point of contact for modifying delinquent home loans.** 1. A lender shall provide to a borrower who is thirty or more days delinquent on his or her home loan with such lender and who chooses to pursue a loan modification or other foreclosure prevention alternative, a single point of contact for the borrower to reach the lender regarding pursuing a loan modification. If at any time the contact information provided to the borrower changes, a notification of such change shall be provided by the lender to the borrower within five business days of such change. The duties imposed on a lender by this section may also be performed by a mortgage servicer acting on behalf of such lender.

2. The single point of contact required by this act shall be responsible for the following:

(a) communicating information regarding options the borrower may have for modifying his or her delinquent home loan;

(b) assisting the borrower with identifying documents necessary for pursuing a loan modification; and

(c) providing accurate information regarding the status of a borrower's loan modification application should such borrower choose to apply for a modification.

3. The single point of contact required by this section shall remain assigned to the borrower's account until such time as the lender determines that all loss modification options have been exhausted or until the borrower's account becomes current.

4. For the purposes of this section, "home loan" shall have the same meaning as defined in paragraph (e) of subdivision one of section six-l of this article.

5. The superintendent of financial services is hereby authorized to establish rules and regulations as he or she may deem necessary for the single point contact required by this section.

* NB There are 2 § 6-o's

*** § 6-o. Reverse cooperative apartment unit loans for persons**

sixty-two years of age or older. 1. For purposes of this section, the following terms shall have the following meanings:

(a) Reverse cooperative apartment unit loan. A loan which is secured by shares or membership in a cooperative apartment that is or intended to be the primary residence of the borrower or borrowers the proceeds of which are advanced to the borrower or borrowers during the term of the loan in equal installments, or in advances through a line of credit or otherwise, in a lump sum, or through a combination thereof. Interest and fees will accrue during the life of the loan and will be added to the principal balance of the loan, but will not become due and payable until the borrower(s) dies, permanently vacates the apartment or defaults on the terms of the loan, and will continue to accrue until the loan is paid in full.

(b) Loan payout options:

(i) Term payment option. Under the term payment option, equal monthly payments are made by the lender to the borrower for a fixed term of months chosen by the borrower.

(ii) Tenure payment option. Under the tenure payment option, equal monthly payments are made by the lender to the borrower, until the loan is prepaid in full or becomes due and payable.

(iii) Line of credit payment option. Under the line of credit payment option, payments are made by the lender to the borrower at times and in amounts determined by the borrower as long as the amounts do not exceed the maximum amount of loan proceeds.

(iv) Single lump sum payment option. Under the single lump sum payment option, the borrower receives an amount from the lender that does not exceed the maximum amount of loan proceeds. Set asides required for disbursements such as loan closing costs or for monthly maintenance fees, will be deducted from the amount of proceeds available to the borrower.

(c) Authorized lender. Any bank, trust company, national banking association, savings bank, savings and loan association, federal savings bank, federal savings and loan association, credit union, or federal credit union or any licensed mortgage banker approved for the making of reverse mortgage loans by the superintendent or any entity exempted from licensing pursuant to section five hundred ninety of this chapter and approved for the making of reverse mortgage loans by the superintendent.

(d) Borrower. A tenant in severalty who is sixty-two years of age or older, or if the cooperative apartment unit is held by tenants by the entirety or by joint tenancy, the youngest of which is sixty-two years age or older.

(e) Superintendent. The superintendent of financial services of this state.

(f) Department. The department of financial services of this state.

(g) Third-party contact. The lender must ask the borrower if they want to designate a third-party contact, such as a family member, trusted friend, advisor or other party whom the borrower would like to be contacted. It shall be the borrower's discretion to choose if the third-party contact is to be contacted if (i) the borrower has not returned the occupancy form, and/or (ii) the loan is in default for any reason and the lender plans to proceed on collecting on the loan, i.e., initiating eviction or foreclosure and/or (iii) the borrower cannot be reached.

2. A cooperative apartment unit loan pursuant to this section shall be subject to the following:

(a) the borrower shall be granted lifetime possession of the subject premises of the cooperative apartment unit for which the shares or membership are the security for the reverse cooperative apartment unit loan, as long as such apartment unit remains the borrowers' primary residence and the borrower is not in default under the reverse cooperative apartment unit loan. The borrower or borrowers must certify annually on each anniversary of the loan, that they reside in the unit and that it is their primary residence;

(b) annually the lender shall advise the borrower or borrowers of the name and contact information, if any, on file for a third-party contact designated pursuant to paragraph (g) of subdivision one of this section and ask if the borrower or borrowers want to update or change the information for the third-party contract;

(c) subject to such rules or regulations as the superintendent may adopt, a reverse cooperative apartment unit loan shall be made at either a fixed or variable rate of interest;

(d) subject to such rules or regulations as the superintendent may adopt, the authorized lender may require a borrower to establish a set

aside account for the purposes of paying property taxes, maintenance or cooperative fees, insurance premiums of the cooperative apartment unit, or for the payment of any other fees and expenses;

(e) a lender who fails to make loan advances as required in the loan documents, and fails to cure an actual default after notice as specified in the loan documents, shall forfeit any right to collect interest or service charges under the contract. The lender's right to recovery at loan maturity shall be limited to the outstanding balance as of the date of lender's default, minus all interest. However, a lender shall not be required to make loan advances under a loan if the borrower is in default under the loan;

(f) the outstanding balance may be prepaid in full by the borrower without penalty at any time during the reverse cooperative apartment unit loan term;

(g) an authorized lender is prohibited from using or attaching any property or asset of the borrower or heirs of the borrower except the shares or membership representing an ownership interest in the apartment unit securing the reverse cooperative apartment unit loan in settlement of a reverse loan obligation--the loan is a non-recourse loan;

(h) an authorized lender shall deliver to the applicant upon application, a statement that complies with the requirements established by the department providing the contact information for New York approved, or U.S. Department of Housing and Urban Development approved, reverse mortgage housing counselors with cooperative housing training whom the cooperative apartment owner can call for independent counseling and information services. Further, no reverse loan commitment shall be issued by the authorized lender until the applicant presents, in writing, a form that certifies the terms of the reverse cooperative apartment unit loan have been explained to them by a New York or U.S. Department of Housing and Urban Development approved reverse mortgage housing counselor with cooperative housing training;

(i) an authorized lender shall deliver to an applicant such disclosures as may be required by the superintendent which shall describe the relevant portions of the reverse loan being offered, and shall include but not be limited to the following items:

(i) a schedule of payments to and from the borrower and the total payments in dollars over the life expectancy of the youngest borrower of

the reverse cooperative apartment unit loan for the borrower;

(ii) a statement prominently displayed advising applicants to consult with appropriate authorities regarding tax and estate planning consequences of a reverse cooperative apartment unit loan;

(iii) where applicable a description of prepayment and refinancing features;

(iv) to the extent determinable at or prior to the inception of the reverse cooperative apartment unit loan, the interest rate and, an estimate of the total interest payable on the reverse cooperative apartment unit loan;

(v) a statement concerning the compliance of the lender with the criteria established by the superintendent that an authorized lender must meet before it may make reverse cooperative apartment unit loans pursuant to this section;

(vi) a statement setting forth those events which would cause the loan to become due and payable (or cause the borrower to default) the reverse cooperative apartment unit loan;

(vii) the loan is subject to a three day right of rescission by the borrower; and

(viii) a financial statement setting forth an estimate of all costs associated with the loan;

(j) an authorized lender shall deliver to each borrower at the time of closing of a reverse cooperative unit loan two copies of the borrower's right to cancel and instructions for how to cancel the loan that complies with the requirements to be prescribed by the superintendent;

(k) a reverse cooperative apartment unit loan pursuant to this section shall expressly and conspicuously bear a legend identifying it as such in at least fourteen-point font;

(l) a reverse cooperative apartment unit loan shall clearly set forth the terms for when the loan becomes due and payable, including:

(i) regardless of loan payout option chosen by the borrower, the loan note shall state that the outstanding loan balance will not be due and payable in full until the last borrower dies, or if a borrower conveys all of his or her title in the property and no other borrower retains title to the property; and

(ii) the loan note shall state that the outstanding loan balance shall be due and payable in full if any of the following occur:

(1) the cooperative apartment unit ceases to be the primary residence of a borrower for reasons other than death and the cooperative apartment unit is not the primary residence of at least one other borrower;

(2) for a period of longer than twelve consecutive months, a borrower fails to occupy the cooperative apartment unit because of physical or mental illness and the cooperative apartment unit is not the primary residence of at least one other borrower; or

(3) an obligation of the borrower under the loan note is not met;

(m) within thirty business days of learning of the occurrence of any event listed in paragraph (l) of this subdivision, the mortgagee shall notify the mortgagor and their authorized designee, in writing, of such occurrence, along with information on the right to cure. The mortgagee shall then allow the mortgagor forty-five calendar days to cure. A mortgagee may only terminate a reverse mortgage loan if the mortgagor fails to cure any termination event within such forty-five calendar day period. In the event that the borrower has not designated a third-party contact to receive such notice of foreclosure, then the authorized lender or the holder of said reverse cooperative apartment unit loan shall notify the local or county office for the aging of its intent to commence foreclosure proceedings. Such entity shall take appropriate action to protect the interests of the borrower;

(n) a reverse cooperative apartment unit loan secured by shares or a membership representing an ownership interest in a unit in a cooperative housing corporation shall also be subject to the prior approval by the cooperative's board of directors; and

(o) no reverse cooperative apartment unit loan shall be subject to mandatory binding arbitration.

3. A reverse cooperative apartment unit loan pursuant to this section may:

(a) provide that an authorized lender may, consistent with federal laws and regulations, include a due-on-sale clause in its reverse cooperative apartment unit loan agreement and at its option exercise and enforce such clause in accordance with its terms; and

(b) provide that the borrower's closing costs, including but not limited to loan or commitment fees if any, insurance premiums, repairs, legal fees, the costs of third party counseling, the costs of paying off

any existing mortgages or liens, and other appropriate costs be included in the principal of the reverse cooperative apartment unit loan and disbursed out of the loan proceeds at closing.

4. The superintendent shall adopt such rules or regulations as he or she considers appropriate to govern a reverse cooperative apartment unit loan made pursuant to this section. No reverse cooperative apartment unit loan shall be made unless it conforms to the requirements of this section and such rules and regulations as the superintendent may adopt.

5. No authorized lender or any other party or entity shall in any manner, in the marketing or offering of reverse cooperative apartment unit loans, engage in any unfair or deceptive practices in connection with the marketing or offering of reverse cooperative apartment unit loans, and, additionally, shall not:

(a) use the words "public service announcement" in any commercial, mailing, advertisement or writing relating thereto;

(b) use the words "government insured" or other similar language representing that reverse cooperative apartment unit loans are insured, supported and sponsored by any governmental entity in any commercial, mailing, advertisement or writing relating thereto; or

(c) represent that any such loan is other than a commercial product.

6. (a) Every authorized lender and assignee must obtain a surety bond in the amount of one hundred thousand dollars for the benefit of claims against the lender/assignee for failure to perform their obligations to the borrower. The superintendent will hold the surety bond. In addition, a lender or assignee shall maintain an irrevocable standby letter of credit from a financial institution approved by the superintendent in favor of the lender or assignee in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans then on the lender's books and those expected to be made over the next twelve months or three million dollars, whichever is greater. The initial term of the letter of credit shall be at least two years. A lender or assignee also shall maintain a minimum capital of ten million dollars. A lender may rely upon its parent company to meet the minimum capital requirements.

(b) Every authorized lender or its agent shall provide, with any solicitation for reverse cooperative apartment unit loan products mailed to a physical address within the state, supplemental consumer protection materials the content and form of which shall be specified by the superintendent or his or her designee.

(c) Every authorized lender shall provide each applicant or potential applicant for a reverse cooperative apartment unit loan with the telephone number and internet website address provided by the department for the purposes of acquiring reverse cooperative apartment unit loan counseling.

(d) The superintendent is authorized to promulgate such rules and regulations as he or she shall deem necessary to implement the provisions of this subdivision.

7. For reverse cooperative apartment unit loans, authorized lender and their agents shall:

(a) provide a monthly account statement, and for all borrowers whose maintenance fees, special assessments mortgage insurance payments, homeowners insurance payments, or payments stemming from any other property obligation or obligations are administered by the authorized lender, and where these payments are derived from the proceeds of the loan, the authorized lender shall provide on the borrower's account statement the current balance remaining in the borrower's line of credit or lifetime expectancy set aside, the projected annual property charges for that year, and a notice which reads in at least fourteen point type:

"YOUR MAINTENANCE FEES AND SPECIAL ASSESSMENTS ARE CURRENTLY BEING PAID BY THE PROCEEDS OF THIS LOAN. THE FUNDS THAT HAVE BEEN SET ASIDE ARE EXPECTED TO BE EXHAUSTED AFTER THE MAINTENANCE FEES AND SPECIAL ASSESSMENT PAYMENTS OF (SPECIFY EXPECTED MONTH AND YEAR). IF THE PROCEEDS OF THIS LOAN CANNOT PAY THE MAINTENANCE FEES AND SPECIAL ASSESSMENTS, YOU MUST PAY THESE OBLIGATIONS OR YOUR COOP SHARES MAY BE LOST TO FORECLOSURE. PLEASE NOTE THAT MAINTENANCE FEES AND SPECIAL ASSESSMENTS CAN VARY SO YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR CHANGES."

(b) by telephone and first class mail, inform and provide notice to a borrower when his or her home equity line of credit or life expectancy set aside is depleted to twenty percent. Such notice shall inform the

borrower of his or her obligations relating to the cooperative apartment unit including, but not limited to, mortgage insurance, homeowners insurance and real property taxes previously paid by such line of credit or life expectancy set aside, and that such obligations must continue to be paid when the home equity line of credit or life expectancy set aside is depleted. Such notice shall use plain language, written in a clear and coherent manner using words with common and every day meanings, appropriately divided and captioned by its various sections. If the lender or its agent is unable to contact the borrower by telephone, notice must be sent to the third-party contact if authorized by the borrower.

(c) Each authorized lender shall, by telephone and first class mail, inform and provide notice to a borrower when his or her home equity line of credit or life expectancy set aside is depleted. Such notice shall inform the borrower of his or her obligations relating to the cooperative apartment unit including, but not limited to, mortgage insurance, homeowners insurance and real property taxes, and that the home equity line of credit or life expectancy set aside will no longer pay these obligations. Such notice shall use plain language, written in a clear and coherent manner using words with common and every day meanings, appropriately divided and captioned by its various sections.

8. In the event that an authorized lender determines a reverse cooperative apartment unit loan to be in default on the basis that the cooperative apartment is no longer the primary residence of or occupied by the borrower, if during the verification of the borrower's primary residence and/or occupancy no responses are received in response to mailings relating thereto, such lender shall cause a telephone call to be made to the borrower, or if the borrower is unreachable by telephone, to the third-party contact if designated, and an in person visit to be made to the borrower at the cooperative apartment to be made prior to the commencement of any proceeding to enforce the lender's rights under the note. During such visit, the authorized lender or its agent shall provide clear information as to who they are, that the visit pertains to the reverse cooperative apartment unit loan, the reason for the home visit, and the telephone number to call for further information. The authorized lender must wait at least thirty days following such visit,

in addition to any additional time or notice requirements specified by any other provision of law, before initiating a foreclosure action on the basis that the cooperative apartment is no longer the primary residence of the borrower. If the borrower contacts the authorized lender and provides proof of residence or occupancy after such visit but before the commencement of a proceeding to enforce the lender's rights under the note, the authorized lender shall be barred from initiating such action. Furthermore, no authorized lender shall charge a borrower any fee for any such visit and inspection. This prohibition on the imposition of fees shall include any and all inspections conducted by the authorized lender to verify the status of the reverse cooperative apartment unit loan, or any suspected or actual default condition.

9. Notwithstanding any inconsistent provision of law, the priority of the lien of a reverse cooperative apartment unit loan, including the lien for all principal, interest, fees, costs, and other charges assessed in connection with the reverse loan, shall date from the filing of a UCC-1 notice for the loan irrespective of the date of any advance of reverse loan proceeds or the date by which an authorized lender shall be entitled to accrued but unpaid interest, fees, costs or other charges.

10. Nothing in this section shall be construed to limit, impair or otherwise affect the priority, under applicable law, of any other mortgage, deed of trust, encumbrance or lien which was filed prior to the effective date of this section.

11. The sale or transfer of the interest in the cooperative apartment unit to a person other than an original borrower or borrowers shall result in the termination of the reverse loan.

12. Any person who has been injured by reason of any violation of this section or any violation of the rules and regulations of the department relating to the reverse cooperative apartment unit loan program may bring an action in his or her own name to recover treble his or her actual damages, plus the prevailing plaintiff's reasonable attorneys' fees.

13. Compliance with the provisions of this section shall be conditions precedent to commencing an action to foreclose upon a reverse cooperative apartment unit loan which is subject to the provisions of this section, and the failure to comply therewith shall be a complete defense to such action.

* NB There are 2 § 6-o's

§ 6-p. Loan counseling for mortgages guaranteed by the Servicemen's Readjustment Act of 1944. Every mortgage lending institution and mortgage banker which originates loans secured by real property used for residential purposes located in this state which are to be guaranteed under the Servicemen's Readjustment Act of 1944 shall provide a separate disclosure form with each application stating that a veteran seeking a housing loan under chapter 37 of title 38 of the United States Code has been offered loan counseling services. Such loan counseling services shall be provided by the department of veterans' services under section twenty-nine-a of the veterans' services law upon request of an applicant. The disclosure form required by this section shall be signed by each applicant and shall include information detailing how to access such counseling services.

§ 7. Payment of dividends or interest upon unclaimed deposits or shares; limitation of charges in connection with savings accounts. 1. No banking organization or foreign banking corporation transacting business in this state shall discontinue the payment of dividends or interest on any deposit made with such organization or corporation, or reduce the rate at which dividends or interest is paid, solely because such deposit is inactive or unclaimed, except that payment of dividends or interest may be discontinued for the period following June thirtieth of the year in which the deposit is paid to the state comptroller pursuant to section three hundred three of the abandoned property law. A share issued by a savings and loan association or by a credit union shall be deemed a deposit for the purposes of this section.

2. No banking organization or foreign banking corporation transacting business in this state shall impose any service charge on an inactive savings account which is higher than the service charge imposed by such organization or corporation on an active savings account; provided, however, that a banking organization or foreign banking corporation may impose a reasonable charge on an inactive savings account for costs related to or incurred as a result of the payment or delivery of abandoned property to the state comptroller pursuant to the abandoned property law.

3. The superintendent of financial services may promulgate such regulations as he or she deems necessary and proper to implement and define the provisions of this section.

§ 8. Deposits by custodian designated by administrator of veterans' affairs, or by person certified by social security administration. When any deposit shall be made for the benefit of an individual by the person who has been designated the custodian of such individual by the administrator of veterans' affairs pursuant to the provisions of title thirty-eight, United States code, "Veterans' Benefits", as amended, or when a deposit shall be made for the benefit of an individual by a person who has been certified by the social security administration as the person to whom payment for the benefit of such individual should be made pursuant to the provisions of an act of congress entitled the "Social Security Act", the deposit, together with any interest or dividends credited thereon, may be paid to such custodian or his successor designated by the administrator of veterans' affairs or to such person or his successor certified by the social security administration, and the receipt or acquittance of such custodian or person or such successor shall be a valid and sufficient release and discharge to the depositary for any payment so made.

§ 9. Checks drawn against corporate funds or payable to corporations; no notice of defense against or claim to check. Notwithstanding section 3-304 of the uniform commercial code, the drawing of a check by an

officer or agent of a corporation against the account of, or in the name of the corporation, whether the check is drawn against an account in the name of the corporation, or in the name of such officer or agent of the corporation as such, to himself as payee, or the endorsement of a check in the name of the corporation, to himself as endorsee, and in either case the cashing of such check or the deposit thereof to the credit of his personal account, shall not constitute notice to a private banker, banking organization or branch of a foreign banking corporation of any defense against or claim to the check on the part of any person, provided that the private banker, banking organization or branch has on file an authorization from the corporation showing that the officer or agent is authorized on behalf of the corporation to perform any of the above acts for unlimited or limited amounts, and that the amount of the check does not exceed the maximum limits of the amount so contained in the authorization so filed for the officer or agent when such a limitation is contained therein.

§ 9-a. Defense of ultra vires.

No act of a corporation formed under this chapter, or of a corporation formed under any other statute or special act having as its purpose or among its purposes a purpose for which a corporation may be formed under this chapter, and no transfer of real or personal property to or by such a corporation, otherwise lawful, shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such transfer, but such lack of capacity or power may be asserted:

1. In an action by a stockholder or member against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other

parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of such contract; provided that anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

2. In an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized act.

3. In an action or special proceeding by the superintendent or the attorney-general to annul or dissolve the corporation or to enjoin it from the doing of unauthorized business.

§ 9-b. Actions or special proceedings by superintendent or attorney-general.

1. In addition to any action or special proceeding which may be maintained by either of them under any other section of this chapter, the superintendent or the attorney-general may maintain an action or special proceeding:

(a) To annul the corporate existence or dissolve a corporation formed under any article of this chapter or formed under any other statute or special act having as its purpose or among its purposes a purpose for which a corporation may be formed under this chapter that has acted beyond its capacity or power or to restrain it from the doing of unauthorized business.

(b) To annul the corporate existence or dissolve any such corporation that has not been duly formed.

(c) To restrain any person or persons from acting as such a corporation within this state without being duly incorporated or from exercising in this state any corporate rights, privileges or franchises not granted to them by the law of the state.

(d) To dissolve a corporation under section nine-c.

2. In any action or special proceeding brought under this section:

(a) If an action, it is triable by jury as a matter of right.

(b) The court may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.

(c) A temporary restraining order to restrain the commission or continuance of the unlawful acts which form the basis of the action or special proceeding may be granted upon proof, by affidavit, that the defendant or defendants have committed or are about to commit such acts. Application for such restraining order may be made ex parte or upon such notice as the court may direct.

(d) When final judgment in such action or special proceeding is rendered against the defendant or defendants, the court may direct the costs to be collected by execution against any or all of the defendants or by order of attachment or other process against the person of any director or officer of a corporate defendant.

(e) In connection with any such proposed action or special proceeding the superintendent or the attorney-general may take proof and issue subpoenas in accordance with the civil practice law and rules.

§ 9-c. Superintendent's or attorney-general's action for judicial dissolution.

1. The superintendent or the attorney-general may bring an action for the dissolution of a corporation formed under any article of this chapter or formed under any other statute or special act having as its purpose or among its purposes a purpose for which a corporation may be formed under this chapter upon one or more of the following grounds:

(a) That the corporation procured its formation through fraudulent misrepresentation or concealment of a material fact.

(b) That the corporation has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the state has become liable to be dissolved.

2. An action under this section is triable by jury as a matter of right.

3. The enumeration in subdivision one of grounds for dissolution shall not exclude actions or special proceedings by the superintendent, the attorney-general or other state officials for the annulment or dissolution of a corporation for other causes as provided in this chapter or in any other statute of this state.

§ 9-d. Enforcement of section two hundred ninety-six-a of the executive law. In addition to the powers conferred upon the superintendent of financial services by this chapter, he shall enforce section two hundred ninety-six-a of the executive law by taking such action as is therein authorized.

§ 9-f. Geographic discrimination in making mortgage loans prohibited. 1. No banking institution as such term is defined in this section shall refuse to make a prudent loan upon the security of real property or otherwise discriminate with respect thereto because of the geographic location of such property if such property is located within the geographic area ordinarily serviced by such bank or within the community within which the principal or any branch office of such banks is located. A violation of the provisions of this subdivision shall be subject to the applicable provisions of sections thirty-nine and forty-four of this chapter.

2. Any person who makes application for such a loan and is refused such loan may request the superintendent to review the denial of such application. If the superintendent determines that such loan was prudent and was denied in violation of subdivision one hereof, the superintendent shall certify such determination to the state of New York mortgage agency created pursuant to title seventeen of article eight of the public authorities law.

3. For the purposes of this section, the term (a) "prudent loan" means

a loan upon the security of real property which is prudent by acceptable banking standards and is in compliance with all of the provisions of this chapter and rules and regulations of the superintendent of financial services; and (b) notwithstanding any other provision of this chapter or law to the contrary, the term banking institution when used in this section shall mean and include all banks, trust companies, savings banks, savings and loan associations, credit unions, mortgage bankers, exempt organizations as defined in article twelve-D of this chapter and foreign banking corporations whether incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States.

4. If any clause, sentence, paragraph, subdivision or part of this section or the application thereof to any person, firm or corporation, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined (i) in its operation to the clause, sentence, paragraph, subdivision, or part of this section, or (ii) in its application to the person, firm or corporation, or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

§ 9-g. Right of set off. 1. (a) No banking institution shall assert, claim or exercise any right of set off against any deposit account into which social security or supplemental security income payments are deposited pursuant to an agreement with such banking institution which provides that such payments be deposited directly into such deposit account without presentation to the depositor at the time of deposit.

(b) No banking institution shall assert, claim or exercise any right of set off against any payments referred to in subdivision (p) of section fifty-two hundred five of the civil practice law and rules.

2. No banking institution shall assert, claim or exercise any right of set off against any other deposit account held by such banking institution unless, prior to or on the same business day of such action, notice of the set off together with the reasons for the set off are

mailed to the depositor.

3. Failure to provide the notice required by this section shall not be deemed to affect the validity of the right of set off.

4. "Banking institution" as used in this section shall have the same meaning as used in section nine-f of this chapter.

5. "Depositor" as used in this section shall include shareholders in state and federal savings and loan associations and state and federal credit unions.

6. "Deposit account" as used in this section shall include shares and share accounts of state and federal savings and loan associations and state and federal credit unions.

7. If any provision of this section, or the application of such provision to any bank, trust company, national bank, savings bank, federal mutual savings bank, savings and loan association, federal savings and loan association, credit union, federal credit union or branch of a foreign banking corporation, shall be held invalid, the remainder of this section, and the application of such section to banks, trust companies, national banks, savings banks, federal mutual savings banks, savings and loan associations, federal savings and loan associations, credit unions, federal credit unions or branches of foreign banking corporations other than those to which it is held invalid, shall not be affected thereby.

§ 9-h. Imposition of service charges prohibited. No banking organization shall impose any service charge with respect to any deposit account as a result of the loss of a check or money which is properly deposited with the banking organization by delivery to an employee of the banking organization for credit to the deposit account and for which a written receipt is issued by the employee.

*** § 9-i. Close-out fees prohibited in certain cases.** No banking institution, as that term is defined in section nine-f of this chapter, shall charge its customers a fee for the withdrawal of all funds from any account resulting in the closing of such account provided that such account was opened for a period of at least one hundred eighty consecutive days prior to its closing.

* NB There are 2 § 9-i's

*** § 9-i. Prohibition on depositor of early withdrawal penalty in certain cases.** No banking institution, as that term is defined in section nine-f of this chapter, shall impose any penalty for the repayment of a time deposit prior to maturity where the depositor has died or been declared legally incompetent.

* NB There are 2 § 9-i's

§ 9-j. Disposal of records; customer accounts. 1. Every banking institution, which for purposes of this section means a bank, trust company, savings bank, savings and loan association, licensed foreign banks and credit unions, with respect to written records no longer required or needed to be retained which contain information relating to an identified customer or an identified customer's depository or loan account, shall in disposing of such records provide procedures and processes reasonably calculated to assure destruction or disposal in a manner which prevents subsequent unauthorized review or reuse of the record.

2. The superintendent shall enforce the provisions of this section by appropriate rules, regulations and orders.

§ 9-k. Sale of education loans. 1. "Banking institution" as used in this section shall mean and include all banks, trust companies, savings banks, savings and loan associations, credit unions and foreign banking corporations whether incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States.

2. "Lender" as used in this section shall mean and include:

(a) a national or state chartered bank, mutual savings bank, savings and loan association, or credit union that:

(1) is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the state in which its principal place of operation is established; and

(2) does not make or hold loans to students under the federal guaranteed student loan program that total more than one-half of its consumer credit loan dollar volume, including home mortgages, unless it is a bank that is wholly owned by a state; or

(b) a pension fund as defined in the federal employees retirement income security act; or

(c) an insurance company that is subject to examination and supervision by an agency of the United States or a state; or

(d) in any state, a single agency of the state or a single private nonprofit agency designated by the state; or

(e) for purposes only of purchasing and holding loans made by other lenders under the federal guaranteed student loan program, the student loan marketing association or an agency of any state functioning as a secondary market.

3. "Guaranteed education loan" as used in this section shall mean and include any loan made for the purpose of financing higher education which is made under the authority of Part B of Title IV of the Higher Education Act of 1965 as amended or under the authority of section six hundred eighty of the education law.

4. Whenever a banking institution or other eligible lender as such terms are defined in this section sells a guaranteed education loan to another banking institution or eligible lender, such selling institution shall notify the borrower in writing within fifteen days of such sale. Such notice shall include the name and address of the institution which has purchased such loan. The selling institution shall also notify the New York state higher education services corporation or other guarantor of such sale. Notice shall include:

(a) the name and address of the institution which has purchased the

loan; and

(b) the name, address and social security number of the borrower and the borrower's account number.

§ 9-m. Return of checks. Any banking institution as that term is defined in section nine-f of this chapter, except a credit union, and any other financial institution which offers consumer accounts, meaning accounts established by natural persons primarily for personal, family or household purposes, which can be accessed by check, negotiable order of withdrawal, or other similar written instrument, shall offer a consumer account on which the cancelled checks, negotiable orders of withdrawal, or other similar instruments drawn on that account are returned to the customer with a periodic statement of the account.

§ 9-n. Trust accounts; address of beneficiary. 1. Every banking institution, which for the purposes of this section means a bank, trust company, savings bank, savings and loan association, licensed foreign bank or credit union, which shall hold accounts by depositors in such depositor's own name and, further, in trust for a third party beneficiary or beneficiaries, shall make a written record of the address of any such beneficiary or beneficiaries at the time a trust account is established.

2. The superintendent shall enforce the provisions of this section by appropriate rules, regulations and orders.

§ 9-o. Mortgage loans; disclosure form. 1. For the purpose of this section, the following terms shall have the following meanings:

(a) "Mortgage lending institution" shall mean an 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 other state, with the power to make mortgage loans. Mortgage lending institution shall include a subsidiary of such entity.

(b) "Mortgage banker" shall mean a person or entity who or which is licensed pursuant to section five hundred ninety-one of this chapter to make mortgage loans in this state.

2. Every mortgage lending institution and mortgage banker which originates loans secured by real property used for residential purposes located in this state shall provide a separate disclosure form with each application that shall contain a provision stating whether the interest rate of such loan shall be the interest rate in effect at the time of application, the time of commitment, the time of closing or at such other period of time as shall be determined by the lending institution. The superintendent of financial services shall promulgate rules and regulations to implement the provisions of this section.

§ 9-p. Acceptance of certain checks for deposit. No banking institution as that term is defined in section nine-f of this chapter shall, as a policy or general practice, refuse to accept as a deposit made with a teller by an account holder a check for the sole reason that it contains two endorsements. Nothing contained herein shall prevent a banking institution from requiring the approval of an officer or manager as a condition of accepting a check with two endorsements for deposit or from refusing to accept a deposit of a check with two endorsements that is not made with a teller.

§ 9-r. Geographic restrictions. 1. No banking institution shall have a policy or general practice of refusing to open a deposit account solely on the basis of the geographic location of the depositor's residence or place of business; provided that the banking office at which the depositor seeks to open the account is within the county or, in the case of a county wholly contained within a city, the city in which such residence or place of business is located. For purposes of this section, "banking institution" means any bank, trust company, savings bank,

savings and loan association, or branch of a foreign banking corporation the deposits of which are insured by the federal deposit insurance corporation, which is incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States.

2. Nothing herein contained shall prevent a banking institution from requiring any person applying for a deposit account to demonstrate that the residence or place of business of such person is located within the same county or city, or prevent a banking institution from taking actions necessary to verify such person's residence or place of business, so as to avoid being considered in violation of any law of the United States or of this state which has as its purpose the prevention of money laundering or other criminal or fraudulent acts, including, without limitation, 12 USC § 1829b (Bank Secrecy); 18 USC § 1341 (Frauds and Swindles); 18 USC § 1342 (Fictitious Name or Address); 18 USC § 2113 (Bank Robbery and Incidental Crimes); 31 USC § 5311 through § 5326 (Records and Reports on Monetary Instruments Transactions).

§ 9-s. Preauthorized electronic fund transfers. 1. Every banking institution which provides preauthorized electronic fund transfers from consumer accounts shall, in accordance with regulations adopted by the superintendent of financial services, provide consumers with the right to stop payment by giving written or oral notice within a specified period of time prior to such transfer. For purposes of this section, "banking institution" shall mean any state or federally chartered bank, trust company, savings bank, savings and loan association or credit union, and "consumer account" shall mean an account used primarily for personal, family or household purposes.

2. No agreement for preauthorized electronic fund transfers entered into on or after January first, two thousand thirteen shall permit or require the transfer from a consumer account of any funds as a penalty or a final payment after the consumer has given written or oral notice to stop payment to his or her financial institution.

3. Any banking institution which complies with the stop payment

provisions of the federal Electronic Funds Transfer Act, as such act may be amended from time to time, and any regulations adopted pursuant thereto, shall be deemed to be in compliance with the provisions of this section.

§ 9-t. Unsolicited mail-loan checks. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "lending institution" shall mean a licensed lender or a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union.

(b) "mail-loan check" shall mean a check, made out to and mailed to a person by a lending institution, which, when cashed or deposited by such person, obligates such person to repay to such lending institution the amount of the proceeds of such check according to terms mailed to such recipient with such check.

2. Any lending institution which issues mail-loan checks shall:

(a) include on the face of each check issued to a non-customer a written statement, in legible type reading "ONE FORM OF VALID PHOTOGRAPHIC ID NEEDED TO CASH OR DEPOSIT"; provided, however, that any entity cashing or accepting a mail-loan check for deposit may require more than one form of identification;

(b) make no reference on the outside of the envelope containing a mail-loan check that indicates that a check is enclosed within such envelope;

(c) provide that all mail-loan checks shall be non-transferable; and

(d) include the transaction fee and interest rate and an expiration date of not more than six months on the mail-loan check, as well as any additional information that the superintendent may require.

3. No lending institution shall issue a mail-loan check, except in response to a request or application therefor.

4. Failure to destroy or return a mail-loan check shall not constitute acceptance of the check.

5. Any lending institution which mails a mail-loan check in violation of the provisions of this section shall be liable for a civil penalty not to exceed five hundred dollars for each such violation.

§ 9-u. ATM transactions by persons using foreign bank accounts. 1. Subject to the requirements of section three hundred ninety-nine-y of the general business law, as added by chapter four hundred ninety-five of the laws of nineteen hundred ninety-nine, an agreement to operate or share an automated teller machine shall not have the effect of prohibiting, limiting or restricting the right of the operator or owner of the automated teller machine to charge a customer who is conducting a transaction using an account from a financial institution that is located outside the United States an access fee or surcharge not otherwise prohibited under state or federal law.

2. Nothing in this section shall be construed to prohibit or otherwise limit the ability of an operator or owner of an automated teller machine to voluntarily enter into an agreement regarding participation in a surcharge free network.

§ 9-v. Savings promotion prize giveaway. A banking organization organized under or subject to the provisions of this chapter, federal credit union, federal savings bank, federal savings and loan association, or national bank association may conduct a savings promotion in accordance with the provisions of this section, to the extent it is not prohibited by federal law or regulation.

1. Definitions. As used in this section the following terms shall have the following meanings:

a. The term "savings promotion" means a contest or promotion sponsored by a banking organization, federal credit union, federal savings bank, federal savings and loan association, or national bank association in which a chance of winning designated prizes is obtained by its depositors for the purposes of encouraging depositors to build and

maintain savings deposits.

b. The term "qualifying account" means a savings account, share account, share certificate, or other savings product or program offered by a banking organization, federal credit union, federal savings bank, federal savings and loan association, or national bank association through which depositors may obtain chances to win prizes in a savings promotion.

c. The term "non-qualifying account" means a savings account, share account, certificate of deposit, or other savings product or program offered by a banking organization, federal credit union, federal savings bank, federal savings and loan association, or national bank association that is not a qualifying account.

2. Rules of operation. a. Participants in a savings promotion shall not be required to provide any consideration in order to obtain entries to win. For purposes of this paragraph, participants shall not be deemed to have provided consideration due to the requirement that they deposit money in a qualifying account to obtain entries to win, so long as: (i) the interest rate associated with any such qualifying account is not reduced when compared with other comparable non-qualifying accounts offered by any banking organization, federal credit union, federal savings bank, federal savings and loan association or national bank association, to account for the possibility of depositors winning specified prizes; and (ii) no banking organization, federal credit union, federal savings bank, federal savings and loan association, or national bank association may charge a fee for entry. All fees charged in connection with such qualifying account shall be comparable with all fees charged in connection with other comparable non-qualifying accounts, if any, offered by any banking organization, federal credit union, federal savings bank, federal savings and loan association, or national bank association.

b. A savings promotion shall be conducted such that each entry in the savings promotion has an equal chance of being drawn.

c. Participants in a savings promotion shall not be required to be present at a prize drawing in order to win.

d. The offering of a savings promotion shall be subject to section three hundred sixty-nine-e of the general business law in the same manner as other promotions regulated thereunder. For purposes of the general business law and the penal law, a savings promotion offered in accordance with this chapter shall not be deemed to entail consideration or the promotion of gambling or a lottery.

§ 9-w. Standard financial aid award letter. The superintendent of financial services in consultation with the president of the higher education services corporation shall develop a standard financial aid award letter which shall clearly delineate (a) the estimated cost of attendance, including but not limited to, the cost of tuition and fees, room and board, books, and transportation. Such standard letter shall provide the estimated cost of attendance for the current academic year as well as estimates for each academic year that the student would need to attend to earn a degree at such institution with a disclaimer that the cost of attendance for years other than the current academic year are estimates and may be subject to change, (b) all financial aid offered from the federal government, the state, and the institution with an explanation as to which components will require repayment, (c) any expected student and/or family contribution, (d) net costs, defined as an estimate of the costs of attendance after financial aid which does not require repayment, (e) campus-specific graduation, median borrowing, and loan default rates, (f) options for loans which do require repayment, and (g) any other information as determined by the superintendent in consultation with the president. Such standard letter shall include a glossary of standard terms and definitions used on such standard letter. The superintendent shall publish and make available such standard letter by December thirty-first, two thousand fifteen and thereafter. Each college, vocational institution, and any other institution that offers an approved program as defined in section six hundred one of the education law shall utilize the standard letter issued by the department of financial services in responding to all

undergraduate financial aid applicants for the two thousand sixteen--two thousand seventeen academic year and thereafter. The superintendent shall promulgate regulations implementing this section.

*** § 9-x. Mortgage forbearance.** 1. As used in this section, the following terms shall have the following meanings:

(a) "Covered period" means March 7, 2020 until the later of December 31, 2021 or the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive Orders 202.28 and 202.31 and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county of the qualified mortgagor's residence;

(b) "qualified mortgagor" means an individual (i) whose primary residence is located in New York and is encumbered by a home loan pursuant to paragraph (a) of subdivision six of section thirteen hundred four of the real property actions and proceedings law or whose primary residence is located in New York and is a co-operative unit whose shares are encumbered by any loan otherwise meeting the requirements of a home loan under paragraph (a) of subdivision six of section thirteen hundred four of the real property actions and proceedings law, from or serviced by a regulated institution; and (ii) who demonstrates financial hardship as a result of COVID-19 during the covered period;

(c) "regulated institution" means any New York regulated banking organization as defined in this chapter and any New York regulated mortgage servicer entity subject to supervision by the department; and

(d) "trial period plan" means an agreement whereby the mortgagor is required to make trial payments in full and on-time in order to be considered for a permanent loan modification.

2. Notwithstanding any other provision of law, New York regulated institutions shall:

(a) make applications for forbearance of any payment due on a

residential mortgage of a property located in New York widely available to any qualified mortgagor who, during the covered period, is in arrears or on a trial period plan, or who has applied for loss mitigation; and

(b) grant such forbearance of all monthly payments due with respect to the mortgage secured by the qualified mortgagor's primary residence in New York for a period of up to one hundred eighty days to any such qualified mortgagor, with the option to extend the forbearance of such monthly payments for up to an additional one hundred eighty days provided that this extension is subject to the mortgagor demonstrating continued financial hardship. If any qualified mortgagor has already received a forbearance pursuant to executive order 202.9 of two thousand twenty, the time of such forbearance shall be considered as part of the requirement of this section to provide a forbearance of up to one hundred eighty days, and any extension thereof pursuant to this section.

(c) Such forbearance may be backdated to March seventh, two thousand twenty, provided that the maximum length of the forbearance may be no longer than one hundred eighty days and any extension thereof pursuant to this section.

3. Notwithstanding any other provision of law, any mortgage forbearance granted by a regulated institution pursuant to executive order number 202.9 of two thousand twenty, this section, or 3 NYCRR Part 119 to a qualified mortgagor as a result of financial hardship shall be subject to the following provisions:

(a) the mortgagor shall have the option to extend the term of the loan for the length of the period of forbearance. The regulated institution shall not charge additional interest or any late fees or penalties on the forborne payment; or

(b) the mortgagor shall have the option to have the arrears accumulated during the forbearance period payable on a monthly basis for the remaining term of the loan without being subject to penalties or late fees incurred as a result of the forbearance; or

(c) the mortgagor shall have the option to negotiate a loan modification or any other option that meets the changed circumstances of the qualified mortgagor; or

(d) if the mortgagor and regulated institution cannot reasonably agree on a mutually acceptable loan modification, the regulated institution

shall offer to defer arrears accumulated during the forbearance period as a non-interest bearing balloon loan payable at the maturity of the loan, or at the time the loan is satisfied through a refinance or sale of the property. Any late fees accumulated as a result of the forbearance shall be waived.

(e) The exercising of options provided for in paragraph (a), (b), (c) or (d) of this subdivision by a qualified mortgagor shall not be reported negatively to any credit bureau by any regulated institution.

4. Notwithstanding any other provision of law, adherence with this section shall be a condition precedent to commencing a foreclosure action stemming from missed payments which would have otherwise been subject to this section. A defendant may raise the violation of this section as a defense to a foreclosure action commenced on the defendant's property when such action is based on missed payments that would have otherwise been subject to this section.

5. Notwithstanding anything to the contrary in this section, this section shall not apply to, and does not affect any mortgage loans made, insured, purchased or securitized by any agency or instrumentality of the United States, any government sponsored enterprise, or a federal home loan bank, or a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association.

6. Notwithstanding any other provision of law or of this section, the obligation to grant the forbearance relief required by this section shall be subject to the regulated institution having sufficient capital and liquidity to meet its obligations and to operate in a safe and sound manner. Any regulated institution that determines that it is not able to offer relief pursuant to this section to any qualified mortgagor must notify the department within five business days of making such determination. Any such notice filed with the department shall include information about the qualified mortgagor, the reason the regulated institution determined that it was unable to offer any relief pursuant

to this section, information about the regulated institution's financial condition supporting the regulated institution's determination, and any other information required by the department. At the same time that the regulated institution provides notice to the department, it shall advise the qualified mortgagor that the application for relief was denied and provide a statement that the applicant may file a complaint with the New York state department of financial services at 1-800-342-3736 or http://www.dfs.ny.gov if the applicant believes the application was wrongly denied.

* NB There are 2 § 9-x's

*** § 9-x. Fees based on inactivity; notification.** Notwithstanding any other provision of law or rule or regulation to the contrary, any financial institution subject to the provisions of this chapter, including any bank, trust company, savings bank, savings and loan association, credit union, mortgage broker, mortgage banker, or other investment entity, whether headquartered within or outside the state, which provides an account to a customer shall provide written notice of the pending charges to a customer thirty days prior to charging any fee based on account inactivity. Such notice shall include a telephone number and full contact information for a representative of the financial institution responsible for resolving any matter relating to the fee. A notification by electronic mail shall satisfy the writing requirement for the purposes of this section.

* NB There are 2 § 9-x's

§ 9-y. Order of payment of checks and other debits, insufficient funds charges and return deposit item charges. 1. Order of paying checks. (a) Notwithstanding any law, rule or regulation to the contrary, every banking organization that provides checking services to consumer accounts shall either pay checks in the order wherein they are received or pay checks from smallest to largest dollar amount for each business day's transactions.

(b) If a check is dishonored for insufficient funds and thereafter smaller checks which could be paid are received, the smaller checks

shall be honored within amounts on deposit in the subject account.

(c) The banking organization shall disclose to consumers in writing the order in which checks are drawn. The written disclosure shall be provided to the consumer at the time the account is opened and prior to any change in such policy.

(d) The superintendent shall promulgate rules and regulations necessary for the implementation of this section.

2. Regulation of other consumer account transactions and associated fees. (a) The superintendent shall have the power to prescribe by regulation:

i. the manner in which banking organizations process debit and credit transactions, other than those specified in subdivision one of this section, for consumer accounts maintained at such organization;

ii. the charges that may be imposed in connection with a check drawn or other written order upon, or electronic transfer sought to be effectuated against, insufficient funds or uncollected balances in a consumer account, whether or not the banking organization pays such check, written order, or electronic transfer;

iii. the charges that may be imposed in connection with a check or other written order received by a banking organization for deposit or collection drawn against a consumer account and subsequently dishonored and returned for any reason by the drawee;

iv. disclosures provided to consumers regarding the processing of transactions in a consumer account and the associated fees; and

v. alerts, notices, and other disclosures relating to the imposition or possible imposition of a charge as provided in subparagraphs ii and iii of this paragraph.

(b) In prescribing regulations regarding the manner in which banking organizations process debit or credit transactions, or the charges that may be imposed pursuant to subparagraphs ii or iii of paragraph (a) of this subdivision, the superintendent shall consider, at a minimum, the

following factors:

i. the cost incurred by the banking organization, in providing any services associated with such charges;

ii. the competitive position of the banking organization; and

iii. the maintenance of a safe and sound banking organization that protects the public interest.

3. Definition. As used in this section, "consumer accounts" means accounts at banking organizations established by natural persons primarily for personal, family or household purposes.

§ 9-z. Cashing of certain checks. 1. No bank, trust company, savings bank, savings and loan association or credit union shall, refuse to cash a cashier's check, a payroll check, or a certified check in the amount of five hundred dollars or less, drawn on accounts in such institution or a branch as long as there are sufficient funds within the account on which the check is drawn. Such institution may require, as a condition for cashing such check, that the payee present a valid government-issued photo identification and matching proof of address such as a bank statement, utility bill or printed pay stub.

2. If a person presents such forms of identification, as provided in subdivision one of this section, and a signature or mark, and the institution refuses to cash the check in the absence of suspected fraudulent activity, such institution shall be guilty of a violation of this section and shall be subject to penalties pursuant to section forty-four of this chapter.

ARTICLE II

DEPARTMENT OF FINANCIAL SERVICES; SUPERINTENDENT OF FINANCIAL SERVICES; SUPERVISORY AND REGULATORY POWERS

Section 10. Declaration of policy.

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§ 10. Declaration of policy. It is hereby declared to be the policy of the state of New York that the business of all banking organizations shall be supervised and regulated through the department of financial services in such manner as to insure the safe and sound conduct of such business, to conserve their assets, to prevent hoarding of money, to eliminate unsound and destructive competition among such banking organizations and thus to maintain public confidence in such business and protect the public interest and the interests of depositors, creditors, shareholders and stockholders.

§ 11. Department of financial services; official documents; destruction of documents; official communications. 1. The department shall be charged with the execution of the laws relating to the individuals, partnerships, corporations and other entities to which this chapter is applicable and shall exercise such powers and perform such duties as are conferred and imposed upon it by this chapter, or by any law of this state.

2. (a) Except as specified in paragraph (b) or (c) of this subdivision, any report expressly required to be rendered to the superintendent under any provision of this chapter, any report of an examination made in accordance with any provision of this chapter, and any oath or declaration of office received by the department shall be retained in such form and for such period as the superintendent finds necessary and proper. After such period the superintendent shall recommend disposal of such material in accordance with the provisions of the arts and cultural affairs law.

(b) Reports made in accordance with section twenty-eight-b of this article or pursuant to the rules and regulations of the superintendent promulgated in connection with assessing a banking organization's record

of performance in meeting the credit needs of local communities within the meaning of section twenty-eight-b of this article, including reports expressly required to be rendered to the superintendent and reports of examinations may be destroyed at the direction of the superintendent and in accordance with the provisions of the arts and cultural affairs law after three years from date of receipt thereof, provided any such report has first been photographed, microphotographed or otherwise reproduced. Each such reproduction shall be retained in the files of the department for a period of at least fifteen years from the date of the last received report, oath or declaration appearing thereon. After the expiration of such period, such reproduction may be destroyed at the direction of the superintendent and in accordance with the provisions of the arts and cultural affairs law. Such reproduction thereof shall be deemed, for any purpose, the equivalent of the original of such report. Any such report not so reproduced shall be retained in the files of the department for a period of at least fifteen years from the date of receipt thereof, after which it may be destroyed at the direction of the superintendent and in accordance with the provisions of the arts and cultural affairs law.

(c) This subdivision shall not apply to any records, documents or correspondence referred to in subdivision four of section six hundred twenty-seven of this chapter.

4. Any communication from the department to any person, partnership, corporation or other entity may contain a direction that such communication shall be presented to the controlling owners or principal management of such entity, members of such partnership or to the board of directors or trustees of such corporation. A communication containing such direction shall be for the purposes of this chapter an official communication. The superintendent may, in his or her discretion, notify in writing each owner or principal manager of such entity, every member of such partnership and every director or trustee of such corporation of the sending of such a communication and, in that event the notification shall state the date of such communication.

*** § 12-a. Power of state chartered banking institutions to exercise**

the rights of counterpart federally chartered banking institutions. 1. Definitions. (a) As used in this section, "state chartered banking institution" shall mean any bank, trust company, private banker, savings bank, savings and loan association, foreign banking corporation, or credit union.

(b) As used in this section and as is applicable, "federally chartered banking institution" shall mean (i) any national banking association organized pursuant to the National Bank Act of 1864, as amended, (12 USC 21 et seq.); (ii) any federal savings association as such term is defined by the Federal Deposit Insurance Act, as amended, (12 USC 1813(b)(2)); (iii) a federal branch and agency of a foreign bank, as such terms are defined by the International Banking Act of 1978, as amended, (122 USC 3101); or (iv) a federal credit union, as such term is defined by the Federal Credit Union Act, as amended, (12 USC 1752(1)).

(c) As used in this section, "charter" shall mean the organization certificate or comparable document of a state banking institution, or the license for a state branch or agency of a foreign banking corporation, or a similar organizational document for a federal banking institution or a federal branch or agency, and "chartered" shall mean the formal act of the state or appropriate federal regulatory agency in approving and conveying such charter of a banking institution.

(d) As used in this section, "federally permitted power" shall mean any right, power, privilege or benefit, any activity, or any loan, investment or transaction which a federally chartered banking institution directly or through a subsidiary or subsidiaries, may lawfully exercise or into which it may lawfully engage or enter.

(e) As used in this section "foreign banking corporation" shall mean a banking corporation organized under the laws of a foreign country and acting through a branch or agency licensed pursuant to section twenty-six of this article.

(f) As used in this section, unless the context requires otherwise, the term "subsidiary" shall have the same meaning as set forth in subdivision five of section one hundred forty-one of this chapter, except that (i) any reference therein to "bank holding company" shall be deemed to refer to a "state chartered banking institution" as defined in this section, and (ii) with respect to a credit union, the term "subsidiary" as used in this section shall mean a "credit union

organization".

2. Pursuant to this section and notwithstanding any other provision of law, except as otherwise provided in its charter, a state-chartered banking institution may exercise any federally permitted power of its counterpart federally chartered banking institution as herein set forth:

(a) a bank, private banker, or trust company may exercise any federally permitted power of a national banking association;

(b) a savings bank or savings and loan association may exercise any federally permitted power of a federal savings association;

(c) a foreign banking corporation acting through a branch may exercise any federally permitted power of a foreign bank acting through a federal branch;

(d) a foreign banking corporation acting through an agency may exercise any federally permitted power of a foreign bank acting through a federal agency;

(e) a credit union may exercise any federally permitted power of a federal credit union.

Nothing contained in this section shall be deemed to permit a state chartered banking institution to exercise any federally permitted power except in a manner consistent with the following provisions of law, in each case, as the terms contained in such provisions may be amended from time to time:

(i) chapter one of the laws of nineteen hundred ninety-four;

(ii) chapter nine of the laws of nineteen hundred ninety-six; and

(iii) sections fourteen-c, twenty-eight-b, thirty-nine and forty-four of this article, and sections six hundred five through six hundred thirty-four of this chapter, and with respect to savings banks and savings and loan associations, respectively, section two hundred forty and section three hundred ninety-six of this chapter.

3. Except with respect to a federally permitted power approved pursuant to subdivision four of this section, prior to any state chartered banking institution initially exercising any federally permitted power pursuant to this section, such banking institution shall make an application individually or with one or more state chartered

banking institutions to the superintendent indicating that such institution or institutions intend to exercise such federally permitted power and the basis on which such institution or institutions believe such power is a federally permitted power. The superintendent shall have one hundred twenty days from receipt of the application to determine whether it meets the requirements of this section, provided that such period may be extended for an additional period of time with the written consent of the applicant or applicants. If such application meets the requirements of this section, the superintendent shall post such application upon the bulletin board of the department pursuant to section forty-two of this article. If such application does not meet the requirements of this section, the superintendent shall, within ten days of such determination, notify the applicant or applicants of the reasons why the application fails to meet the requirements. The superintendent shall determine, consistent with the standards set forth in subdivision five of this section, whether to approve such application subject to such terms and conditions as the superintendent may deem appropriate, in the superintendent's sole discretion. Such determination, shall be made by the superintendent within forty-five days after the posting of such application, provided however that the superintendent may notify the applicant or applicants that the review of the application shall be extended for an additional period of time not exceeding sixty days after the posting of such application, and provided further that such period of time may be extended for an additional period of time with the written consent of the applicant or applicants. The superintendent shall not act upon the application prior to thirty days after such application has been posted. If the superintendent approves such application, the superintendent shall, within ten days of approving the application, notify the applicant or applicants in writing thereof, and the applicant or applicants may exercise such federally permitted power subject to such terms and conditions as the superintendent may have approved. If the superintendent declines such application, the superintendent shall, within ten days of making such determination, notify the applicant or applicants in writing thereof. An applicant or applicants may, upon the superintendent's failure to comply with this section, petition the superintendent to act upon the application. The failure of the superintendent to act upon the application or notify the applicant or

applicants, in writing, as to the reasons why action cannot be taken within thirty days of receipt of such petition shall be deemed a denial of the application, which shall be subject to judicial review. Notwithstanding any other law, the superintendent may make the approval of an application under this section applicable to one or more additional state chartered banking institutions that are qualified to exercise the same federally permitted powers as the applicant or applicants pursuant to subdivision two of this section, subject to such terms and conditions as the superintendent shall find necessary and appropriate.

4. Notwithstanding any other law, the superintendent, in the superintendent's discretion, may, when the superintendent deems it necessary and appropriate after considering the standards set forth in subdivision five of this section, by order, authorize one or more state chartered banking institutions to exercise a federally permitted power, subject to such terms and conditions as the superintendent shall find necessary and appropriate. Prior to issuing such order, the superintendent shall post notice of the superintendent's intention to issue such order upon the bulletin board of the department pursuant to section forty-two of this article, and shall not act upon such intention prior to thirty days after such notice has been posted.

5. Prior to approving any application or proposal pursuant to subdivision three or four of this section, the superintendent shall make a finding that the approval of such application or proposal is:

(i) consistent with the policy of the state of New York as declared in section ten of this article and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers; and

(ii) necessary to achieve or maintain parity between state chartered banking institutions and their counterpart federally chartered banking institutions with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

6. A federally permitted power authorized pursuant to this section shall not exceed and shall be limited by any conditions, qualifications

or restrictions on the same when exercised by a counterpart federally chartered banking institution of a state chartered banking institution unless the state chartered banking institution is so authorized by other New York state law, or a rule, regulation or policy adopted pursuant to such other New York state law, or by a judicial decision. Notwithstanding any other law, the superintendent may, at any time, impose by order any other terms and conditions as he or she finds necessary and proper including, but not limited to, a requirement that any federally permitted power authorized by this section be exercised, conducted or held in a subsidiary of a state chartered banking institution. In the event that federally chartered banking institutions located in the state of New York lose the authority to exercise a federally permitted power, based upon which comparable authority was granted to the counterpart state chartered banking institutions pursuant to this section, then unless such authority is authorized by other New York state law, or a rule, regulation or policy adopted pursuant to such other New York state law, or by a judicial decision, the authorization for such state chartered banking institutions pursuant to this section shall be deemed revoked, provided, however, that any such revocation shall be subject to such terms and conditions as may be imposed upon the counterpart federally chartered banking institutions or by the superintendent.

7. (a) In those instances where state chartered banking institutions are permitted to engage in the business of insurance pursuant to this section, they shall do so subject to all insurance laws, rules, and regulations; provided, however, that the superintendent may exempt state chartered banking institutions from any insurance law, rule or regulation which has been preempted under federal law, rule or regulation for federally chartered banking institutions if such law, rule or regulation has been preempted because it applies to insurance activities of federally chartered banking institutions and not to those of other entities.

(b) In those instances where a federally permitted power authorized pursuant to this section is subject to regulation by an agency, as defined in subdivision one of section one hundred two of the state administrative procedure act, other than the superintendent, then when a

state chartered banking institution exercises such federally permitted power, unless it is so authorized by other New York state law, or a rule, regulation or policy adopted pursuant to such other New York state law, or by a judicial decision, it shall do so subject to such regulation to the same extent and in the same manner as such agency regulates entities other than state chartered banking institutions, except to the extent that federally chartered banking institutions are not subject to such regulation.

(c) Any state chartered banking institution or federally chartered banking institution and any subsidiary or affiliate thereof which is licensed to sell insurance in this state shall maintain separate and distinct books and records relating to its insurance transactions, including all files relating to and reflecting consumer complaints, and such insurance books and records shall be made available to the superintendent for inspection upon reasonable notice.

8. On or before June first of each year, the superintendent shall submit a report to the governor, the speaker of the assembly, the temporary president of the senate, the minority leaders of the senate and assembly, and the chairs and ranking minority members of the senate and assembly banks committees, which shall include, with respect to the authority provided for in this section, with respect to the preceding calendar year, (1) a listing of state chartered banking institutions that were established, (2) a listing of institutions that have converted to a federal charter or have been acquired by, or merged with, another banking institution, (3) the number of New York banking institutions exercising the insurance activities authorized by this section, (4) the total number of New York chartered banking institutions located in this state, and (5) the total amount of assets of such chartered banking institutions by type.

9. Any rules or regulations promulgated by the banking board pursuant to former sections fourteen-g and fourteen-h of this chapter prior to September first, two thousand seven, and any resolutions adopted by the banking board pursuant to this section after September first, two thousand seven and before the effective date of the chapter of the laws of two thousand eleven which amended this subdivision, including any

such rules, regulations and resolutions which in whole or in part impose conditions, qualifications or restrictions on any federally permitted powers authorized thereby which exceed the conditions, qualifications or restrictions imposed on the same when exercised by a federally chartered banking institution, shall remain in full force and effect on or after such date, unless any such rule, regulation or resolution is thereafter superseded, modified, or revoked by the superintendent pursuant to the provisions of subdivisions three and four of this section.

* NB Repealed September 10, 2029

§ 14. Additional powers of the superintendent. 1. For the purpose of effectuating the policy declared in section ten of this article, without limiting any other powers that the superintendent is permitted by law to exercise, the superintendent shall have the power to make, alter and amend orders, rules and regulations not inconsistent with law. Such orders, rules and regulations shall be brought to the attention of those affected thereby in a manner prescribed by law. Without limiting the foregoing power, orders or rules or regulations may be so adopted for the following specific purposes:

(a) To approve organization certificates and articles of association, private bankers' certificates and applications of foreign corporations for licenses to do business in this state, as provided in this article.

(b) To determine the purposes for which and the extent to which capital notes or debentures shall be considered and treated as capital stock of corporate banking organizations; but capital notes or debentures shall not be considered or treated as capital stock for the purposes of sections one hundred ten and one hundred eleven of this chapter.

(c) To grant permission to a trust company, including a national bank, to establish one or more common trust funds upon application and after inquiry concerning the qualifications of such trust company to maintain and manage the same, and to regulate the conduct and management of any common trust fund and for such purpose, but not by way of limitation of the foregoing power, to prescribe (1) the records and accounts to be kept of such common trust funds; (2) the procedure to be followed in adding moneys to or withdrawing moneys or investments from any such

common trust fund; (3) the methods and standards to be employed in determining the value of such common trust funds and of the assets and investments thereof; (4) the maximum amount of moneys of any estate, trust or fund which may be invested in any common trust fund; and (5) the maximum proportionate share of any such common trust fund which may be apportioned to any estate, trust or fund; and in connection with such powers to classify the corporations maintaining such common trust funds according to the population of the city, town or village in which the principal offices of such corporations are respectively located and to prescribe the minimum total of any such common trust fund and the permissible limits of investment therein in accordance with such classification.

(cc) To approve the incorporation by or on behalf of trust companies and national banks with trust powers of a mutual trust investment company to form a medium for the common investment of funds held by trust companies, including national banks, acting as executors, administrators, guardians, inter-vivos or testamentary trustees or committees or conservators either alone or with individual co-fiduciaries, and any amendments of the certificate of incorporation of such mutual trust investment company, and to regulate the conduct and management of such mutual trust investment company and for such purpose, but not by way of limitation of the foregoing power, to prescribe (1) the records and accounts to be kept by such mutual trust investment company; (2) the procedure to be followed in the sale or redemption of stocks or shares therein; (3) the methods and standards to be employed in determining the value of such shares in the mutual trust investment company and the assets and investments thereof; and (4) the maximum proportionate shares of any such mutual trust investment company which may be apportioned or sold to any one trust company or national bank.

(d) To authorize a bank or a trust company to invest in the capital stock of, or any other equity interest in, any corporation, partnership, unincorporated association, limited liability company, or other entity not included among the corporations or other entities for which investment in the capital stock or other equity interest is expressly authorized by this chapter.

(e) To authorize a savings bank to invest in the capital stock, capital notes and debentures of a trust company or other corporation, as

provided in article six of this chapter.

(f) To authorize a savings and loan association to invest in the capital stock, capital notes and debentures of a trust company or other corporation, as provided in article ten of this chapter.

(g) To prescribe from time to time: (1) the rates of interest which may be paid on deposits with any banking organization and with any branch or agency of a foreign banking corporation; and (2) the rates of dividends which may be paid on shares of any savings and loan association or credit union, and to prohibit the payment of such interest or such dividends by any banking organization or by any branch of a foreign banking corporation. Interest or dividend rates so prescribed need not be uniform.

(h) To limit and regulate withdrawals of deposits or shares from any banking organization, if the superintendent shall find that such limitation and regulation are necessary because of the existence of unusual and extraordinary circumstances.

(i) To prescribe from time to time reserves against deposits to be maintained by banks and trust companies pursuant to article three of this chapter; provided that no reserve requirement imposed against either time or demand deposits shall require any bank or trust company to maintain total reserves in an amount greater than it would be required to maintain if it were at the time a member of the federal reserve system; and provided further, however, that a bank or trust company not a member of the federal reserve system may be authorized to maintain total reserves against deposits in an amount lower than the reserves required by article three of this chapter to be maintained, either in individual cases or by general regulations on such basis as the superintendent may deem reasonable or appropriate in view of the character of the business transacted by such bank or trust company.

(j) To grant permission to officers, directors, clerks or employees of banks and trust companies to engage in the issue, flotation, underwriting, public sale or distribution at wholesale or retail, or through syndicate participation of stocks, bonds or other similar securities, and to revoke such permission, both as provided in this chapter.

(k) To prescribe the methods and standards to be used (1) in making the examinations provided for in this chapter, and (2) in valuing the

assets of banking organizations.

(l) To prescribe the form and contents of periodical reports of condition to be rendered to the superintendent by banks, trust companies, private bankers and branches of foreign banking corporations, and the manner of publication of such reports.

(m) To postpone or omit the calling for and rendering of reports provided for by this chapter if the superintendent shall find that such postponement or omission is necessary because of the existence of unusual and extraordinary circumstances.

(n) To define what is an unsafe manner of conducting the business of banking organizations.

(o) To define what is a safe or unsafe condition of a banking organization.

(p) To make variations from the requirements of this chapter, provided such variations are in harmony with the spirit of the law, if the superintendent shall find that such variations are necessary because of the existence of unusual and extraordinary circumstances.

(q) To establish safe and sound methods of banking and safeguard the interests of depositors, creditors, shareholders and stockholders generally in times of emergency.

(qq) To permit any banking organization, national banking association, federal mutual savings bank, federal savings and loan association and federal credit union to offer graduated payment mortgages which shall conform to the provisions of section two hundred seventy-nine of the real property law.

(s) To permit authorized lenders, as defined by section two hundred eighty or two hundred eighty-a of the real property law, to offer reverse mortgage loans which shall conform to the provisions of section two hundred eighty or two hundred eighty-a of the real property law.

§ 14-a. Rate of interest; superintendent of financial services to adopt regulations. 1. The maximum rate of interest provided for in section 5-501 of the general obligations law shall be sixteen per centum per annum.

2. The rate of interest as so prescribed under this section shall

include as interest any and all amounts paid or payable, directly or indirectly, by any person, to or for the account of the lender in consideration for the making of a loan or forbearance as defined by the superintendent pursuant to subdivision three of this section.

3. The superintendent shall have the power to adopt such regulations as the superintendent shall deem necessary or proper to implement the provisions of this section. The superintendent shall make available to the public copies of all regulations adopted pursuant to this section.

4. Such regulations as shall have been adopted pursuant to the provisions of this chapter and in effect immediately prior to the effective date of this section, shall continue in effect until such time as new regulations shall have been adopted by the superintendent and shall become effective.

5. Whenever reference is made in this chapter or in any other law, contract or document to the rate of interest prescribed or to be prescribed by the superintendent pursuant to this section or any former section fourteen-a of this chapter, such reference shall be deemed a reference to the rate of interest prescribed in subdivision one of this section.

6. Notwithstanding the provisions of subdivision five of this section, the rate of interest charged, taken or received on any loan or forbearance, which would have otherwise been subject to the provisions of former section fourteen-a of this chapter, made or entered into between the effective date of this section and the first day of February, nineteen hundred eighty-one pursuant to a commitment which was made or entered into prior to the effective date of United States Public Law 96-161 and which provides for interest at the prevailing rate at the time of closing shall not exceed the rate of eleven and one-quarter per centum per annum.

7. Nothing contained in this section nor in any other provision of this act whereunder this section is added to the banking law shall be deemed to prohibit the charging of interest at the rates provided or

permitted by United States Public Laws 96-161, 96-221 and 96-399, where applicable.

§ 14-b. Power of the superintendent of financial services to prescribe minimum rate of interest on mortgage escrow accounts. 1. The superintendent shall have the power to prescribe, from time to time but not more often than once in every three month period, by regulation a minimum rate of, and method or basis of computing, interest that a mortgage investing institution shall be required to pay on each escrow account maintained with respect to a mortgage on a one to six family residence occupied by the owner or on any property owned by a cooperative apartment corporation, as defined in subdivision twelve of section three hundred sixty of the tax law, (as such subdivision was in effect on December thirtieth, nineteen hundred sixty), and located in this state, which rate shall be greater than the rate of interest required to be paid under section 5-601 or 5-602 of the general obligations law.

2. In making such determination the superintendent shall consider pertinent economic and cost factors including, but not limited to: (i) current yields on short term investments, (ii) current dividend rates paid on regular savings accounts throughout this state, (iii) currently prevailing interest rates on conventional and insured or guaranteed mortgage loans in this state, (iv) cost factors in maintaining escrow accounts and (v) such other pertinent economic or cost factors that the superintendent shall deem to be appropriate. Prior to the superintendent's prescription of any such minimum rate of interest, the superintendent shall issue a statement in writing setting forth the economic and cost data and criteria upon which such determination is based. Prior to making such determination, the superintendent may invite presentation, by interested persons, of information and data relating to economic and cost factors relevant to such minimum rate of interest.

3. The superintendent may promulgate such regulations as the superintendent deems necessary and proper to implement and define the provisions of this section. The superintendent may prescribe the minimum

rate of interest from time to time, but not more often than once in any three-month period, and shall provide reasonable notice to the public of any change in the rate of interest, of the effective date of such change, which shall be not less than seven days following the adoption of such change by the superintendent, and of any rule or regulation adopted pursuant to this subdivision.

4. In no event shall interest be required to be paid on escrow accounts where (i) there is a contract between the mortgagor and the mortgage investing institution, entered into before the date this subdivision shall have become a law which contains an express disclaimer of an obligation on the part of the mortgage investing institution to pay interest on such accounts, or (ii) the payment of such interest would violate any federal law or regulation, or (iii) such accounts are maintained with a mortgage servicing company, neither affiliated with nor owned in whole or in part by the mortgage investing institution, under a written contract, entered into before the date this subdivision shall have become a law, which contract does not permit the mortgage investing institution to earn or receive a return from the investment of such accounts.

5. "Mortgage investing institution" as used in this section and in section 5-601 or 5-602 of the general obligations law shall mean and include any bank, trust company, national bank, savings bank, savings and loan association, federal savings and loan association, private banker, credit union, investment company, insurance company, pension fund, mortgage company or other entity which makes, extends or holds a mortgage on any one to six family residence occupied by the owner or any property owned by a cooperative apartment corporation, as defined in subdivision twelve of section three hundred sixty of the tax law, (as such subdivision was in effect on December thirtieth, nineteen hundred sixty), and located in this state.

6. "Escrow account" as used in this section and in section 5-601 or 5-602 of the general obligations law shall mean any account established pursuant to an agreement between a mortgagor and a mortgage investing institution whereby the mortgagor pays to the mortgage investing

institution or his designee amounts to be used for the payment of insurance premiums, water rents or any similar charges, and shall also include real property tax escrow accounts as defined in title three-A of article nine of the real property tax law.

7. "One to six family residence" as used in this section and in section 5-601 or 5-602 of the general obligations law shall mean property used primarily for residential purposes for one to six families, including property held in condominium form, and which is occupied in whole or in part by the owner.

8. If any provision of this section, or the application of such provision to any individual, company, corporation or circumstance, shall be held invalid, the remainder of this section, and the application of such section to individuals, companies, corporations, or circumstances other than those to which it is held invalid, shall not be affected thereby.

§ 14-c. Power of the superintendent of financial services to prescribe criteria for disclosure of information on savings and time accounts. 1. The superintendent of financial services shall promulgate rules and regulations with respect to the disclosure of information on savings and time accounts by all banking organizations and out-of-state state banks authorized to operate and maintain branches pursuant to article five-C of this chapter. Such rules and regulations shall set forth guidelines for, but not be limited to the following:

(a) disclosure of the annual rate of simple interest; the effective annual yield; the formula used in calculating interest; the frequency of compounding and crediting of interest; date on which a deposit begins to earn interest; any delay in crediting a deposited instrument; grace periods for deposits and withdrawals; the minimum balance required to earn interest; the method of determining the balance on which interest is paid; the minimum length of time funds must remain on deposit to earn interest; any fees levied on inactive accounts; any charges, penalties or other conditions imposed upon withdrawals; any penalties for the closing of an account before a specific date; and any other fees,

charges or penalties.

(b) form, content and distribution of information.

2. The superintendent of financial services may alter or amend rules and regulations or promulgate additional rules and regulations as he or she deems necessary and proper to effectuate the provisions of subdivision one.

§ 14-d. Power of the superintendent of financial services to prescribe a reasonable period of time permitting the drawing on items received for deposit in a customer's account. 1. It is the public policy of this state to provide all banking customers with the ability to draw against items deposited for collection with any banking institution located in this state within a reasonable period of time.

2. The superintendent of financial services shall promulgate regulations, which may be amended from time to time, establishing a reasonable period of time within which a banking institution must permit a banking customer to draw, as of right, on an item which has been received for deposit in the customer's account.

3. The superintendent is authorized to gather from banking institutions such information as may be required by the superintendent of financial services for the promulgation of the regulations required by this section.

4. (a) Except as otherwise provided in paragraph (b) of this subdivision, a provision in any agreement between a banking institution and its banking customer which provides for a period of time longer than the period prescribed under regulations promulgated pursuant to this section is unreasonable for purposes of article four of the uniform commercial code and, in lieu thereof, the maximum period of time permitted in the regulation shall be deemed controlling. For all other purposes the provisions of this section shall not be deemed or construed to alter or impair any right or obligation under the uniform commercial code.

(b) This section does not prohibit a banking institution and a banking customer from agreeing in writing to a greater period of time than that otherwise prescribed by regulation pursuant to this section for the drawing against items because of special circumstances, provided that, such agreement is not contained in a pre-printed form and is not a usual, regular business practice of the institution.

5. Such regulations shall require every banking institution to notify each of its banking customers, in writing, of the applicable time limitations on the right to draw on items received for deposit in the customer's account and to keep posted in a conspicuous place at each branch, a notice substantially setting forth the generally applicable time limitations of the banking institution's customers' rights to draw on items deposited to their accounts.

6. The superintendent of financial services is empowered, upon a determination that the uniform application of a regulation adopted pursuant to this section would result in unsafe or unsound banking practices, to issue such further regulation or order with respect thereto as it deems appropriate.

7. In this section "banking institution" has the same meaning ascribed to it by section nine-f of this chapter and "item" has the same meaning ascribed to it by the uniform commercial code.

§ 14-e. Power of the superintendent to authorize the operation of savings banks and savings and loan associations in stock form.

1. Notwithstanding any other provision of law to the contrary, the superintendent is authorized to promulgate such rules and regulations as shall facilitate:

(a) The organization and operation of stock-form savings banks and stock-form savings and loan associations,

(b) The conversion of mutual savings banks and savings and loan associations to stock form, and

(c) Mergers and acquisitions of assets or of capital stock between and

among all of the foregoing banking institutions and between and among such institutions and any other banking institution.

The superintendent is authorized to define and implement, by regulation, the terms and provisions of this section. In adopting such regulations, the superintendent shall take into account the declaration of policy contained in section one of a chapter of the laws of nineteen hundred eighty-four entitled "An Act to amend the banking law, in relation to the organization and incorporation of stock-form savings banks and stock-form savings and loan associations and the conversion of mutual savings banks and mutual savings and loan associations to stock form". In connection with such regulations, the superintendent is empowered to apply to such stock-form organizations any provision of this chapter, in whole or in part, as shall be applicable to any other stock-form banking organization and to vary any condition, requirement or provision of this article or article fifteen or sixteen of this chapter.

2. Such applications as the superintendent may prescribe under paragraph (a), (b) or (c) of subdivision one of this section shall each be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this article.

3. Without limiting the foregoing, the superintendent, if the superintendent shall determine that unusual and extraordinary circumstances exist, shall be authorized, by resolution or regulation, to apply or to deem inapplicable to any banking institution referred to in subdivision one of this section, such provisions of this chapter in whole or in part, as it shall find appropriate in connection with the organization, operation, conversion, merger or any other transaction involving a stock-form savings bank or stock-form savings and loan association, provided, however, that such actions are in harmony with the spirit of the law and are necessary because of the existence of such circumstances.

§ 14-f. Power of the superintendent of financial services to require

the provision of basic banking services. 1. The legislature finds and declares that certain consumers residing in this state may be unable to afford, without undue financial hardship, the cost of maintaining a consumer transaction account at a banking institution located in this state. It is the policy of this state that, consistent with safe and sound banking practices, banking institutions make available lower cost banking services to consumers. It is further intended that no banking institution be required to offer lower cost banking services at a cost to account holders which is less than the actual cost to the banking institution to provide such services.

2. Except as otherwise provided in this section, every banking institution shall make available to consumers a consumer transaction account, to be known as a "basic banking account", with the following features to be prescribed by the superintendent of financial services by regulation:

(a) the maximum amount which a banking institution may require as an initial deposit, if any;

(b) the maximum amount a banking institution may require as a minimum balance, if any, to maintain such account;

(c) eight withdrawal transactions for account holders under sixty-five years of age, and twelve withdrawal transactions for account holders sixty-five years of age or older, including those conducted at electronic facilities, during any periodic cycle at no additional charge to the account holder; and

(d) the maximum amount a banking institution may charge per periodic cycle for the use of such account.

3. With respect to any transactions in excess of the number specified in accordance with paragraph (c) of subdivision two of this section, (a) a banking institution may impose a reasonable per-transaction charge, or (b) it may impose the fees and charges normally applied to other consumer transaction accounts available at that banking institution provided that any charge per periodic cycle imposed hereunder must be reduced by the charge imposed under paragraph (d) of subdivision two of this section; provided however, that at no time shall the fees and charges on the basic banking account exceed the amount that is normally

applied to other consumer transaction accounts available at that banking institution.

4. A banking institution may require as a condition for opening or maintaining a basic banking account, (a) that the holder of a basic banking account be a resident of this state; and (b) the direct deposit to the banking institution of recurring payments such as, but not limited to, social security, wage, or pension payments where direct deposit is available to both the consumer and the banking institution.

5. Except as provided in this section and any rules and regulations promulgated hereunder, a basic banking account may be offered subject to the same rules, conditions and terms normally applicable to other consumer transaction accounts offered by the banking institution; provided that the fees and charges for specific services other than those otherwise provided in this section shall not exceed those imposed by the banking institution for the same services in connection with other consumer transaction accounts offered by the banking institution.

6. No banking institution shall be required to permit any person to open or maintain a basic banking account pursuant to this section if such person maintains another consumer transaction account either at that banking institution or any other banking institution.

7. In lieu of the basic banking account required by this section, a banking institution may make available an alternative account or other banking services determined by the superintendent to be at least as advantageous to consumers as the basic banking account.

8. (a) Where a banking institution posts in the public area of its offices notice of the availability of its other consumer transaction accounts, it shall also post equally conspicuous notice in such public areas and in the same manner the availability of its basic banking accounts. Where a banking institution makes available in such public areas material describing the terms of its other consumer transaction accounts, it shall also make comparable descriptive material available in the same such areas and in the same manner for its basic banking

account.

(b) Where a banking institution posts in the public area of its offices the notices for information required in paragraph (a) of this subdivision, it shall also post equally conspicuous notice in such public areas and in the same manner, of the department's toll free consumer's hotline telephone number, where consumers can file complaints if a consumer is not satisfied with the services a banking institution provides.

9. For purposes of this section:

(a) "banking institution" means any bank, trust company, savings bank, savings and loan association, or credit union, or branch of a foreign banking corporation the deposits of which are insured by the Federal Deposit Insurance Corporation, which is incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States, and, in the ordinary course of its business, offers consumer transaction accounts to the general public or, in the case of a credit union, to its members;

(b) "consumer transaction account" means a demand deposit account, negotiable order of withdrawal account, share draft account or similar account used primarily for personal, family or household purposes.

10. For purposes of this section, any banking insititution which offers share draft accounts shall use the term "basic share draft account" instead of "basic banking account".

11. If any provision of this section, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this section, and the application of such provisions thereof to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

§ 18. Fees for copies and certifications. Notwithstanding any provision of this chapter to the contrary, for every copy of any paper filed in the department and for the certification thereof, the superintendent may charge such amounts by regulation as the

superintendent, in his or her discretion, determines to be fair and reasonable.

§ 18-a. Application fees. 1. The provisions of this section shall only be applicable to applications for which a fee is authorized to be imposed by any other provision of this chapter or regulations promulgated thereunder.

2. The fees set forth in this section may be imposed notwithstanding any fee amount set forth in any other provision of this chapter or the regulations promulgated thereunder.

3. As used in this section, "applications" shall include notices and similar filings.

4. The fee which shall be imposed for any application for an initial license, registration, incorporation or for the formation of any other entity pursuant to this chapter, or for a merger, acquisition, purchase or sale of assets, change of control, or for any other application requiring the approval of the superintendent that may necessitate, as determined by the superintendent, a determination regarding the character or fitness and/or the safety and soundness of such applicant or a similar investigative undertaking by the department, shall be:

(a) twelve thousand five hundred dollars when such application relates to a banking organization, bank holding company or, except as provided in paragraph (b) of this subdivision, a foreign banking corporation;

(b) seven thousand five hundred dollars when such application relates to licensing a branch, agency or representative office of a foreign banking corporation;

(c) one thousand five hundred dollars when the application relates to a mortgage broker; or

(d) three thousand dollars for all other such applications.

5. The fee for any other application requiring the approval of the superintendent, including, but not limited to, any application required to change the name of the applicant, open branches or offices or

additional locations, or relocate an existing branch, office, or location, and any other application not subject to subdivision four of this section, shall be:

(a) seven hundred fifty dollars when the application relates to a banking organization, bank holding company, out-of-state state bank, foreign credit union, or foreign banking corporation;

(b) two thousand dollars when the application relates to the licensing of an additional location or change of location or the licensing of a mobile unit of a licensed casher of checks; or

(c) five hundred dollars for all other such applications.

6. The superintendent, in his or her sole discretion, may waive or reduce the amount of the fee to be imposed pursuant to this section, either on a case-by-case basis or, by regulation, generally with respect to a type of application, if the superintendent determines that:

(a) the payment of such fee would impose an economic hardship upon the applicant;

(b) the amount of such fee is excessive with respect to the expenses incurred by the department of financial services to investigate such application; or

(c) such waiver or reduction (i) serves the interests of interstate administrative reciprocity or multi-state regulatory cooperation; (ii) facilitates the administration of the department of financial services; or (iii) is otherwise appropriate.

§ 18-b. Holocaust reparations payment fees. 1. For the purposes of this section, "victims or targets of Nazi persecution" means any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because of race, religion, ethnicity, sexual orientation, national origin, or physical or mental disability or handicap, or the heirs, successors, administrators, executors, affiliates, or assignees of such victims or targets, or any other claimant receiving funds from an eligible settlement fund, or from an eligible grantor trust established for the benefit of such victims or

targets. An eligible settlement fund is an entity that is treated for federal income tax purposes as a designated or qualified settlement fund, as such term is defined in section 468B of the Internal Revenue Code and the regulations thereunder, which is established for the principal purpose of resolving and satisfying claims arising from or in connection with any act or omission in any way relating to the Holocaust, World War II and its prelude and aftermath, victims or targets of Nazi persecution, transactions with or actions of the Nazi Regime, or treatment of refugees fleeing Nazi persecution by or in the Swiss Confederation. An eligible grantor trust is a grantor trust which is established for the principal purpose of resolving and satisfying such claims.

2. The superintendent shall maintain and annually update a list of banks and other financial institutions doing business in the state that voluntarily waive wire transfer fees and other processing fees imposed for automated deposits or transfers of amounts received (including accumulated interest) by victims or targets of Nazi persecution from an eligible settlement fund, or from an eligible grantor trust established for the benefit of such victims or targets. The department shall make the list available to the public on the department's website.

§ 19. Assessments for deficiency in reserves against deposits. If any banking organization or branch of a foreign banking corporation shall not maintain the total reserves prescribed by or pursuant to this chapter, the superintendent may levy an assessment upon it for such period as any deficiency in its total reserves amounting to one per centum or more of its deposits against which reserves are required to be maintained shall continue, at rates not in excess of the following:

(1) Six per centum per annum upon any such deficiency not exceeding two per centum of such deposits.

(2) Eight per centum per annum upon any additional deficiency in excess of two and not exceeding three per centum of such deposits.

(3) Ten per centum per annum upon any additional deficiency in excess of three and not exceeding four per centum of such deposits.

(4) Twelve per centum per annum upon any additional deficiency

therein.

§ 20. Assessments, penalties and forfeitures entitled to priority. In case of the insolvency or voluntary or involuntary liquidation of any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter, all unpaid charges lawfully assessed against such person or entity by the superintendent and all unpaid penalties and forfeitures incurred by such person or entity under any section of this chapter shall be entitled to priority of payment from such person's or entity's assets on an equality with any other priority given by this chapter.

§ 21. Collection of assessments, penalties and forfeitures; proceedings by attorney general. 1. When the superintendent, pursuant to the powers conferred on him or her by this article, shall have duly levied any assessment and shall have given due notification of the amount thereof, the amount so assessed shall become a liability of, and shall be paid to the superintendent by any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter upon which it was levied.

2. If any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter shall not pay, after due notice, any such assessment or any penalty or forfeiture incurred under any section of this chapter, the superintendent may, in his or her discretion, apply in payment thereof, with interest at the legal rate, so much as may be necessary of the interest accruing on any stocks or bonds deposited with him or her by such person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter pursuant to any requirement of this chapter.

3. The superintendent may, in his or her discretion, report to the attorney general any failure to make such payments or the failure of any officer, director, trustee, or employee of any person or entity licensed, registered, or incorporated or otherwise formed pursuant to

this chapter, after due notice, to pay any penalty or forfeiture incurred by him or her under any provision of this chapter, or any violation by any corporation, unincorporated association, partnership, individual, or any other entity, of any provision of this chapter. The attorney general shall thereupon, in the name of the superintendent, or of the people of the state, institute such action or proceedings as the facts may warrant.

4. The provisions of this section shall be applicable to any bank holding company, as that term is defined in article three-A of this chapter.

§ 22. Fingerprints. (a) Notwithstanding any other provision of law, every applicant for a license, authorization or registration under articles nine, nine-A, eleven-B, twelve-B, twelve-C, twelve-D, twelve-E and thirteen-B of this chapter and every applicant filing an application to acquire control of any licensee or registrant, as the case may be, under such articles shall submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon. An applicant shall not be required to submit his or her fingerprints as required by this subdivision if such applicant (i) is already subject to regulation by the department and the applicant has submitted such fingerprints to the department, such fingerprints have been submitted to the division of criminal justice services for the purpose of conducting a criminal history search, and a report of such search has been received by the

department from such division; or (ii) is subject to regulation by a federal bank regulatory agency and has submitted such fingerprints to such agency which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; or (iii) is an officer or stockholder of a corporation whose common or preferred stock is registered on a national securities exchange, as provided in an act of congress of the United States entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended, or such other exchange or market system as the superintendent shall approve by regulation, and has submitted such fingerprints to such exchange or market system which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; provided, however, that the superintendent may subsequently require such applicant to submit his or her fingerprints if the superintendent has a reasonable basis for updating the information or determination resulting from the report of the criminal history search conducted at the request of such federal banking agency, exchange or market system.

(b) The superintendent shall also, concurrent with an investigation of a licensee or registrant, or an authorized individual, pertaining to a violation of this chapter, submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon and through the division to the federal bureau of investigation for the purpose of a fingerprint check of such licensee, registrant or authorized individual.

(c) For purposes of this section, "applicant" shall include a natural person or such principal, officer, director, trustee or stockholder of any other entity as may be designated by the superintendent. Notwithstanding any other provision of this article, the superintendent shall not access criminal history data or information, unless any agency from which the superintendent receives directly criminal history data or information has entered into a use and dissemination agreement with the superintendent consistent with the provisions of this section.

§ 23. Acceptance or rejection of certificate; investigation fees.

Within twenty days after the receipt by the superintendent of any organization certificate of a corporation proposed to be organized under this chapter, or any private banker's certificate together with such documents as are required to be filed therewith, the superintendent shall, if such certificate and such accompanying documents comply in form and substance with the requirements of this chapter, file such certificate for examination and note thereon the date of such filing. If such certificate or such accompanying documents do not comply in all respects with the requirements of this chapter, the superintendent shall, within twenty days after receipt thereof, return them to the persons from whom they were received, calling attention to the defect or defects therein.

At the time of submission of the certificate and accompanying documents an investigation fee as prescribed pursuant to section eighteen-a of this article shall be paid to the superintendent, to be retained by him or her if the certificate and accompanying documents are filed. If the certificate and accompanying documents are not filed because of defects therein, the investigation fee is to be returned with such papers to the persons from whom they were received.

§ 24. Investigation by superintendent; refusal or approval; filing certificate. 1. Within ninety days after the date when any organization certificate or private banker's certificate shall have been filed for examination, the superintendent, if the superintendent shall find after investigation and examination of what the superintendent deems to be the best sources of information available that the character, responsibility and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed corporation or private banker will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter, and that the public convenience and advantage will be promoted by allowing such proposed corporation or private banker to engage in business, shall approve such certificate. An extension of such ninety day period may be requested, by a written request executed by a majority of the persons from whom the superintendent received such organization

certificate or private banker's certificate, for such additional reasonable period of time as may be required for applicants to comply with conditions precedent stipulated by the superintendent as being a prerequisite to his or her approval. The superintendent, in the superintendent's sole discretion, shall determine whether to grant such an extension.

2. The superintendent shall also endorse upon each of the duplicates the date of such approval. The superintendent shall forthwith cause notice of such approval to be given to the proposed incorporators or private banker and one of the duplicate certificates shall be filed in the office of the department and the other in the office of the clerk of the county in which the principal office of such proposed corporation or private banker is to be located. In a case in which a private banker certificate is submitted to the superintendent for the purpose of continuing the business in connection with a change in its partnership, the superintendent shall approve the private banker certificate upon making a determination that the private banker should be permitted to continue its business based upon the considerations set forth in subdivision one of this section.

3. If the superintendent is not satisfied, upon the considerations set forth in subdivision one of this section, that such proposed corporation or private banker should be permitted to engage in business, the superintendent shall refuse such certificate and shall endorse thereon the date of such refusal and return one of the duplicates to the proposed incorporators or private banker from whom such certificate was received.

4. The provisions of this section shall not apply to any organization certificate required to be filed in the office of the superintendent by section one hundred thirty-six, by section two hundred sixty-b, by section four hundred ten, by section four hundred eleven or by section four hundred eighty-six of this chapter.

§ 25. Authorization certificate; when and to whom issued; contents;

filing and recording. 1. If the superintendent shall find that a corporation or private banker, the certificate of which has been approved and filed as provided in section twenty-four of this article, has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this chapter, the superintendent shall, within ninety days after the date of such approval, issue and execute under the official seal of the department, in triplicate, an authorization certificate to the person or persons named in such organization certificate or private banker's certificate. Notwithstanding the preceding sentence, if the superintendent determines it is consistent with the declaration of policy contained in section ten of this article, the superintendent may extend the period within which the superintendent may issue the authorization certificate by (i) an additional ninety days, provided, however, that he or she shall have determined that such extension of time is needed for raising capital, for fulfilling any other condition precedent to the commencement of business or for satisfying any other requirement of organization, whether imposed by statute or regulation or otherwise, or (ii) such longer period of time as he or she shall deem appropriate, provided, however, that he or she shall have determined that extraordinary circumstances exist. Such authorization certificate shall state that the corporation or private banker named therein has complied with the provisions of this chapter and that it is authorized to transact the business specified therein. Such authorization certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the superintendent or the attorney general. The superintendent shall cause one of the triplicate authorization certificates to be transmitted to the corporation or private banker thereby authorized to commence business, another to be filed in the office of the department, and the third to be filed in the county clerk's office in which the organization certificate or the private banker's certificate has been filed. The copies of the authorization certificate filed in the offices of the superintendent and the county clerk shall be attached to the copies of the organization certificate or private banker's certificate previously filed and such certificates shall be recorded in the records of

incorporation therein.

2. Any corporation which shall not receive an authorization certificate within the time period provided by subdivision one of this section shall forfeit its rights and privileges as a corporation and its corporate powers shall cease and determine.

3. Any corporation which shall not commence business within six months after the date on which its authorization certificate is issued by the superintendent shall forfeit its rights and privileges as a corporation and its corporate powers shall cease and determine unless the time within which such business may be commenced has been extended by the superintendent. Upon satisfactory cause being shown, the superintendent may grant one or more extensions. Such extension shall be granted by order executed, transmitted and filed in the manner provided for an authorization certificate in subdivision one of this section.

*** § 25-a. Authority of superintendent to file organization certificate and issue authorization certificate under certain conditions.** 1. Notwithstanding any other provision of law to the contrary, the superintendent is authorized to file and approve the organization certificate of a bank or trust company and to issue an authorization certificate to such bank or trust company in accordance with the provisions of subdivision two of this section.

2. If the superintendent, after taking possession of the business and property of any banking organization pursuant to section six hundred six of this chapter, shall find that it is in the public interest for all or a substantial part of the business or property of such banking organization to be acquired by a bank or trust company to be organized for such purpose, he may forthwith file and approve the organization certificate of, and issue an authorization certificate to, such bank or trust company and in connection therewith may waive any condition, requirement or provision of articles two, three and fifteen of this chapter, provided, however, that the superintendent shall be empowered to impose such terms and conditions, if any, on the exercise of any

authority granted to any such bank or trust company as he may deem appropriate to effectuate the declaration of policy contained in section ten of this article.

* NB Expired March 31, 1982

§ 26. Licenses to foreign banking corporations; renewal. Upon receipt of an application in proper form of any foreign banking corporation for leave to do business in this state under the provisions of article five of this chapter, the superintendent, if he or she shall find after investigation and examination of what he or she deems to be the best sources of information that the character, responsibility and general fitness of the person or persons named in such application are such as to command confidence and warrant belief that the business of such foreign banking corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that the public convenience and advantage will be promoted by granting such foreign banking corporation leave to do business in this state, shall execute and issue a license under the official seal of the department authorizing such applicant to carry on such business at the place designated in the license. Such license shall be executed in triplicate and the superintendent shall cause one copy to be transmitted to the applicant, another to be filed in the office of the department and the third to be filed in the office of the clerk of the county in which the place of business designated in such license is located. A license issued to such foreign banking corporation pursuant to this section shall remain in full force and effect until surrendered or revoked.

§ 27. Exchange and examination of securities. 1. Any corporation, unincorporated association, partnership or individual which shall have deposited with the superintendent in trust any stocks or bonds in pursuance of any requirement of this chapter, may be permitted by the superintendent, so long as it shall continue business in the ordinary course, from time to time to withdraw any of such stocks or bonds upon depositing with the superintendent other stocks or bonds of the kind it is required by this chapter to deposit with him and if the value of the

stocks or bonds so held by the superintendent exceeds the amount required by this chapter to be so deposited, the stocks or bonds in excess of such amount may be withdrawn without depositing others in exchange therefor.

2. Any such corporation, unincorporated association, partnership or individual may, at any time during ordinary business hours, examine such stocks or bonds and compare them with the record on the books of the department. Unless it shall deliver to the superintendent at least once in each calendar year, a statement listing such stocks or bonds and the amounts thereof, and stating that they are in the custody and possession of the superintendent at the date of the statement, the state comptroller and the superintendent shall appoint some suitable and discreet person as agent for such corporation, unincorporated association, partnership or individual, who shall make an examination of such stocks or bonds. If such agent finds that the stocks or bonds held by the superintendent agree with the records thereof on the books of the department, he shall execute a statement in the form above described and transmit a copy thereof to the corporation, unincorporated association, partnership or individual in behalf of which it is made, and such statement shall have the same force and effect as if executed by such corporation, unincorporated association, partnership or individual. Compensation for the services and expenses of such agent in making such examination shall be paid as a general expense of the department.

§ 28. Change of location; change of designation of principal office; approval or refusal; certificate. Upon receipt by the superintendent of a written application in proper form from any banking organization or foreign corporation for leave to change its place or one of its places of business to another place or from any banking organization for leave to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office, the superintendent shall, if he or she shall be satisfied that such change may be permitted under the terms of this chapter and that there is no reasonable objection to such change, execute and issue a certificate under the official seal of the department authorizing such

change and specifying the date on or after which such change may be made, and shall cause the original of such certificate to be transmitted to the applicant, a copy to be filed in the office of the department and a copy to be filed in the office of the clerk of the county in which the principal office of the applicant is located, provided that if the proposed principal office is in a different county than the county in which the principal office is located at the time of the filing of the application, the superintendent shall cause copies to be filed in the offices of the clerks of both counties. If the superintendent shall be satisfied in any case that such change is undesirable or inexpedient, he or she shall refuse such application and notify the applicant of such determination.

§ 28-a. Temporary change of location; approval or refusal; certificate. Notwithstanding any provisions of law limiting the number of offices which may be maintained thereby, any banking organization or foreign banking corporation may make a written application to the superintendent for a temporary change of location of its authorized place or one of its authorized places of business or a portion thereof to another place within the state which shall be as near as practicable to such authorized place of business. At the time of making the application an investigation fee as prescribed pursuant to section eighteen-a of this article shall be paid to the superintendent for each temporary location for which leave to open is sought, except where (1) the applicant would not be required to pay an investigation fee upon the filing of an application for a change of location under provisions of this chapter other than this section, or (2) said application is necessitated by damage or destruction caused by flood, tidal wave, earthquake, conflagration, tornado, hurricane, cyclone, windstorm or other storm or such other event as shall have been declared a catastrophe by the superintendent. If there is no reasonable objection to such change, and if the superintendent finds that such change is necessary or desirable during a period of construction, repair, alteration, improvement, or reconstruction of the previously authorized place of business, he or she shall issue a certificate under his or her hand and the official seal of the department authorizing each such

change and specifying (a) the period during which such temporary location may be maintained, (b) the date on or after which such change may be made, and (c) the powers which may be exercised thereat. The superintendent shall cause the original of such certificate to be transmitted to the applicant, a copy to be filed in the office of the department and a copy to be filed in the office of the clerk of the county in which the principal office of the applicant is located. If the superintendent shall be satisfied in any case that a change is undesirable or inexpedient, he or she shall refuse such application and notify the applicant of his or her determination. A temporary place of business occupied pursuant to the provisions of this section shall be closed as soon as practicable, and in no event later than the date specified in its authorization certificate, unless the superintendent shall have extended such time. The banking organization or corporation shall notify the superintendent in writing prior to such closing as to the date it intends to close the temporary place of business.

§ 28-b. Credit needs of local communities. 1. Each banking institution as defined in subdivision four of this section to which the Community Reinvestment Act of 1977, United States P.L. 95-128, applies shall file with the superintendent a copy of each report and document which it is required to prepare for or file with one or more federal agencies pursuant to the provisions of that law and the rules and regulations promulgated thereunder. Where a banking institution has filed such reports or documents with the superintendent, an update of the reports or documents shall be required at such time as the banking institution requests the superintendent to take any action on any application to which the provisions of subdivision three of this section apply.

3. (a) When taking any action on an application or notice made by a banking institution under (i) section one hundred five, two hundred twenty-four, two hundred forty, or three hundred ninety-six of this chapter for a branch office, (ii) section one hundred ninety-one of this chapter for a public accommodation office, (iii) section six hundred one-b of this chapter for approval of a merger or purchase of assets, or (iv) under section one hundred five-a, two hundred forty-a or three

hundred ninety-six-a of this chapter for the use or installation of an automated teller machine, point-of-sale terminal or similar electronic facility or on any other application or notice to which the superintendent of financial services shall by rule or regulation make applicable the provisions of this section, the superintendent shall take into account, among other factors, an assessment, in writing, of the record of performance of the banking institution in helping to meet the credit needs of its entire community, including low and moderate-income neighborhoods and minority- and women-owned businesses, consistent with safe and sound operation of the banking institution. Such assessment and any written communications from the department of financial services to a banking institution relating to such assessment shall be made available to the public upon request, provided that nothing contained in this subdivision shall be deemed to alter, amend or affect the provisions of subdivision ten of section thirty-six of this chapter. In making such assessment the superintendent shall review all reports and documents filed with him or her pursuant to subdivision one of this section and any signed, written comments received by the superintendent which specifically relate to the banking institution's performance in helping to meet the credit needs of its community. In addition, the superintendent shall consider the following factors in assessing a banking institution's record of performance, and include in its written assessment required by this section the record of performance of such banking institution as to each of the following factors:

(1) Activities conducted by the banking institution to ascertain credit needs of its community, including the extent of the banking institution's efforts to communicate with members of its community regarding the credit services being provided by the banking institution;

(2) The extent of the banking institution's marketing and special credit-related programs to make members of the community aware of the credit services offered by the banking institution;

(3) The extent of participation by the banking institution's board of directors or board of trustees in formulating the banking institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(4) Any practices intended to discourage application for types of credit set forth in the banking institution's Community Reinvestment Act

Statement(s);

(5) The geographic distribution of the banking institution's credit extensions, credit applications and credit denials;

(6) Evidence of prohibited discriminatory or other illegal credit practices;

(7) The banking institution's record of opening and closing offices and providing services at offices;

(8) The banking institution's participation, including investments, in local community development and redevelopment projects or programs and in technical assistance programs for small businesses and minority- and women-owned businesses;

(9) The banking institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm or minority- and women-owned business loans within its community or the purchase of such loans originated in its community;

(10) The banking institution's participation in governmentally-insured, guaranteed or subsidized loan programs for housing, small businesses or small farms;

(11) The banking institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition and other factors;

(11-a) The geographic distribution, availability and use of automated teller machines, point-of-sale terminals, personal computer banking, debit cards or similar electronic facilities or services; and any training of customers thereon among every branch of the banking institution, if the institution offers such services to any of its customers; and

(12) Other factors that, in the judgment of the superintendent, reasonably bear upon the extent to which a banking institution is helping to meet the credit needs of its entire community, including, without limitation, the banking institution's participation in credit counseling services or participation in a banking development district established pursuant to section ninety-six-d of this chapter by establishing a branch in such district.

(b) In assessing the record of performance of a banking institution pursuant to the provisions of paragraph (a) of this subdivision, the

superintendent may, where he or she deems it appropriate, provide for public hearings when an objection to the banking institution's application or notification has been submitted.

(c) An assessment of a banking institution's record of performance under paragraph (a) of this subdivision may be the basis for denying an application or notice under the provisions of this section.

(d) When taking any action pursuant to paragraph (a) of this subdivision, the superintendent shall request from the applicant or notificant banking institution and from the appropriate federal bank regulatory authorities any documents, other than those required to be filed with the superintendent by this section or by other applicable statutes or regulations, which are (1) filed with the federal bank regulatory authorities in connection with the application or notice or (2) produced by the applicant or notificant banking institution or others in connection with the application or notice.

4. Notwithstanding any other provision of this chapter or other law to the contrary, the term banking institution when used in this section shall mean and include all banks, trust companies, savings banks, savings and loan associations, credit unions and foreign banking corporations incorporated, chartered, organized or licensed under the laws of this state. In the case of a foreign banking corporation licensed pursuant to this article and maintaining a branch in this state, the management of the branch shall establish a committee of not fewer than three officers to function in the role of a board of directors for purposes of this section.

5. The superintendent is hereby authorized and empowered to promulgate rules and regulations effectuating the provisions of this section, including any rules and regulations providing that the assessment of banking institutions referred to in subdivision three of this section shall be made on a graduated numerical basis.

6. If any clause, sentence, paragraph, subdivision or part of this section or the application thereof to any person, firm, or corporation, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect,

impair or invalidate the remainder thereof, but shall be confined (i) in its operation to the clause, sentence, paragraph, subdivision, or part of this section or (ii) in its application to the person, firm or corporation, or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

§ 28-bb. Credit needs of local communities; mortgage bankers. 1. When taking any action on an application made by a mortgage banker licensed pursuant to section five hundred ninety-one of this chapter for a change in control under section five hundred ninety-four-b of this chapter, or on any other application or notice to which the superintendent of financial services shall by rule or regulation make applicable the provisions of this section, the superintendent shall take into account, among other factors, an assessment, in writing, of the record of performance of the mortgage banker in helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, and consistent with safe and sound operation of the mortgage banker. Such assessment and any written communications from the department of financial services to a mortgage banker relating to such assessment shall be made available to the public upon request, provided that nothing contained in this subdivision shall be deemed to alter, amend or affect the provisions of subdivision ten of section thirty-six of this article. In making such assessment of a mortgage banker, the superintendent shall review all reports and documents filed by the mortgage banker pursuant to section five hundred ninety-seven of this chapter. In addition, the superintendent shall consider the following factors in assessing a mortgage banker's record of performance, and include in its written assessment required by this section the record of performance of such mortgage banker as to each of the following factors:

(a) Activities conducted by the mortgage banker to ascertain credit needs of its community, including the extent of the mortgage banker's efforts to communicate with members of its community regarding the services being provided by the mortgage banker;

(b) The extent of the mortgage banker's marketing and special programs to make members of the community aware of the services offered by the mortgage banker;

(c) The extent of the mortgage banker's participation in community outreach, community development or redevelopment, and educational programs;

(d) The extent of participation by the mortgage banker's board of directors, advisory committee, managing members or executive management or equivalent body or person, in formulating the mortgage banker's policies and reviewing its performance with respect to the purposes of this section;

(e) Any practices intended to discourage application for types of credit offered by the mortgage banker;

(f) The geographic distribution of the mortgage banker's credit extensions, credit applications, and credit denials;

(g) Evidence of prohibited discriminatory or other illegal credit practices;

(h) The mortgage banker's record of opening and closing offices and providing services at offices;

(i) The mortgage banker's participation in governmentally-insured, guaranteed or subsidized loan programs for housing;

(j) The mortgage banker's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition and other factors; and

(k) Other factors that, in the judgment of the superintendent, reasonably bear upon the extent to which a mortgage banker is helping to meet the credit needs of its entire community.

2. In assessing the record of performance of a mortgage banker pursuant to the provisions of subdivision one of this section, the superintendent may, where he or she deems it appropriate, provide for public hearings when an objection to the mortgage banker's application or notice has been submitted.

3. An assessment of a mortgage banker's record of performance under subdivision one of this section may be the basis for denying an application under the provisions of this section.

4. Notwithstanding any other provision of this chapter or other law to the contrary, the term mortgage banker when used in this section shall

mean and include mortgage bankers licensed pursuant to section five hundred ninety-one of this chapter that originate a minimum number of loans annually, such number to be set by regulation promulgated by the superintendent.

5. The superintendent is hereby authorized and empowered to promulgate rules and regulations effectuating the provisions of this section, including any rules and regulations providing that the assessment of mortgage bankers shall be made on a graduated numerical basis.

6. If any clause, sentence, paragraph, subdivision or part of this section or the application thereof to any person, firm, or corporation, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined (i) in its operation to the clause, sentence, paragraph, subdivision, or part of this section or (ii) in its application to the person, firm or corporation, or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

§ 28-c. Branch office closings; report to and action by the superintendent. 1. This section is intended to provide the superintendent with detailed information concerning the planned closing of branch offices by state-chartered banking organizations, the availability of alternative financial services within the general area served by such branch and the economic impact upon the community resulting from such closing, and to provide the superintendent with authority to conduct meetings with banking organizations and community groups in areas where a branch closing is planned. The requirements of this section shall not apply to the following:

(a) branch offices located outside the state of New York;

(b) a sale or other transfer of a branch office which does not result in any material reduction in the financial services offered at such location;

(c) the closing of a branch office acquired from a failing or failed institution, provided that such closing occurs within one hundred eighty

days from the date of the acquisition; or

(d) the closing of a branch office when unexpected circumstances make strict compliance impossible, provided that such determination shall be solely within the discretion of the superintendent and provided further that the superintendent may require the banking organization to comply with the requirements of this section to the extent possible.

2. Every banking organization shall submit to the superintendent a report of its planned or intended closing of a branch office, and shall give written notice to any person who maintains a banking account relationship with such branch office which is the subject of such planned or intended closing, no less than ninety days nor more than one hundred eighty days prior to the date of actual closing. The banking organization shall post and keep posted in a conspicuous place notice of such planned closing at such branch office, commencing on the date the banking organization submits its report pursuant to the foregoing provision and until the proposed closing is effected or withdrawn.

3. Such report shall be in writing and shall contain a statement of the reasons leading to the decision to close the branch and any statistical or other information in support thereof. Such report shall be and remain at all times subject to the provisions of subdivision ten of section thirty-six of this chapter. Such report shall also contain the following information, provided that the superintendent may waive or modify these requirements for good cause:

(a) a past (at least three years), present and projected financial analysis of deposits at such branch (giving number of accounts and dollar amount, profits and losses);

(b) a past (at least three years), present and projected financial analysis of profits and losses relating to the loan activity at such branch;

(c) a detailed map of the general area served by such branch showing the distance and direction of all remaining state or federally chartered institutions within such area and any licensee of the department which provides financial services of any kind; and

(d) a description of any planned limited or full service banking facility to be opened within such area by either the reporting banking

organization or, if known, to the reporting banking organization, by any other banking institution.

4. The superintendent shall make a finding as to whether or not the proposed branch closing will result in a significant reduction of financial services in the community to be affected. Such finding shall be made public. If the superintendent finds that the availability of financial services in a particular geographic area or community will be significantly reduced by the closing of a particular branch office, he or she shall conduct such meetings with banking organizations and community leaders as are necessary, in his or her judgment, to explore the feasibility of replacing such branch with other adequate banking facilities.

5. In this section:

(a) "banking organization" includes each bank, trust company, savings bank, and savings and loan association as those terms are defined in section two of this chapter and each out-of-state state bank authorized to operate and maintain a branch pursuant to article five-C of this chapter;

(b) "branch office", "branch", or "office" shall not include electronic facilities as defined by general regulation of the superintendent of financial services, but shall include a public accommodation office;

(c) "financial services" includes demand and time deposit accounts, check cashing services, deposit and withdrawal transactions, sale of bank or travellers checks and money orders, processing loan applications, acceptance of loan repayments, and any related services; and

(d) "facility" and "facilities" includes any building, structure, vehicle, unit, machine, or device, permanent or temporary, mobile or stationary, which provides or dispenses financial services of any kind or description.

6. No provision of this section or any rule or regulation adopted pursuant thereto shall be deemed or construed as impairing the ability of any banking organization to close any branch office after complying

with the provisions of subdivision two of this section.

§ 29. Branch offices; public accommodation offices; approval or refusal; certificate; investigation fee. When a banking organization seeks to open a branch office or public accommodation office, it shall submit a written application to the superintendent. The application shall contain such information as the superintendent deems necessary. At the time of making such application, an investigation fee as prescribed pursuant to section eighteen-a of this article shall be paid to the superintendent for each branch office or public accommodation office for which leave to open is sought. If the superintendent finds that the opening of the branch office or public accommodation office is consistent with the declaration of policy set forth in section ten of this article and that the applicant is in compliance with section twenty-eight-b of this article, he or she shall issue a certificate in triplicate under his or her hand and the official seal of the department authorizing the opening and occupation of such branch office or public accommodation office and specifying the date on or after which and the conditions under which it may be opened and the place where it shall be located. The superintendent shall cause one of such triplicate certificates to be transmitted to the applicant, another to be filed in the office of the department and the third to be filed in the office of the clerk of the county in which the principal office of the applicant is located. If the superintendent shall not find that the opening of the branch or public accommodation office is consistent with the declaration of policy set forth in section ten of this article or that the applicant is in compliance with section twenty-eight-b of this article, he or she shall notify the applicant that the application has been denied.

No investigation fee for branch applications shall be collected from applicants if such branch applications are filed in conjunction with proceedings under section one hundred thirty-six, four hundred ten or subdivision eight of section six hundred five of this chapter.

§ 30. Unclaimed amounts; deposit by superintendent in trust;

preference; release of debtor. 1. After the completion of the voluntary or involuntary liquidation of the business and property of any banking organization or of the business and property in this state of any foreign banking corporation, the superintendent may take and hold as trustee for the owners thereof any amounts which remain due to and unclaimed by any creditor, depositor, stockholder, shareholder, bailor or depositor of property for hire or otherwise, or lessee of any safe, vault or box. Whenever such amounts are received by the superintendent and he is not in possession of the business and property of such banking organization or corporation, he shall give his receipt for such amounts and shall forthwith deposit them in one or more banks, trust companies, or savings banks, to the credit of the superintendent of financial services in trust for the persons entitled thereto. In a liquidation by the superintendent he shall deposit such amounts in like manner at the times provided in article thirteen of this chapter.

2. All such deposits by the superintendent shall be entitled to priority of payment in case of the insolvency or voluntary or involuntary liquidation of the depositary on an equality with any other priority given by this chapter.

3. The superintendent shall before the close of each fiscal year pay into the state treasury all interest received by him on such unclaimed amounts since the last such payment.

4. Any banking organization or foreign banking corporation with respect to which the superintendent has received unclaimed amounts as trustee for the owners thereof pursuant to the provisions of this section shall, from and after the date when such amounts are so received, be relieved and held harmless from any and all liability for any claim or claims which exist at such time with respect to such unclaimed amounts, or which may thereafter be made or may come into existence on account of or in respect of any such unclaimed amounts, and no action shall be maintained against such banking organization or corporation or any officer, partner, agent, employee, attorney, shareholder or stockholder thereof for the recovery of any such unclaimed amounts, or for interest thereon subsequent to the date of

receipt by the superintendent or for damages alleged to have resulted from the payment thereof to the superintendent.

§ 31. Index of persons entitled to unclaimed amounts; payment to persons entitled; deduction of service charge. An index shall be kept in the office of the department of the names of all persons for whom the superintendent holds in trust any unclaimed amounts. The superintendent may pay over any such amount which he holds in trust amounting to over three dollars to any person who shall show by evidence satisfactory to the superintendent that he is lawfully entitled to receive it. In cases of doubt or conflicting claims, he may require of the claimant an order of the supreme court authorizing and directing the payment thereof. The superintendent shall be held harmless and shall not be liable to any subsequent claimant for any payment made by him in good faith. The superintendent shall deduct from the amount of any claim of fifty dollars or more allowed by him or ordered by the court to be paid a service charge of one percentum of the amount thereof, but in no event less than one dollar and, in addition, any costs, disbursements and legal fees which the court may allow. The amount so deducted shall be paid into the state treasury in accordance with the provisions of section seventeen of this chapter.

§ 32. Insurance of deposits and share accounts.

1. Within one year from the date this section shall have become law, every bank, trust company, savings bank, savings and loan association and credit union shall obtain insurance of deposits and share accounts, as the case may be:

(a) from the Federal Deposit Insurance Corporation, in the case of a bank, trust company, savings bank or savings and loan association;

(b) from the Administrator of the National Credit Union Administration, in the case of a credit union; or

(c) in the case of any such banking organization, from any other insurer upon such terms and conditions as the superintendent shall approve.

2. No banking organization whose deposit or share accounts are so insured shall hereafter voluntarily terminate such insured status.

3. Notwithstanding the foregoing provisions of this section, the superintendent shall have the power to promulgate such regulations as the superintendent deems necessary and proper (a) to implement and define the provisions of this section, (b) to exempt from the requirements of this section any banking organization which does not receive deposits or share accounts from the general public, and (c) for good cause shown, to extend for up to two years the period within which any banking organization must comply with the requirements of subdivision one of this section.

§ 33. Reserve depositaries. The superintendent shall, in his discretion, upon the nomination of any bank, trust company, industrial bank, foreign banking corporation authorized to maintain a branch or branches in this state or private banker, designate as a depositary for its reserves on deposit a bank, trust company, private banker or national bank located in this state, or a banking corporation located elsewhere in the United States if such banking corporation shall make such reports as the superintendent may prescribe and shall submit to such examinations as he may deem necessary. No such bank, trust company, private banker, national bank or banking corporation may be a depositary of any such reserves unless it shall have a combined capital and surplus of at least

(1) One million dollars, if located in a borough in this state which has a population of one million five hundred thousand or over;

(2) Seven hundred and fifty thousand dollars, if located in a borough in this state which has a population of one million or over and less than one million five hundred thousand or in a city in this state not divided into boroughs which has a population of four hundred thousand or over;

(3) Five hundred thousand dollars, if located elsewhere in this state;

(4) Two million dollars, if located outside this state.

No bank, trust company, private banker or national bank located in a borough having a population of one million five hundred thousand or over which does not have a combined capital and surplus of at least two million dollars, may be a depositary for such reserves unless it shall have a combined capital and surplus greater than the combined capital and surplus of the bank, trust company, industrial bank, foreign banking corporation authorized to maintain a branch or branches in this state or private banker depositing such reserves.

§ 34. Superintendent as attorney to accept service of process. Whenever pursuant to any provision of this chapter, the superintendent shall have been duly appointed attorney to receive service of process for any individual, partnership, unincorporated association or corporation, such service shall be made by personally delivering duplicate copies of the process to and leaving them with the superintendent or any deputy superintendent. Service of process so made shall be deemed to have been made within the territorial jurisdiction of any court in this state. The superintendent or deputy superintendent shall forthwith forward by mail, postage prepaid, a copy of every process served upon him in accordance with this section, directed to the person last designated by such individual, partnership, unincorporated association or corporation in accordance with the provisions of this chapter to receive such process on his or its behalf. For each service of process upon the superintendent or a deputy, he shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service. The term process when used in this section, includes any writ, summons, petition or order whereby any suit, action or proceeding shall be commenced.

§ 35. Information pamphlet for residential mortgage applicants. 1. The superintendent shall develop a pamphlet known as "what mortgage applicants need to know" and post such pamphlet on the department's web site. Such pamphlet shall be posted and printed in the six most common non-English languages spoken by individuals with limited-English proficiency in New York state as based on the most recent census. The

department will notify mortgage bankers and banking organizations when the pamphlet is posted on the department's web site and when any changes to the pamphlet are made. A copy of such pamphlet shall be provided by mortgage bankers and other banking organizations to each person applying for a loan secured by a mortgage upon residential real estate in accordance with the timing requirements under 12 CFR § 1026.19(e)(1)(iii). A mortgage banker or banking organization may provide the applicant with the pamphlet via electronic communications, including but not limited to, electronic mail or a hyperlink to the pamphlet posted on the department's web site.

2. The pamphlet developed pursuant to this section shall be substantially in the following form, along with other information added at the discretion of the superintendent:

""WHAT MORTGAGE APPLICANTS NEED TO KNOW"

As an applicant for a residential mortgage you have the right to:

1. Compare and negotiate the charges of different mortgage brokers and lenders to obtain the best loan possible.

2. Ask your mortgage broker to explain such person's responsibilities within the mortgage lending process.

3. Know how much the mortgage broker is compensated by you and the lender for your loan.

4. A clear and truthful explanation of the terms and conditions of the loan.

5. Know if the loan being offered is a fixed or adjustable rate mortgage loan, whether the loan can be transferred or refinanced, know the exact amount of your monthly loan payments, including any projected escrow payments, know the final annual percentage rate (APR) and the amount of regular payments at the loan's closing.

6. Ask for an estimate detailing all loan and settlement charges

before you agree to the loan and pay any fees, including without limitation loan application fees, title search and insurance fees, lender's attorney fees, property appraisal charges, inspections, recording fees, late payment fees, transfer taxes, point and origination fees, escrow account balances, which services a loan applicant can shop for and which they cannot, and you are entitled to receive such estimate within three business days of applying for a loan.

7. Obtain credit counseling before closing a loan.

8. Decide whether or not to finance any portion of the points or fees.

9. Refuse to purchase credit insurance for any mortgage loan.

10. Have your property appraised by an independent licensed professional and to receive a copy of the appraisal.

11. Not be subject to deceptive marketing practices.

12. Ask for the consumer financial protection bureau's booklet "Your home loan toolkit".

13. Receive the following documents, and every document otherwise required to be given to you at closing under federal and New York state law:

a. Loan estimate or good faith estimate depending on the loan you are applying for.

b. Closing disclosure.

14. Know what deposits and fees are not refundable if you decide to cancel the loan agreement.

15. Receive in writing the reason for the denial or conditional approval of your loan application.

16. If refinancing, you may cancel a loan within three days of the closing by providing written notification of cancellation to the licensed lender or banking institution.

17. Receive the closing disclosure three days before the closing takes place.

18. Have any lending disputes resolved in a fair and equitable manner.

19. A credit decision that is not based upon your race, color, national origin, religion, sex, family status, sexual orientation, disability or whether any income is from public assistance.

20. File a complaint with the department or the Consumer Financial Protection Bureau if you believe that a mortgage broker or any other entity licensed by the department or the Consumer Financial Protection Bureau has violated any rules, regulations or laws which govern such person's conduct in working with you to get or process a mortgage loan.

21. File a complaint with the New York state department of state or the Consumer Financial Protection Bureau if you believe that a real estate broker has violated any rules, regulations or laws which govern such person's conduct in working with you to purchase a home."

3. The superintendent may modify the language of the pamphlet to ensure that the pamphlet is accurate and consistent with applicable law.

§ 36. Examinations; right of inspection; penalties for refusing to permit examination. * 1. The superintendent shall have the power to examine every banking organization, every bank holding company and any non-banking subsidiary thereof (as such terms "bank holding company" and "non-banking subsidiary" are defined in article three-A of this chapter) and every licensed lender at any time prior to its dissolution whenever in his judgment such examination is necessary or advisable.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 1. The superintendent shall have the power to examine every banking organization, every bank holding company and any non-banking subsidiary thereof (as such terms "bank holding company" and "non-banking subsidiary" are defined in article three-A of this chapter) and every licensed lender and licensed buy-now-pay-later lender at any time prior to its dissolution whenever in the superintendent's judgment such examination is necessary or advisable.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

2. At least once in each calendar year upon such date or dates within each such period as in his or her discretion he or she deems proper, the superintendent shall cause every banking organization to be examined; provided, however, that:

(a) the provisions of this subdivision shall not be applicable to an investment company unless (i) such investment company has been authorized by the superintendent of financial services to receive deposits, in accordance with the terms of subdivision three of section five hundred eight of this chapter, (ii) a bank or trust company, or any two or more of such organizations, shall own an aggregate of twenty-five per centum or more of the capital stock of such investment company, or (iii) such investment company is a corporation which, under the terms of subdivision six of this section, is deemed for the purposes of this section to be a corporation affiliated with a corporate banking organization, and

(b) the superintendent may extend the examination interval from at least once in each calendar year to at least once in each eighteen month period if the banking organization to be examined:

(1) has total assets of less than one billion dollars;

(2) is well-capitalized, which for purposes of this paragraph is defined as having capital which significantly exceeds the required minimum level for each relevant capital measure or as having such capital as the superintendent shall otherwise define by regulation;

(3) at its most recent examination, was found to be well-managed and its composite condition was found to be outstanding or good;

(4) is not currently subject to a formal enforcement proceeding or order by the superintendent, the federal deposit insurance corporation or any other federal banking agency; and

(5) has not been acquired by any person during the twelve month period in which an examination would be required but for this paragraph, and

(c) the superintendent may modify the examination intervals as prescribed by this subdivision to the extent the superintendent deems appropriate, in his or her sole discretion, in order to obtain the efficient use of the personal and nonpersonal resources of the department by maximizing coordination with identical or parallel examinations having differing or varying intervals performed by federal banking regulators, whether such examinations are performed in conjunction with the department or on an alternating schedule with such federal banking regulators; provided, that nothing in this paragraph shall be deemed in any manner to lessen or modify the requirement imposed pursuant to section ten of this article.

3. On every such examination of any banking organization inquiry shall be made as to (a) its financial condition, (b) the security afforded to those by whom its engagements are held, (c) the policies of its management, (d) whether the requirements of law have been complied with in the administration of its affairs, and (e) such other matters as the superintendent may prescribe. Examination of a licensed lender shall be made only for the purposes set forth in section three hundred forty-eight of this chapter.

4. The superintendent shall also have power at any time to examine every agency, branch or office located in this state of any foreign banking corporation, including, but not limited to, all of the books, accounts or records of every agency, branch or office located in this state of such foreign banking corporation as well as all of the books, accounts or records maintained in this state of any agency, branch or office not located in this state of such foreign banking corporation for the purpose of ascertaining whether it has violated any law and for any other purpose.

5. The superintendent shall have the power to make such special

investigations as he shall deem necessary to determine whether any individual, partnership, unincorporated association or corporation has violated any of the provisions of this chapter; and to the extent necessary for this purpose the superintendent shall have the power to examine all relevant books, records, accounts and documents.

6. For the purpose of determining the financial condition of a banking organization, the superintendent shall have the power, when in his or her judgment it is necessary or advisable, to examine corporations or any other entity affiliated with any such banking organization. The following are deemed for the purposes of this section to be corporations or other entities affiliated with a banking organization:

(a) (i) Any corporation or other entity, the capital stock of which such banking organization directly or indirectly, or through a subsidiary or subsidiaries, owns or controls ten per centum or more of the voting shares of such corporation or other entity; or (ii) any corporation or other entity the election of a majority of the board of directors of which is in any manner directly or indirectly controlled by such banking organization; or (iii) any corporation or other entity the management or policies over which the banking organization has the power, directly or indirectly, to exercise a controlling influence, as determined by the superintendent; provided, however, the foregoing definition of affiliate corporations and other entities shall not apply to small business investment companies as defined in and operating pursuant to the provisions of an act of congress entitled "Small Business Investment Act of 1958," and such companies shall be deemed to be corporations affiliated with the banking organization for the purposes of this subdivision, if such banking organization directly or indirectly owns or controls twenty-five per centum or more of the voting shares or more than twenty-five per centum of the shares voted for the election of directors at the preceding annual meeting of such small business investment company; or any such small business investment company the election of at least twenty-five per centum of the board of directors of which is in any other manner directly or indirectly controlled by such banking organization; or

(b) Any corporation or other entity which directly or indirectly, or through a subsidiary or subsidiaries, owns or controls ten per centum or

more of the voting shares of capital stock of such banking organization; or any corporation or other entity which in any manner directly or indirectly controls the election of a majority of the board of directors of such banking organization; or with respect to the management or policies of such banking organization has the power, directly or indirectly, to exercise a controlling influence, as determined by the superintendent.

6-a. (a) For the purposes of determining the financial condition of a banking organization, the superintendent shall have the power, when in his or her judgment it is necessary or advisable, to examine a non-banking subsidiary of a corporation or other entity which corporation or other entity, pursuant to paragraph (b) of subdivision six of this section, is deemed to be an affiliate of a banking organization.

(b) For the purposes of this subdivision, a "subsidiary" of such affiliated corporation or other entity shall mean:

(1) Any corporation or other entity ten per centum or more of whose voting stock is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled, or held with power to vote, by an affiliated corporation or other entity; or (2) any corporation or other entity, the election of a majority of whose directors is controlled in any manner by an affiliated corporation or other entity; or (3) any corporation or other entity, ten per centum or more of whose voting stock is directly or indirectly owned, controlled, or held with power to vote, by a trustee or trustees for the benefit of the stockholders or members of an affiliated corporation or other entity; or (4) any corporation or other entity, at least ten per centum of the voting stock of which is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled or held with power to vote by a combination of an affiliated corporation or other entity and by a trustee or trustees for the benefit of the stockholders or members of such affiliated corporation or other entity; or (5) any entity, corporate or unincorporated, with respect to the management or policies of which such affiliated corporation or other entity has the power, directly or indirectly, to exercise a controlling influence, as determined by the superintendent, after notice and opportunity for a

hearing. For the purposes of this subdivision, voting stock shall not be deemed to include voting stock owned by the United States or by any corporation wholly owned by the United States.

(c) A "non-banking subsidiary" for the purposes of this subdivision means one which is not a banking organization or which is not engaged in the banking business as defined in subdivision one of section one hundred thirty-one of this chapter.

(d) The superintendent may use the reports of regulatory agencies of this state, of other states, of any foreign government, and of federal regulatory agencies in making such examinations or in conjunction with such examination. All regulatory agencies of this state, shall upon request of the superintendent, furnish or make available to him or her reports of examination made by them of any such non-banking subsidiary.

6-b. For purposes of subdivisions six and six-a of this section, any references contained therein to "voting stock" or "voting shares" shall be deemed to include any ownership interest with respect to any entity other than a corporation, any references to "stockholders" or "shareholders" shall include persons or entities who have an equity interest in any entity other than a corporation, and any references to "board of directors" shall be deemed to mean the governing body with respect to any entity other than a corporation.

7. The superintendent may cause any corporation, association or partnership having business transactions or relations with any corporate banking organization to be examined if such examination is found by a justice of the supreme court, on application of the superintendent and on notice to such company, to be necessary or expedient in order to ascertain whether the capital stock of such corporate banking organization is impaired or whether safety of depositors with it has been imperilled.

8. Examinations may be made and inquiries instituted or continued in the discretion of the superintendent after he has taken possession of the property and business of any banking organization or after it has entered upon voluntary dissolution until it shall resume business or its affairs shall be finally liquidated.

9. Any individual, partnership, unincorporated association or corporation, or any other entity, which refuses to permit examination or investigation in accordance with the terms of this section shall forfeit to the people of the state an amount as determined pursuant to section forty-four of this chapter for every day such refusal continues.

* 10. All reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations, including any duly authenticated copy or copies thereof in the possession of any banking organization, bank holding company or any subsidiary thereof (as such terms "bank holding company" and "subsidiary" are defined in article three-A of this chapter), any corporation or any other entity affiliated with a banking organization within the meaning of subdivision six of this section and any non-banking subsidiary of a corporation or any other entity which is an affiliate of a banking organization within the meaning of subdivision six-a of this section, foreign banking corporation, licensed lender, licensed casher of checks, licensed mortgage banker, registered mortgage broker, licensed mortgage loan originator, licensed sales finance company, registered mortgage loan servicer, licensed student loan servicer, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, any other person or entity subject to supervision under this chapter, or the department, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event the superintendent may publish or authorize the publication of a copy of any such report or any part thereof in such manner as may be deemed proper or unless such laws specifically authorize such disclosure. For the purposes of this subdivision, "reports of examinations and investigations, and any correspondence and memoranda concerning or arising out of such examinations and investigations", includes any such materials of a bank, insurance or securities regulatory agency or any unit of the federal government or that of this state any other state or that of any foreign government which are considered confidential by such agency or unit and which are in the possession of the department or which are otherwise

confidential materials that have been shared by the department with any such agency or unit and are in the possession of such agency or unit.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 10. All reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations, including any duly authenticated copy or copies thereof in the possession of any banking organization, bank holding company or any subsidiary thereof (as such terms "bank holding company" and "subsidiary" are defined in article three-A of this chapter), any corporation or any other entity affiliated with a banking organization within the meaning of subdivision six of this section and any non-banking subsidiary of a corporation or any other entity which is an affiliate of a banking organization within the meaning of subdivision six-a of this section, foreign banking corporation, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed mortgage banker, registered mortgage broker, licensed mortgage loan originator, licensed sales finance company, registered mortgage loan servicer, licensed student loan servicer, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, any other person or entity subject to supervision under this chapter, or the department, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event the superintendent may publish or authorize the publication of a copy of any such report or any part thereof in such manner as may be deemed proper or unless such laws specifically authorize such disclosure. For the purposes of this subdivision, "reports of examinations and investigations, and any correspondence and memoranda concerning or arising out of such examinations and investigations", includes any such materials of a bank, insurance or securities regulatory agency or any unit of the federal government or that of this state any other state or that of any foreign government which are considered confidential by such agency or unit and which are in the possession of the department or which are otherwise confidential materials that have been shared by the department with any such agency or unit and are in the possession of

such agency or unit.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

§ 36-a. Reports of lending by banking organizations. The superintendent may require every banking organization to submit from time to time data on its mortgage loans, home improvement loans, or other loans and data on its deposits.

§ 36-b. Preservation of books and records. When any provision of this chapter or any rule or regulation adopted pursuant thereto requires that books and records be preserved, such requirement may be satisfied by maintenance of original papers or other records, photographic reproductions, or records stored in electronic storage media. As used in this chapter, "electronic storage media" means any digital storage medium or system that meets the following conditions:

1. It must preserve the records exclusively in non-rewritable, non-erasable format;

2. It must verify automatically the quality and accuracy of the storage media recording process;

3. It must have the capacity to readily download indexes, metadata and records preserved on the electronic storage media to any medium acceptable to the superintendent; and

4. It must be immediately readable on equipment at all times available to the superintendent for examination of such records.

§ 37. Reports to superintendent. 1. The superintendent shall at least two times in each year designate a past day as of which every bank,

trust company, private banker and, in the discretion of the superintendent, a bank holding company and any non-banking subsidiary thereof shall render a periodical report of condition to him. He shall deliver or mail a notice designating such day to such bank, trust company, private banker, bank holding company or any non-banking subsidiary thereof at its principal office.

* 3. In addition to any reports expressly required by this chapter to be made, the superintendent may require any banking organization, licensed lender, licensed casher of checks, licensed mortgage banker, foreign banking corporation licensed by the superintendent to do business in this state, bank holding company and any non-banking subsidiary thereof, corporate affiliate of a corporate banking organization within the meaning of subdivision six of section thirty-six of this article and any non-banking subsidiary of a corporation which is an affiliate of a corporate banking organization within the meaning of subdivision six-a of section thirty-six of this article to make special reports to him at such times as he may prescribe.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 3. In addition to any reports expressly required by this chapter to be made, the superintendent may require any banking organization, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed mortgage banker, foreign banking corporation licensed by the superintendent to do business in this state, bank holding company and any non-banking subsidiary thereof, corporate affiliate of a corporate banking organization within the meaning of subdivision six of section thirty-six of this article and any non-banking subsidiary of a corporation which is an affiliate of a corporate banking organization within the meaning of subdivision six-a of section thirty-six of this article to make special reports to the superintendent at such times as the superintendent may prescribe.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

4. The superintendent, except as otherwise expressly provided in this

chapter, may prescribe the form and contents of all periodical and all special reports.

* 5. The superintendent may extend at his discretion the time within which a banking organization, foreign banking corporation licensed by the superintendent to do business in this state, bank holding company or any non-banking subsidiary thereof, licensed casher of checks, licensed mortgage banker, private banker or licensed lender is required to make and file any report to the superintendent.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 5. The superintendent may extend at the superintendent's discretion the time within which a banking organization, foreign banking corporation licensed by the superintendent to do business in this state, bank holding company or any non-banking subsidiary thereof, licensed casher of checks, licensed mortgage banker, private banker, licensed buy-now-pay-later lender or licensed lender is required to make and file any report to the superintendent.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

6. For purposes of this section thirty-seven the terms "bank holding company" and "non-banking subsidiary" shall be defined as such terms are defined in article three-A of this chapter.

§ 37-a. Submission of annual reports by the Holocaust claims processing office. The superintendent shall report annually to the governor, the temporary president of the senate, the speaker of the assembly, the chairs of the senate standing committees on finance and banks, and the chairs of the assembly standing committees on ways and means and banks on the fifteenth of January of each year, a statement of condition with respect to the purpose, policies and activities of the Holocaust claims processing office. Such report shall include the following information:

1. such offices' operations and accomplishments; and

2. a schedule of expenses including, but not limited to personal service costs, nonpersonal service costs and expenses related to the recovery of properties belonging to Holocaust victim survivors.

§ 38. Power of subpoena. 1. The superintendent shall have power at all times, either personally or by his deputies, including special deputy superintendents, or examiners, to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or the powers vested in, the superintendent under the provisions of this chapter. Any corporation, association, partnership or individual which fails to obey the command of a subpoena without reasonable excuse or refuses, without reasonable cause, to be sworn or to be examined or to answer a question or to produce a book or paper when ordered so to do by the officer duly conducting such inquiry, or fails to perform any act required hereunder to be performed, shall be guilty of a misdemeanor and shall also be subject to the compulsions provided by the civil practice law and rules. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the superintendent the name of any witness examined or any other information obtained upon such inquiry, except as directed by the superintendent, shall be guilty of a misdemeanor.

2. In any such investigation before the superintendent or before his deputy or any other officer duly designated by him to conduct such investigation, the superintendent or such deputy or officer may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.

*** § 39. Orders of superintendent.** 1. To appear and explain an apparent violation. Whenever it shall appear to the superintendent that any

banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business or maintain a representative office in this state has violated any law or regulation, he or she may, in his or her discretion, issue an order describing such apparent violation and requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation to appear before him or her, at a time and place fixed in said order, to present an explanation of such apparent violation.

2. To discontinue unauthorized or unsafe and unsound practices. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business in this state is conducting business in an unauthorized or unsafe and unsound manner, he or she may, in his or her discretion, issue an order directing the discontinuance of such unauthorized or unsafe and unsound practices, and fixing a time and place at which such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage

loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation may voluntarily appear before him or her to present any explanation in defense of the practices directed in said order to be discontinued.

3. To make good impairment of capital or to ensure compliance with financial requirements. Whenever it shall appear to the superintendent that the capital or capital stock of any banking organization, bank holding company or any subsidiary thereof which is organized, licensed or registered pursuant to this chapter, is impaired, or the financial requirements imposed by subdivision one of section two hundred two-b of this chapter or any regulation of the superintendent on any branch or agency of a foreign banking corporation or the financial requirements imposed by this chapter or any regulation of the superintendent on any licensed lender, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner or private banker are not satisfied, the superintendent may, in the superintendent's discretion, issue an order directing that such banking organization, bank holding company, branch or agency of a foreign banking corporation, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or private banker make good such deficiency forthwith or within a time specified in such order.

4. To make good encroachments on reserves. Whenever it shall appear to the superintendent that either the total reserves or reserves on hand of any banking organization, branch or agency of a foreign banking corporation are below the amount required by or pursuant to this chapter or any other applicable provision of law or regulation to be maintained,

or that such banking organization, branch or agency of a foreign banking corporation is not keeping its reserves on hand as required by this chapter or any other applicable provision of law or regulation, he or she may, in his or her discretion, issue an order directing that such banking organization, branch or agency of a foreign banking corporation make good such reserves forthwith or within a time specified in such order, or that it keep its reserves on hand as required by this chapter.

5. To keep books and accounts as prescribed. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, agency or branch of a foreign banking corporation licensed by the superintendent to do business in this state, does not keep its books and accounts in such manner as to enable him or her to readily ascertain its true condition, he or she may, in his or her discretion, issue an order requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or foreign banking corporation, or the officers or agents thereof, or any of them, to open and keep such books or accounts as he or she may, in his or her discretion, determine and prescribe for the purpose of keeping accurate and convenient records of its transactions and accounts.

6. As used in this section, "bank holding company" shall have the same meaning as that term is defined in section one hundred forty-one of this chapter.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* § 39. Orders of superintendent. 1. To appear and explain an apparent violation. Whenever it shall appear to the superintendent that any

banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business or maintain a representative office in this state has violated any law or regulation, the superintendent may, in the superintendent's discretion, issue an order describing such apparent violation and requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed mortgage loan originator, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation to appear before the superintendent, at a time and place fixed in said order, to present an explanation of such apparent violation.

2. To discontinue unauthorized or unsafe and unsound practices. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business in this state is conducting business in an unauthorized or unsafe and unsound manner, the superintendent may, in the superintendent's discretion, issue an order directing the discontinuance of such unauthorized or unsafe and unsound practices, and

fixing a time and place at which such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation may voluntarily appear before the superintendent to present any explanation in defense of the practices directed in said order to be discontinued.

3. To make good impairment of capital or to ensure compliance with financial requirements. Whenever it shall appear to the superintendent that the capital or capital stock of any banking organization, bank holding company or any subsidiary thereof which is organized, licensed or registered pursuant to this chapter, is impaired, or the financial requirements imposed by subdivision one of section two hundred two-b of this chapter or any regulation of the superintendent on any branch or agency of a foreign banking corporation or the financial requirements imposed by this chapter or any regulation of the superintendent on any licensed lender, licensed buy-now-pay-later lender, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner or private banker are not satisfied, the superintendent may, in the superintendent's discretion, issue an order directing that such banking organization, bank holding company, branch or agency of a foreign banking corporation, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or private banker make good such deficiency forthwith or within a time specified in such order.

4. To make good encroachments on reserves. Whenever it shall appear to

the superintendent that either the total reserves or reserves on hand of any banking organization, branch or agency of a foreign banking corporation are below the amount required by or pursuant to this chapter or any other applicable provision of law or regulation to be maintained, or that such banking organization, branch or agency of a foreign banking corporation is not keeping its reserves on hand as required by this chapter or any other applicable provision of law or regulation, the superintendent may, in the superintendent's discretion, issue an order directing that such banking organization, branch or agency of a foreign banking corporation make good such reserves forthwith or within a time specified in such order, or that it keep its reserves on hand as required by this chapter.

5. To keep books and accounts as prescribed. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, agency or branch of a foreign banking corporation licensed by the superintendent to do business in this state, does not keep its books and accounts in such manner as to enable the superintendent to readily ascertain its true condition, the superintendent may, in the superintendent's discretion, issue an order requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or foreign banking corporation, or the officers or agents thereof, or any of them, to open and keep such books or accounts as the superintendent may, in the superintendent's discretion, determine and prescribe for the purpose of keeping accurate and convenient records of its transactions and accounts.

6. As used in this section, "bank holding company" shall have the same meaning as that term is defined in section one hundred forty-one of this chapter.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

§ 40. Revocation of authorization certificate or license or suspension of activities in certain cases. 1. If the superintendent shall find that (i) any of the reasons for taking possession of the business and property of a banking organization or of the business and property in this state of a foreign banking corporation enumerated in section six hundred six of this chapter, shall exist with respect to a private banker to which the superintendent has issued an authorization certificate or a foreign banking corporation to which the superintendent has issued a license or (ii) any fact or condition exists which would be grounds for denial of an application for such a license issued to a foreign banking corporation, as defined by the superintendent of financial services by regulation, he may, after notice and hearing thereon, revoke such license or authorization certificate. Notice of such revocation, under the superintendent's hand and the official seal of the department, shall be executed in triplicate and one copy shall be transmitted to such private banker or foreign corporation, another shall be filed in the office of the department and the third shall be filed in the office of the clerk of the county in which the authorization certificate or license of such private banker or foreign corporation has been filed. The superintendent may, in his discretion, publish a copy of such notice, with such other facts as he may deem proper, in the state register.

2. If the superintendent finds that any of the grounds for revocation described in subdivision one of this section are present with respect to a foreign banking corporation licensed pursuant to this chapter and in addition the superintendent finds it necessary to protect the interest of depositors or the public, the superintendent may issue, without

notice and hearing, an order suspending or otherwise limiting the activities of the foreign banking corporation, for a period not to exceed ninety days, pending investigation or hearing.

§ 41. Removal and prohibition. 1. Grounds for enforcement action. Whenever the superintendent has reason to believe that any director, trustee, officer, member or partner, or, in the case of a foreign banking corporation, the person in charge, or an officer, of a branch or agency (for purposes of this section, each a "covered individual"), of any bank, trust company, limited purpose trust company, private bank, savings bank, safe deposit company, savings and loan association, credit union, investment company, bank holding company (as such term is defined in article three-A of this chapter), foreign banking corporation, licensed lender, licensed casher of checks, budget planner, mortgage banker, mortgage loan servicer, mortgage broker, licensed transmitter of money or student loan servicer (for purposes of this section, each a "covered entity") has, directly or indirectly: (a) caused, facilitated, permitted or participated in any violation by a covered entity of a law or regulation, order issued by the superintendent or any written agreement between such covered entity or covered individual and the superintendent; (b) engaged or participated in any unsafe or unsound practice in connection with any covered entity; or (c) engaged or participated in any willful material act or omitted to take any material act that directly contributed to the failure of a covered entity; the superintendent may bring an action to remove such covered individual from office.

2. Notice and hearing. (a) Whenever the superintendent has reason to believe that any grounds exist to remove a covered individual, the superintendent may serve a statement of the charges against such covered individual, either personally or, upon a finding that such individual cannot be served personally within this state, by registered mail at the last address of such individual shown on the department's records, and a notice of an opportunity to appear before the superintendent to show cause why such covered individual should not be removed from office. A copy of such notice shall also be sent to any affected covered entity.

(b) If after notice and a hearing, the superintendent finds that the covered individual has engaged in conduct described in subdivision one of this section, or if such covered individual waives a hearing, or fails to appear in person or by a duly authorized representative without good cause shown at the time and place set for the hearing, the superintendent may issue an order removing the covered individual from office and prohibiting the covered individual's employment or the performance of any contractual agreements with any covered entity.

(c) Such order and the findings of fact upon which it is based shall be effective upon service on such covered individual personally or, upon a finding that such individual cannot be served personally within this state, by registered mail, and may not be made public or disclosed to anyone, except as provided in subdivision ten of section thirty-six of this article or in connection with proceedings relating to a violation of this section. Such order shall also be served upon any affected covered entity served with the statement of charges in the proceeding resulting in the order. Any such order shall remain in effect, unless it is amended or rescinded by the superintendent or a court of competent jurisdiction, or replaced by an order issued pursuant to subdivision three of this section.

(d) To the extent consistent with the requirements in this section, a proceeding to remove a covered individual pursuant to this section shall be conducted in accordance with the requirements of article three of the financial services law and regulations promulgated pursuant thereto.

3. Suspension pending determination of charges. Upon, or at any time after service of written notice pursuant to subdivision two of this section, the superintendent may suspend, pending the determination of the charges, a covered individual from office or prohibit such individual from participating in any manner in the conduct of the affairs of any covered entity for a period of up to one hundred eighty days if the superintendent has reason to believe that by reason of the conduct described in subdivision one of this section: (a) a covered entity has suffered or will probably suffer financial loss that impacts its ability to operate in a safe and sound manner; (b) the interests of the depositors at a covered entity have been or could be prejudiced; or (c) the covered individual demonstrates willful disregard for the safety

and soundness of a covered entity. The superintendent may extend the suspension for additional periods of up to one hundred eighty days if the hearing is not completed within the prior suspension period due to the request of the covered individual.

4. Effect of order for removal or suspension. Any covered individual subject to an order issued pursuant to this section shall be prohibited from participating, in any manner, in the conduct of the affairs of any covered entity unless permitted to, in writing, by the superintendent. Any covered individual who thereafter, without permission of the superintendent, participates in any manner in the management of a covered entity shall be guilty of a misdemeanor.

5. Manner of review. Any order issued pursuant to this section may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

§ 42. Official acts of superintendent and details of department business to be made public. The superintendent shall publish and make available to the general public at the offices of the department and also post on the department's internet website a bulletin at noon on Friday of each week stating the following items of general information with regard to the work of the department since the preceding statement:

* 1. The name and the location of the principal office of every proposed corporation, private banker, licensed lender and licensed casher of checks, the organization certificate, private banker's certificate or application for license of which has been filed for examination, and the date of such filing.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 1. The name and the location of the principal office of every proposed corporation, private banker, licensed lender, licensed buy-now-pay-later lender and licensed casher of checks, the organization certificate, private banker's certificate or application for license of which has been filed for examination, and the date of such filing.

* NB Effective upon the one hundred eightieth day after the

promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

* 2. The name and location of every licensed lender and licensed casher of checks, and the name, location, amount of capital stock or permanent capital and amount of surplus of every corporation and private banker and the minimum assets required of every branch of a foreign banking corporation authorized to commence business, and the date of authorization or licensing.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 2. The name and location of every licensed lender, licensed buy-now-pay-later lender and licensed casher of checks, and the name, location, amount of capital stock or permanent capital and amount of surplus of every corporation and private banker and the minimum assets required of every branch of a foreign banking corporation authorized to commence business, and the date of authorization or licensing.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

* 3. The name of every proposed corporation, private banker, branch of a foreign banking corporation, licensed lender and licensed casher of checks to which a certificate of authorization or a license has been refused and the date of notice of refusal.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 3. The name of every proposed corporation, private banker, branch of a foreign banking corporation, licensed lender, licensed buy-now-pay-later lender and licensed casher of checks to which a certificate of authorization or a license has been refused and the date of notice of refusal.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

* 4. The name and location of every private banker, licensed lender,

licensed casher of checks, sales finance company and foreign corporation the authorization certificate or license of which has been revoked, and the date of such revocation.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 4. The name and location of every private banker, licensed lender, licensed casher of checks, sales finance company, licensed buy-now-pay-later lender and foreign corporation the authorization certificate or license of which has been revoked, and the date of such revocation.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

* 5. The name of every banking organization, licensed lender, licensed casher of checks and foreign corporation which has applied for leave to change its place or one of its places of business and the places from and to which the change is proposed to be made; the name of every banking organization which has applied to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office, and the location of the principal office which is proposed to be redesignated as a branch office and of the branch office which is proposed to be redesignated as the principal office.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 5. The name of every banking organization, licensed lender, licensed casher of checks, licensed buy-now-pay-later lender and foreign corporation which has applied for leave to change its place or one of its places of business and the places from and to which the change is proposed to be made; the name of every banking organization which has applied to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office, and the location of the principal office which is proposed to be redesignated as a branch office and of the branch office which is proposed to be redesignated as the principal office.

* NB Effective upon the one hundred eightieth day after the

promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

* 6. The name of every banking organization, licensed lender, licensed casher of checks and foreign corporation authorized to change its place or one of its places of business and the date when and the places from and to which the change is authorized to be made; the name of every banking organization authorized to change the designation of its principal office to a branch office and to change the designation of a branch office to its principal office, the location of the redesignated principal office and of the redesignated branch office, and the date of such change.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* 6. The name of every banking organization, licensed lender, licensed casher of checks, licensed buy-now-pay-later lender and foreign corporation authorized to change its place or one of its places of business and the date when and the places from and to which the change is authorized to be made; the name of every banking organization authorized to change the designation of its principal office to a branch office and to change the designation of a branch office to its principal office, the location of the redesignated principal office and of the redesignated branch office, and the date of such change.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

7. The name of every banking organization and of every foreign banking corporation which has applied for permission to open a branch office or a public accommodation office, the date of such application and the location of the proposed branch or public accommodation office.

8. The name of every banking organization and of every foreign banking corporation authorized to open a branch office or a public accommodation office, the date of approval and the location of such office.

9. The name and location of every banking organization authorized to increase or reduce its capital stock or permanent capital, the date of such authorization and the amount of the increase or reduction.

10. The names and locations of all banking organizations which have merged pursuant to the provisions of this chapter and the dates upon which such mergers became effective.

11. The name and city or town of residence of every person, whose compensation is to be paid upon the audit and warrant of the comptroller, who has been appointed deputy and of every person who has been appointed to a position in the exempt class of the classified service as such terms are defined in the civil service law, in the department, and the title of the position to which he or she has been appointed and the date of appointment. Such other information as the superintendent deems appropriate.

12. The date on which a call pursuant to section thirty-seven of this chapter for a periodical report of condition by banks, trust companies and private bankers was issued and the day designated as the day as of which such reports should be made.

13. The name and location of every banking organization and branch of a foreign banking corporation of which the superintendent has taken possession for the purpose of liquidation, the date of taking possession, and the name and residence of any special deputy superintendent appointed to assist in the liquidation thereof.

14. The name and location of every banking organization of which the superintendent has surrendered possession pursuant to the provisions of section six hundred seven of this chapter.

15. The name and location of every corporate banking organization the creditors and depositors of which have been paid in full by the superintendent and a meeting of stockholders of which has been called, and the date of notice of meeting and date of meeting.

16. The name and location of every corporate banking organization the affairs and business of which have been finally liquidated and which has been dissolved.

17. The name and location of every private banker the liquidation of the affairs of which has been completed by the superintendent.

18. The name and location of every corporate banking organization which has applied for approval of a change of name, and the name proposed.

* 19. a. The name of every state chartered banking institution, as defined pursuant to section twelve-a of this article, which has applied to exercise a federally permitted power pursuant to subdivision three of section twelve-a of this article, a description of such power and the date of such filing.

b. The intention of the superintendent to issue an order pursuant to subdivision four of section twelve-a of this article, which shall include a description of the proposed federally permitted power and a reference to the state-chartered banking institutions which shall be permitted to exercise such power.

* NB Repealed September 10, 2029

Every such statement after having been so posted for one week shall be placed on file and kept in the office of the department. All such statements shall be public documents and at all reasonable times shall be open to public inspection.

§ 44. Violations; penalties. 1. * (a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any safe deposit company, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed mortgage banker, licensed student loan servicer, registered mortgage broker, licensed mortgage loan originator, registered mortgage loan servicer or licensed

budget planner to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent in connection with the grant of any application or request, or any written agreement entered into with the superintendent.

* NB Effective until certain provisions are met (see Ch. 58 of 2025, Part Y, § 13)

* (a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any safe deposit company, licensed lender, licensed buy-now-pay-later lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed mortgage banker, licensed student loan servicer, registered mortgage broker, licensed mortgage loan originator, registered mortgage loan servicer or licensed budget planner to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent in connection with the grant of any application or request, or any written agreement entered into with the superintendent.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

(b) The penalty for each violation prescribed in paragraph (a) of this subdivision shall not exceed two thousand five hundred dollars for each day during which such violation continues.

(c) Notwithstanding paragraph (b) of this subdivision, if the superintendent determines (i) that any such licensee, registrant or safe deposit company has committed a violation as described in paragraph (a) of this subdivision, or has recklessly engaged in any unsafe and unsound practice and (ii) that such violation or practice is part of a pattern of misconduct, results or is likely to result in more than minimal loss to such licensee, registrant or safe deposit company, or results in pecuniary gain or other benefit to such licensee, registrant or safe

deposit company, then the penalty shall not exceed fifteen thousand dollars for each day during which such violation or practice continues.

(d) Notwithstanding paragraphs (b) or (c) of this subdivision, if the superintendent determines (i) that any such licensee, registrant or safe deposit company has knowingly and willfully committed any violation as described in paragraph (a) of this subdivision, or has knowingly and willfully engaged in any unsafe and unsound practice, or (ii) that any licensee, registrant or safe deposit company has knowingly committed any violation described in paragraph (a) of this subdivision which substantially undermines public confidence in any such licensee, registrant or safe deposit company or in such licensees, registrants or safe deposit companies generally, and, in either case, (iii) that such licensee, registrant or safe deposit company has knowingly or recklessly incurred so substantial a loss as a result of such violation or practice as to threaten the safety and soundness of such licensee, registrant or safe deposit company, then the penalty shall not exceed seventy-five thousand dollars for each day during which such violation continues.

(e) The superintendent, in determining the amount of any penalty assessed pursuant to this subdivision, shall take into consideration the net worth and annual business volume of such licensees, registrants or safe deposit companies.

2. (a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and hearing, require any banking organization, bank holding company out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to maintain a branch, agency or representative office in this state to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent in connection with the grant of any application or request, or any written agreement entered into with the superintendent. For purposes of this section, any reference to a "banking organization" shall be deemed to exclude a safe deposit company and any reference to a "foreign bank licensee" shall be deemed to include an out-of-state state

bank that maintains a branch or branches or representative or other offices in this state and a foreign banking corporation licensed to maintain a branch, agency or representative office in this state.

(b) The penalty for each violation prescribed in paragraph (a) of this subdivision shall not exceed five thousand dollars for each day during which such violation continues.

3. Notwithstanding paragraph (b) of subdivision two of this section, if the superintendent determines: (a) that any banking organization, bank holding company, or foreign bank licensee has committed any violation described in subdivision two of this section or has recklessly engaged in any unsafe and unsound practice, and

(b) that such violation or practice is part of a pattern of misconduct, results or is likely to result in more than minimal loss to the banking organization, bank holding company, or foreign bank licensee, or results in pecuniary gain or other benefit to the banking organization, bank holding company, or foreign bank licensee, then the penalty shall not exceed twenty-five thousand dollars for each day during which such violation or practice continues.

4. Notwithstanding paragraph (b) of subdivision two and subdivision three of this section, if the superintendent determines: (a) (i) that any banking organization, bank holding company, or foreign bank licensee has knowingly and willfully committed any violation described in subdivision two of this section or has knowingly and willfully engaged in any unsafe and unsound practice, or (ii) that any banking organization, bank holding company, or foreign bank licensee has knowingly committed any violation described in subdivision two of this section which substantially undermines public confidence in any such banking organization, bank holding company, or foreign bank licensee or in banking organizations, bank holding companies, or foreign bank licensees generally, and, in either case, (b) that the banking organization, bank holding company, or foreign bank licensee has knowingly or recklessly incurred so substantial a loss as a result of such violation or practice as to threaten the safety and soundness of such banking organization, bank holding company, or foreign bank licensee, then the penalty shall not exceed the lesser of (i) two

hundred fifty thousand dollars or (ii) one percent of the total assets of such banking organization, or one percent of the total assets of the banking subsidiaries, as such term is defined pursuant to section one hundred forty-one of this chapter, of such bank holding company, or one percent of the total assets in this state of such foreign bank licensee, as applicable, for each day during which such violation or practice continues.

5. In assessing any penalty against any entity listed in paragraph (a) of subdivision one or paragraph (a) of subdivision two of this section, the superintendent shall take into account, without limitation, factors including: (a) the extent, if any, to which senior management or board directors or trustees participated therein, (b) the extent to which the entity has cooperated with the superintendent in the investigation of such conduct, (c) any sanction imposed by any other regulatory agency, (d) the financial resources and good faith of the entity, (e) the gravity of the violation, (f) any history of prior violations, and (g) such other matters as justice and the public interest may require.

6. Whenever the superintendent shall require the payment of such penalty by any such entity, he shall forthwith execute in duplicate a written order to that effect. On the date such order is executed, the superintendent shall file one copy of such order in the office of the department and serve the second copy upon such entity either personally or by registered or certified mail, return receipt requested, directed to the entity's principal place of business or, in the case of a licensee or registrant, its last known address of record. Such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such special proceeding for review as authorized by this section must be commenced within thirty days from the service of such order.

7. The superintendent may compromise, modify, or remit any penalty which he or she may assess or had already assessed under this section.

8. The superintendent may prescribe regulations to carry out the provisions and purposes of this section.

9. As used in this section, "bank holding company" shall have the same meaning as that term is defined in subdivision six of section thirty-nine of this article.

§ 44-a. Violations and penalties; failure to make reports. 1. Notwithstanding any other provision of this chapter to the contrary:

a. any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter, or an out-of-state state bank, that inadvertently or unintentionally: (i) fails to make any report required by the superintendent pursuant to this chapter, on or before the day designated for the making thereof; (ii) fails to include within such report any prescribed matter; or (iii) submits false or misleading information therein, shall, after notice and hearing, forfeit to the people of the state not more than two thousand dollars for each day during which such report or omitted matter is delayed or withheld or such false or misleading information is not corrected, unless the time therefor shall have been extended by the superintendent, for good cause shown, in his or her sole discretion;

b. notwithstanding the provisions of paragraph a of this subdivision any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter, or an out-of-state state bank, that demonstrates by any pattern of behavior or other action that any of its failures as described in paragraph a of this subdivision were not inadvertent or unintentional shall, after notice and hearing, forfeit to the people of the state not more than twenty thousand dollars for each day during which such failures continue;

c. notwithstanding the provisions of paragraph a or b of this subdivision, any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter that demonstrates that any of its failures as described in paragraph a of this subdivision constitutes a pattern of behavior or other action performed knowingly and with reckless disregard shall, after notice and hearing, forfeit to

the people of the state not more than two hundred fifty thousand dollars or in the case of a banking organization, foreign bank licensee or an out-of-state state bank, the lesser of two hundred fifty thousand dollars or one percent of the total assets of such banking organization or one percent of the total assets in this state of such foreign bank licensee, as applicable for each day that its failures continue.

With respect to any amount assessed pursuant to this section against any person or entity licensed or registered pursuant to this chapter, but not with respect to a banking organization, foreign bank licensee or out-of-state state bank, the superintendent in determining such amount, shall take into consideration the net worth and annual business volume of such licensed or registered person or entity.

2. In assessing any penalty pursuant to this section, the superintendent shall take into account, without limitation, factors including:

a. the extent, if any, to which senior management or board directors or trustees participated therein,

b. the extent to which the entity has cooperated with the superintendent in the investigation of such conduct,

c. any sanction imposed by any other regulatory agency,

d. the financial resources and good faith of the entity,

e. the gravity of the violation,

f. any history of prior violations, and

g. such other matters as justice and the public interest may require.

3. Whenever the superintendent shall require the payment of such penalty by any such entity, he or she shall forthwith execute in duplicate a written order to that effect. On the date such order is

executed, the superintendent shall file one copy of such order in the office of the department and serve the second copy upon such entity either personally or by registered or certified mail, return receipt requested, directed to the entity's principal place of business or, in the case of a licensee or registrant, its last known address of record. Such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such special proceeding for review as authorized by this section must be commenced within thirty days from the service of such order.

4. The superintendent may compromise, modify, or remit any penalty which he or she may assess or had already assessed under this section.

5. The superintendent may prescribe regulations to carry out the provisions and purposes of this section.

§ 45. Export finance awareness program. There shall be created within the department an export finance awareness program. Such program shall provide in a manner prescribed by the superintendent, but not be limited to, the following:

1. information to all the various banking corporations principally engaged in doing business within the state, about the various methods used by particular corporations which provide financing for businesses engaged in the export of products or services to foreign countries;

2. information to such banking corporations about other state or federal programs designed to promote or expedite financing of exports that may be of value to them, specifically such programs that may be targeted to the small and medium-size transactions; and

3. the use of seminars, workshops, written materials disseminated by the department or any other methods the superintendent may deem necessary or proper for the provision of such information.

ARTICLE II-AA

ATM SAFETY ACT

Section 75-a. Legislative intent.
75-b. Definitions.
75-c. Security measures.
75-d. List of facilities.
75-e. Consumer safety information.
75-f. Enforcement and statistics.
75-g. Report of compliance.
75-h. Compliance with local building code and all other applicable provisions of law.
75-i. Facilities not subject to this article.
75-j. Civil penalties.
75-k. Collection of penalties.
75-l. Preemption.
75-m. Variances and exemptions from automated teller machine security measures.
75-n. Rules and regulations.
75-o. Severability.

§ 75-a. Legislative intent. The legislature hereby finds that automated teller machines are an integral part of consumers' lives and that automated teller machines are used by millions of New Yorkers, statewide, on a daily basis. It is the legislature's intent to ensure the convenience and safety of automated teller machine use by establishing security measures for automated teller machine facilities.

§ 75-b. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Access device" means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer for the purpose of initiating electronic fund transfers.

2. "Automated teller machine" means a device which is linked to the

accounts and records of a banking institution and which enables consumers to carry out banking transactions, including, but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and loan payments.

3. "Automated teller machine facility" means an area within the dominion and control of a banking institution comprised of one or more automated teller machines and any adjacent space which is made available to banking customers after regular banking hours.

4. "Adequate lighting" means (a) with respect to an automated teller machine facility located within the interior of a building, lighting, on a twenty-four hour basis, which permits a person entering such facility to readily and easily see all persons occupying such facility, and which permits a person inside such facility to readily and easily see all persons at the entry door of such facility.

(b) with respect to an open and operating automated teller machine facility open to the outdoor air, and any defined parking area, lighting during nighttime hours according to the following standards:

(i) a minimum illuminance of five footcandles is maintained on a horizontal plane at a point five feet outward from and five feet above the ground surface from the automated teller machine;

(ii) a minimum illuminance of two footcandles is maintained on a horizontal plane at a point thirty feet in all unobstructed directions from the automated teller machine, measured at ground level; and

(iii) at sixty feet in all unobstructed directions from the automated teller machine, a minimum illuminance of one footcandle is maintained, measured on a vertical plane at five feet above ground level, with the normal to the plane of measurement aimed at a light source; or

(iv) with respect to an automated teller machine facility that is not in accordance with the standards set forth in either subparagraph (ii) or (iii) of this paragraph, or both such subparagraphs, a minimum illuminance of two footcandles is maintained, measured on a horizontal plane at five feet above ground level, at fifty feet in all unobstructed directions from the automated teller machine.

(c) with respect to an open and operating automated teller machine facility located within the interior of a building, which facility

includes a defined parking area: (i) a minimum illuminance of two footcandles is maintained on a horizontal plane at a point thirty feet in all unobstructed directions from the entrance to the automated teller machine facility, measured at ground level; and (ii) at sixty feet in all unobstructed directions from the entrance to the automated teller machine facility, a minimum illuminance of one footcandle is maintained, measured on a vertical plane at five feet above ground level, with the normal to the plane of measurement aimed at a light source; or (iii) with respect to an automated teller machine facility that is not in accordance with the standards set forth in either subparagraph (i) or (ii) of this paragraph, or both such subparagraphs, a minimum illuminance of two footcandles is maintained, measured on a horizontal plane at five feet above ground level, at a point sixty feet in all unobstructed directions from the entrance to the automated teller machine facility.

5. "Banking institution" means any state or federally chartered bank, trust company, savings bank, savings and loan association, or credit union, whether headquartered within or outside of the state, that operates one or more automated teller machine facilities within the state.

6. "Footcandles" means the unit of illuminance equal to one lumen per square foot.

7. "Regular banking hours" means the time at which an office of a banking institution is open to the banking public for normal transaction of business.

8. "Nighttime hours" means the period of time beginning thirty minutes after sunset and ending thirty minutes before sunrise.

9. (a) "Defined parking area" means that portion of any parking area open for and accessible to customers of a banking institution which is:

(1) contiguous to any paved walkway or sidewalk within fifty feet of an automated teller machine facility;

(2) regularly, principally and lawfully used for parking by users of

the automated teller machine facility while conducting transactions at such automated teller machine facility; and

(3) owned or leased by the operator of the automated teller machine facility, or owned or otherwise controlled by the party leasing the automated teller machine facility site to the banking institution.

(b) The term "defined parking area" does not include any parking area which is not open or regularly used for parking by the users of the automated teller machine facility or the conduct of transactions during nighttime hours. For this purpose, the parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed.

§ 75-c. Security measures. Every banking institution shall maintain the following security measures with respect to each of the automated teller machine facilities within its dominion and control:

1. A surveillance camera or cameras, which shall view and record all persons entering an automated teller machine facility located within the interior of a building, or which shall view and record all activity occurring within a minimum of three feet in front of an automated teller machine located outside a building and open to the outdoor air. Such camera or cameras need not record banking transactions made at the automated teller machines. The recordings made by such cameras shall be preserved by the banking institution for at least forty-five days.

2. Adequate lighting.

3. With respect to an indoor automated teller machine facility: (a) entry doors equipped with locking devices which permit entry to such facility only to persons using a magnetic-strip plastic card or similar access device.

(b) To the extent practicable, as determined by an expert with competence in such matters and as permitted by local building codes, at least one exterior wall which provides an unobstructed view of the interior of the automated teller machine facility.

(c) A reflective mirror or mirrors, as necessary, placed in such a

manner as to permit a person entering an indoor automated teller machine facility to view areas within such facility that are otherwise concealed to plain view.

(d) A clearly visible sign which, at a minimum, provides the following information:

(1) the activity of the automated teller machine facility is being recorded by a surveillance camera or cameras;

(2) customers should close the entry door completely upon entering and exiting;

(3) customers should not permit any unknown persons to enter after regular banking hours;

(4) customers should place withdrawn cash securely upon their person before exiting the automated teller machine facility;

(5) complaints concerning security in the automated teller machine facility should be directed to the banking institution's security department or the department of financial services, together with telephone numbers for such complaints, and that the nearest available public telephone should be used to call the police if emergency assistance is needed.

§ 75-d. List of facilities. Any banking institution which operates an automated teller machine facility shall file a list of such facilities with the department, including the street addresses, intersecting streets, hours of operation, and the telephone number of the banking institution's security department. Such information shall also be filed with the department with respect to each additional automated teller machine facility within a reasonable time, as specified by the superintendent, from the date upon which such facility commences operation. The department shall make such list available on request of local law enforcement agencies and other local governmental entities.

§ 75-e. Consumer safety information. Upon the original issuance or reissuance of an automated teller machine facility access device, the issuing banking institution shall provide its customers with written information concerning safety precautions to be employed while using an

automated teller machine facility. Such written information shall include, at a minimum, the information described in paragraph (d) of subdivision three of section seventy-five-c of this article.

§ 75-f. Enforcement and statistics. 1. The department is authorized to enforce this article.

2. Statistics of crimes associated with the use of automated teller machine facilities compiled and maintained by any law enforcement agency shall be made available upon the request of any banking institution or the department.

§ 75-g. Report of compliance. 1. By the fifteenth day of January and July of each year (or the following business day if such day is not a business day), every banking institution which had an automated teller machine facility which was in operation on the fifteenth day of the preceding month shall submit a written compliance report to the department on a form prescribed by the superintendent, certifying that such automated teller machine facility is in compliance with the provisions of this article or any variance or exemption that has been granted, or if such facility is not in compliance with such provisions, stating the manner in which such facility fails to meet such requirements. Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that such reports and any other reports required by this section shall be made by electronic means, unless the superintendent, in his or her sole discretion, grants a waiver of such electronic filing requirements, upon good cause shown.

2. If any compliance report required by subdivision one of this section indicates any failure to meet the requirements of this article, such banking institution shall submit a written report to the department, on a form prescribed by the superintendent, no later than the eleventh business day following such compliance report, indicating whether each such failure has been corrected and, for any failure that

has not been corrected, the reason for such failure and the expected correction date. If any such failure shall not have been corrected within ten business days of the filing date of the applicable compliance report, such banking institution shall, promptly after correcting such failure, submit a written report to the department with the date or dates of each such correction.

§ 75-h. Compliance with local building code and all other applicable provisions of law. Unless otherwise provided in this article, nothing contained in this article shall be construed to exempt or relieve any banking institution from complying with all relevant provisions of the local building code and all other applicable provisions of law.

§ 75-i. Facilities not subject to this article. The provisions of this article shall not apply to any unenclosed automated teller machine located in any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports, school buildings, and public buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure, or space in which such machine is located.

§ 75-j. Civil penalties. 1. Any banking institution found to be in violation of any provision of section seventy-five-c of this article in a compliance report under section seventy-five-g of this article or otherwise found by the department to be in violation of any provision of section seventy-five-c of this article shall correct the violation within ten business days after such finding. Where a banking institution fails to correct any violation of a provision of section seventy-five-c of this article within ten business days after the filing of such report or a finding of violation by the department, the superintendent may in a proceeding after notice and a hearing, require such banking institution to pay a civil penalty in an amount as determined pursuant to section forty-four of this chapter, provided, however, that the aggregate

penalty for all offenses with respect to any one automated teller machine facility in any one proceeding shall not exceed an amount as determined pursuant to section forty-four of this chapter. For the purposes of this article, each violation of section seventy-five-c of this article shall be considered a separate and distinct violation.

2. Any banking institution found to be in violation of the provisions of section seventy-five-g of this article shall be liable for a civil penalty in an amount as determined pursuant to section forty-four-a of this chapter for each automated teller machine facility for which a report has not been filed. Any banking institution which makes a material false statement or material omission in any report filed pursuant to section seventy-five-g of this article shall be liable for a civil penalty in an amount as determined pursuant to section forty-four-a of this chapter for each such report.

3. Whenever payment of a civil penalty is required under this article, the superintendent shall execute a written order to that effect. A copy of such order shall be filed in the office of the department and a second copy shall, within three days of execution, be served upon such banking institution either personally or by registered or certified mail, return receipt requested, directed to the banking institution's principal place of business. Such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such special proceedings for review as authorized by such section must be commenced within thirty days from the service of such order. Such section shall in no way limit any of the powers granted to the superintendent under any provision of this chapter.

§ 75-k. Collection of penalties. The superintendent shall have the discretion to report to the attorney general any failure, after due notice, to make payments of penalties incurred under this article. The attorney general shall, thereupon, in the name of the superintendent, or of the people of the state, institute such actions or proceedings as the facts may warrant.

§ 75-l. Preemption. 1. Except as provided in subdivision two of this section, this article shall supersede and preempt all rules, regulations, codes, statutes or ordinances of all cities, counties, municipalities, and local agencies regarding customer safety at automated teller machine facilities.

2. To the extent that any security measures inconsistent with or in addition to the provisions of section seventy-five-c of this article are in effect, on the date on which this article becomes a law, in any city having a population of one million or more, pursuant to any rules, regulations, codes, statutes or ordinances regarding customer safety at automated teller machine facilities duly enacted by such city on or before the date on which this article becomes a law, such security measures shall continue to be required within such city; provided, however, that the enforcement of any such security measures shall be enforced by the superintendent.

§ 75-m. Variances and exemptions from automated teller machine security measures. 1. Except in cities having a population of one million or more, and in accordance with the guidelines set forth in this article, the superintendent, pursuant to rules and regulations promulgated by the superintendent, and upon written request of a banking institution, may approve variances which provide substitute security measures that are substantially as safe as the requirements of any of the security measures contained in this article, or exemptions from such measures, with respect to an automated teller machine facility or facilities operated by such banking institution;

2. In no event, however, shall the superintendent vary or exempt any such measures unless he or she shall have received the following items, in form and substance satisfactory to him or her:

(a) a resolution or declaration of the governing body of the city, village, or town in which such automated teller machine facility is located consenting to any such variance or exemption; and

(b) written certification from the banking institution's security

officer, appointed in accordance with federal law, that, in his or her professional judgment, either the variance will provide security measures which are substantially as safe as those which are otherwise required by this article or the exemption is warranted, as applicable; and

(c) in the event the request for any such variance or exemption is premised upon the impracticability or burdensome expense that would result from compliance with the security provisions contained in this article, and such impracticability or expense is attributable to the manner in which the building in which such automated teller machine facility is, or is to be, located, constructed, configured or otherwise situated, written certification to such effect from an expert with competence in the areas of renovation and/or design, as may be appropriate; and

(d) such other evidence or information as the superintendent may, in his or her sole discretion, deem appropriate or necessary.

§ 75-n. Rules and regulations. The superintendent shall promulgate such rules and regulations as necessary to define and implement the provisions of this article.

§ 75-o. Severability. If any word, phrase, clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which judgment shall have been rendered.

ARTICLE II-B

FINANCIAL FRAUDS

Section 78. Powers with respect to certain crimes and frauds.

§ 78. Powers with respect to certain crimes and frauds. If the superintendent has a reasonable suspicion that a person or entity is engaging in or has engaged in fraud (as interpreted under this chapter, the insurance law or the financial services law) or a misdemeanor or felony under this chapter or one of the articles of the penal law enumerated in this section in connection with activities regulated by the superintendent pursuant to this chapter or involving a product regulated pursuant to this chapter, the superintendent may undertake such investigation as is deemed necessary, and in the enforcement of this chapter, determine whether any such person or entity has violated or is about to violate this chapter or any such enumerated articles. The applicable articles of the penal law are article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy. Notwithstanding the above-referenced laws or articles, the scope of authority set forth in this section shall not be deemed to otherwise limit or impair the ability of the department to assist any other entity in an investigation involving a violation of law.

ARTICLE 2-C
COMMUNITY BANK DEPOSIT PROGRAM

Section 85. Community bank deposit program; purpose.
86. Eligibility.
87. Deposits.

§ 85. Community bank deposit program; purpose. In recognition of the economic benefits and stimulus which result from the placement of deposits in local banks, the community bank deposit program is hereby created to authorize and encourage the state comptroller and the commissioner of taxation and finance to deposit a portion of the funds under their control into community banking institutions.

§ 86. Eligibility. 1. To be eligible to receive deposits, or to renew

existing deposits under this program, a bank, trust company, savings bank or savings and loan association: (a) must be chartered under the provisions of this chapter and (b) must have a current CRA rating of satisfactory or better. The superintendent shall, if requested by the state comptroller or the commissioner of taxation and finance, confirm whether a particular banking institution meets the criteria specified in this section.

2. A federal bank, trust company, savings bank or savings and loan association may also be eligible to receive deposits, or to renew existing deposits, under this program if: (a) its principal office is located in this state; (b) it has a current CRA rating of satisfactory or better; and (c) it meets any additional criteria established by the comptroller and the commissioner of taxation and finance to determine eligibility for participation in the program. Such criteria may include an institution's loan to deposit ratio, its record of small business lending, and the impact such deposits would have on an area's economic activity.

§ 87. Deposits. 1. Notwithstanding any provisions of law to the contrary, the state comptroller and the commissioner of taxation and finance shall, for the purposes of administering moneys in accordance with the provisions of sections ninety-eight-a and one hundred five of the state finance law, give consideration to depositing funds into those community banking institutions which are deemed eligible to receive deposits pursuant to section eighty-six of this article.

2. The maximum amount of funds which the state comptroller and the commissioner of taxation and finance may deposit under this program shall not exceed two hundred fifty million dollars each. The maximum amount of funds on deposit at a community banking institution shall not exceed twenty million dollars.

3. Notwithstanding any provision of law to the contrary, any deposits made pursuant to this article shall be made at rates, and for such periods of time, as may be agreed to by the state comptroller or the

commissioner of taxation and finance and the eligible community banking institution.

4. Any deposits made pursuant to this article may be secured by an irrevocable letter of credit issued by a federal home loan bank.

ARTICLE III

BANKS AND TRUST COMPANIES

Section 94. Change from bank to trust company; from trust company to bank.
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136. Change of national banking association into state bank by conversion or merger.
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138. Foreign branches; performance of contracts and repayment of deposits.
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140-a. Stock option plans.

§ 94. Change from bank to trust company; from trust company to bank.

A bank complying with the minimum capital stock requirements specified in subdivision nine of section four thousand one of this chapter may become a trust company by filing a certificate pursuant to subdivision two of section eight thousand one of this chapter to provide that it shall have the powers specified in section one hundred of this article. A trust company may become a bank by filing a certificate pursuant to subdivision two of section eight thousand one of this chapter to provide that it shall not have the powers specified in section one hundred of this article. Prior to or simultaneously with the filing of such certificate, such trust company shall if its title contains the term "trust company" file a certificate pursuant to subdivision two of section eight thousand one of this chapter for the purpose of omitting such term from its title.

§ 96. General powers. Every bank and every trust company shall, subject to the restrictions and limitations contained in this chapter, have the following powers:

1. To discount, purchase and negotiate promissory notes, drafts, bills of exchange, other evidences of debt, and obligations in writing to pay in installments or otherwise all or part of the price of personal property or that of the performance of services; purchase accounts receivable, whether or not they are obligations in writing; lend money on real or personal security; borrow money and secure such borrowings by pledging assets; buy and sell exchange, coin and bullion; and receive deposits of moneys, securities or other personal property upon such terms as the bank or trust company shall prescribe; and exercise all such incidental powers as shall be necessary to carry on the business of banking. For purposes of this subdivision, the term "accounts receivable" shall not include the right to receive payment for property to be sold at a future date or services to be rendered at a future date.

2. To accept for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw upon it or its correspondents at sight or on time.

3. (a) To receive upon deposit for safe-keeping for hire upon terms and conditions to be prescribed by the bank or trust company, money, securities, papers of any kind and any other personal property;

(b) To engage in the safe deposit business by renting vaults, safe deposit boxes and other receptacles upon premises occupied by the bank or trust company, upon such terms and conditions as may be prescribed by the bank or trust company.

4. To issue by its board of directors capital notes or debentures, when so specifically authorized by the superintendent, and, when so specifically authorized by the superintendent, to receive in payment therefor, in whole or in part, mortgages, interests therein or other property and to retain, unrecorded or unregistered, assignments or conveyances of such mortgages, interests therein or other property,

provided that the superintendent shall not approve the retention of any assignment of mortgage or interest therein or any conveyance of other property, which may be recorded or registered, without record or registration thereof, except where such mortgage, interest therein or other property is assigned or conveyed by a corporation organized under the banking law or by a corporation wholly owned by not less than twenty savings banks of this state.

5. To become a member of a federal reserve bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the federal reserve act. Such bank or trust company and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to banks and trust companies.

6. To assume and discharge such obligations to Federal Deposit Insurance Corporation as may be necessary or required for the purpose of maintaining deposit insurance in such corporation.

7. (a) To act as financial agent of the United States Government and as depositary of public money of the United States (including, without being limited to, revenues and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its officers, agents, or employees, and Postal Savings funds); and to perform all such reasonable duties as depositary of such public money and as financial agent of the United States Government as may be required of it; and to pledge assets or furnish other security, satisfactory in form and amount to the Secretary of the Treasury of the United States, for the safekeeping and prompt payment of such public money deposited with it and for the faithful performance of its duties as financial agent of the United States Government.

(b) To pledge assets or furnish other security, satisfactory in form and amount to judges of courts of bankruptcy, for the repayment of deposits of the money of estates under the national bankruptcy act.

(c) To pledge assets or furnish other security, satisfactory in form and amount to the depositor, for the repayment of moneys held in the

name of any state (which term shall include every territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico), or of any foreign nation, or of any Indian nation or tribe, or of any political subdivision or instrumentality or authority of any of them, when required to be secured by applicable law, decree, regulation or resolution, and to pledge assets or furnish other security for the repayment of moneys held as fiduciary, or in the name of a fiduciary, of any trust created by any such state, foreign nation, Indian nation or tribe, political subdivision, instrumentality or authority as required by the terms of such trust; provided, however, that before any pledge or security is made or furnished to any depositor other than this state or a political subdivision, instrumentality or authority of this state, the bank or trust company shall obtain a certified or official copy of such law, decree, regulation, or resolution or trust requiring such pledge or other security, and an opinion of counsel that such pledge or security is required by such law, decree, regulation, or resolution or by the terms of such trust.

9. To execute and deliver such guaranties as may be incidental to carrying on the business of a bank or trust company.

10. To exercise, subject to such regulations as may be issued from time to time by the superintendent, through any foreign branch office (other than one opened or occupied in another state of the United States, the District of Columbia, any territory of the United States, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands) opened and occupied with the approval of the superintendent as provided in section one hundred five of this article, such further powers as may be usual in connection with the transaction of the business of banking in the place where such foreign branch office shall transact business, provided that no such foreign branch office shall engage in the general business of producing, distributing, buying or selling goods, wares, or merchandise, nor, except with respect to securities issued by any foreign nation or any political subdivision, agency or instrumentality thereof, engage or participate, directly or indirectly, in the business of underwriting, selling or distributing securities.

11. To designate one or more agents (except its employees) to issue or sell its travelers checks or money orders at locations other than its principal office or branch offices authorized pursuant to section one hundred five of this chapter, subject to such rules and regulations as the superintendent may make from time to time.

12. To acquire and lease personal property, or to acquire personal property subject to an existing lease together with the lessor's interest therein, subject to such limitations and conditions as the superintendent of financial services may from time to time prescribe by general regulation.

13. To reserve or order transportation, travel accommodations or other travel services.

14. To arrange, purchase or sell loans secured by liens on interests in real estate, subject to such terms, conditions and limitations as may be prescribed by the superintendent by regulation.

15. To engage in a "savings promotion" in accordance with section nine-v of this chapter and subject to any regulations promulgated by the superintendent. The superintendent shall consult with the state gaming commission before proposing any such regulations or any amendments thereto. Such regulations shall ensure that:

a. no participant in a savings promotion is charged any fee that would constitute, directly or indirectly, consideration for participation in such savings promotion; and

b. no participant in a savings promotion foregoes, directly or indirectly, any interest that would constitute consideration for participation in such savings promotion.

* 16. In addition to such authority as is contained in section ninety-eight of this chapter and notwithstanding any limitations set forth therein, to purchase, lease, exchange or otherwise acquire real property, improved or unimproved, or any interest therein, to erect,

construct, rebuild, enlarge, alter, improve, maintain, manage and operate buildings or other improvements of any description thereon, to sell, lease, sublet, mortgage, exchange or otherwise dispose of same and execute, perform and carry out contracts for construction, alteration, improvement, maintenance, management or repair thereof, to make loans in connection therewith, as owner, co-owner or otherwise, subject to such specific or general approvals and limitations as shall be required by regulations promulgated from time to time by the superintendent of financial services pursuant to this subdivision; provided, however, that no activity specified herein shall be undertaken pursuant to the authority contained in this subdivision until the superintendent of financial services shall have issued regulations specifying the limitations and requirements which shall be imposed in connection with the investments and activities referred to herein, including, without limitation, the consideration of such bank or trust company's record in meeting the credit needs of local communities within the meaning of section twenty-eight-b of this chapter.

* NB Expired June 30, 1988

§ 96-a. Servicing of mortgages by banks. 1. Every bank shall, subject to the restrictions and limitations contained in this article, have the power to service mortgages, and the superintendent shall have the power to prescribe, by specific or general regulation, the extent to which, and the conditions upon which, mortgages may be serviced.

2. No bank shall, by virtue of the provisions contained in this section, be deemed to have the powers defined and described in subdivision two of section one hundred of this article.

3. The grant of powers to banks by or pursuant to this section shall not be deemed to limit or restrict any other banking organizations, heretofore or hereafter organized, in the exercise of their lawful powers.

§ 96-b. Payroll payment by banks or trust companies. l. Every bank

and trust company shall have the power to enter into contracts with any municipal corporation, school district, district corporation, town or county improvement district, public authority, or public corporation to receive in a single payment, for each pay period, the total payroll of such corporations, districts or authorities and deposit the same in accordance with the terms of such contract, which shall include provision for deposits for withholding, retirement and insurance, if any.

2. The amount due each employee shall be disbursed or credited in accordance with the directions of each employee to saving or checking accounts, or loan or mortgage accounts within such bank or trust company or to a single account in another bank or trust company or savings bank or savings and loan association or may be payable in cash or by check to such employee.

§ 96-c. Power to act as trustee under self-employed retirement trust or individual retirement trust. Every bank without fiduciary powers may, subject to any regulations and restrictions prescribed by the superintendent of financial services, act as trustee under a retirement plan established pursuant to the provisions of the act of congress entitled "Self-employed Individuals Tax Retirement Act of 1962" as such provisions may be amended from time to time, and under an individual retirement account plan established pursuant to the amendments to the provisions of the Internal Revenue Code contained in the act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time, provided that the provisions of such retirement or individual retirement account plan require the funds of such trust to be invested exclusively in deposits in banks, trust companies, savings banks, savings and loan associations or federal savings and loan associations whose principal offices are located in this state. In the event that any such retirement or individual retirement account plan, which in the judgment of the bank, constituted a qualified plan under the provisions of the applicable act of congress hereinabove mentioned and the regulations promulgated thereunder at the time the trust was established and accepted by the

bank is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the bank may, nevertheless, continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof. No bank, in respect to deposits made under this section, shall be required to segregate such deposits from other deposits of such bank, provided, however, that the bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

§ 96-d. Banking development districts. 1. There is hereby created a banking development district program, the purpose of which is to encourage the establishment of bank branches in geographic locations where there is a demonstrated need for banking services. The superintendent of financial services shall, in consultation with the department of economic development, promulgate rules and regulations, after public hearing and comment, which set forth the criteria for the establishment of banking development districts. Such criteria shall include, but not be limited to, the following:

(a) the location, number, and proximity of sites where banking services are available within the district;

(b) the identification of consumer needs for banking services within the district;

(c) the economic viability and local credit needs of the community within the district;

(d) the existing commercial development within the district;

(e) the impact additional banking services would have on potential economic development in the district;

(f) whether a community is identified as unbanked or underbanked by the superintendent; and

(g) such other criteria which the superintendent in his or her discretion shall identify as appropriate.

2. A local government, in conjunction with a bank, trust company or national bank, may submit an application to the superintendent for the

designation of a banking development district. The superintendent shall issue a determination on such an application within sixty days of receiving such application. If an application is approved, the superintendent shall transmit notification of the designation of a banking development district to the local government, the bank, trust company or national bank, the state comptroller, the commissioner of taxation and finance, the commissioner of the department of economic development, the temporary president of the senate and the speaker of the assembly. The designation of a banking development district shall be valid for fourteen years. Prior to the expiration of a banking development district designation, the superintendent may extend the designation for one or more additional five or ten year periods.

2-a. Notwithstanding any other provision of law, an application may be submitted by a local government in conjunction with a bank, trust company or national bank which has already opened a bank branch within such area. In considering the criteria authorized pursuant to subdivision one of this section, the superintendent shall also take into account the importance and benefits of preserving the banking services offered by the existing branch.

3. The establishment of a branch in a banking development district by a bank, trust company or national bank shall be subject to all applicable state and federal laws regarding the establishment of branch offices, including the provisions of section one hundred five of this article, provided however that the branch application fee required pursuant to section twenty-nine of this chapter shall be waived for any such branch. A bank or trust company may submit an application to open a branch office simultaneously with the submission of the application for the designation of a banking development district.

4. For the purposes of this section, the term "local government" shall mean a county, town, city or village.

* 5. (a) Notwithstanding the provisions of subdivision two of section two hundred thirty-seven of this chapter; for the purposes of this section, paragraph c of subdivision two of section ten of the general municipal law, subdivision six of section one hundred five of the state

finance law and section four hundred eighty-five-f of the real property tax law, any reference to a bank, trust company or national bank shall be deemed to include a savings bank, savings and loan association, federal savings and loan association, federal savings bank, credit union, or federal credit union; provided, however, that such provisions of law do not grant a savings bank, savings and loan association, federal savings and loan association, federal savings bank, credit union, or federal credit union eligibility to accept municipal or public funds or municipal or public moneys other than for the limited purposes of the establishment of a branch in a banking development district pursuant to this section. Any such municipal or public funds or moneys shall be deposited only at the branch established pursuant to this section, and any municipal funds or moneys may be deposited only by the sponsoring municipality in which the branch and banking development district are located; provided further that any such municipal or public funds or moneys shall be subject to the same requirements which apply to municipal or public funds or moneys deposited in a bank, trust company or national bank and shall also be subject to the provisions of section one hundred five of the state finance law or section ten of the general municipal law relating to such deposits.

(b) Notwithstanding any other provision of law, the superintendent of financial services shall promulgate rules and regulations to authorize the participation of savings banks, savings and loan associations, federal savings banks, federal savings and loan associations, credit unions, and federal credit unions in the program established pursuant to this section.

* NB Repealed January 1, 2029

6. For the purposes of this section, nothing shall preclude a bank, trust company or national bank from seeking approval to establish one or more branches in an existing banking development district where it or another bank has or is authorized to have a branch. The department shall have the authority to approve any bank, trust company or national bank for participation in the banking development district program, and any branch approved pursuant to this section shall operate in accordance with this section and is eligible for all the rights and privileges authorized by this section.

§ 97. Power to purchase securities and stocks. Subject to the restrictions and limitations contained in this chapter, a bank or trust company may invest in and have and exercise all rights of ownership with respect to:

1. Bonds, notes, debentures and other obligations for payment of money, which are not in default as to either principal or interest when acquired.

2. Stocks of any city, county, town or village of this state which are not in default as to either principal or interest when acquired.

3. Stock of a federal reserve bank in the amount necessary to qualify for membership in such reserve bank.

4. Stock of each of the following to an amount not in excess of ten per centum of the capital stock, surplus fund and undivided profits of such bank or trust company:

(a) Any safe deposit company which does business on premises owned or leased by the bank or trust company or the vaults of which are connected with or adjacent to an office of such bank or trust company; provided that the purchase and holding of such stock is first duly authorized by resolution of the board of directors of the bank or trust company and by written approval of the superintendent, stating the number and amount of the shares which may be so purchased and held, excepting that the bank or trust company may, without the written approval of the superintendent, acquire the stock owned by a former director of the safe deposit company at the time that he ceased to be a director. The bank or trust company may not pay, without the prior written approval of the superintendent, more for such stock than the cost thereof to the director.

(b) Any investment company qualified to exercise the powers specified in subdivision two of section five hundred eight of this chapter;

(c) The Bank for International Settlements.

4-a. Subject to such restrictions as the superintendent of financial services may prescribe, stock or other equity investments in subsidiary corporations, partnerships, unincorporated associations, limited liability companies, or other entities engaged in, or to be organized to engage in the following activities:

(a) To acquire and lease personal property under the same terms and conditions as provided in subdivision twelve of section ninety-six of this article;

(b) To purchase accounts receivable as provided in subdivision one of section ninety-six of this article;

(c) To be a corporation organized pursuant to the provisions of section twenty-five (a) of an act of congress entitled the "Federal Reserve Act";

(d) To own or operate real or personal property acquired through foreclosure or in settlement or reduction of debts due it;

(e) To own or operate real or personal property for use as bank premises; or

(f) To transact any other business in which the bank or trust company may engage directly.

4-b. Common or preferred stock of any corporation created or existing under the laws of the United States or of any state, district or territory thereof, or of the commonwealth of Puerto Rico, provided that: (a) such common or preferred stock is registered on a national securities exchange, as provided in an act of congress of the United States entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended, or such other exchange or market system as the superintendent shall approve by regulation; (b) the aggregate amount of all investments in common and preferred stock as permitted by this subdivision shall at no time exceed two percent of the assets or twenty percent of the capital, surplus and undivided profits of the bank or trust company, whichever is less, provided however that the superintendent may, upon the request of a bank or trust company, approve an increase in such aggregate amount to a maximum of five percent of the assets or one hundred percent of the capital, surplus and undivided profits of such bank or trust company, whichever is less, subject to any limitations or conditions prescribed by the

superintendent; (c) the aggregate amount of all investments in the common and preferred stock of any one issuer pursuant to this subdivision, together with the aggregate amount of all investments in the bonds, debentures, notes or other obligations of such issuer made pursuant to paragraph (i) of subdivision one of section one hundred three of this chapter, shall at no time exceed one percent of the assets or fifteen percent of the capital, surplus and undivided profits of the bank or trust company, whichever is less; and (d) no bank or trust company shall at any time hold pursuant to this subdivision more than two percent of the total issued and outstanding shares of stock of any one issuer.

4-c. Subject to such restrictions as the superintendent of financial services may prescribe, stock or other equity interest in one or more small business investment companies, as authorized pursuant to the provisions of an act of congress entitled "Small Business Investment Act of 1958," as amended, or in any entity established to invest solely in such small business investment companies, except that in no event shall the total amount of such investments exceed five percent of the capital stock, surplus fund and undivided profits of such bank or trust company.

5. So much of the capital stock of, or any other equity interest in, any other corporations, partnerships, unincorporated associations, limited liability companies, or other entities as may be specifically authorized by the laws of this state or by the superintendent, or regulations promulgated by the superintendent.

The superintendent is authorized to adopt such rules and regulations as shall permit banks and trust companies to make a loan which provides for receipt of shares of stock of or any other equity interest in, or a share of the profits, income or earnings of, a borrower in consideration for making the loan.

A bank or trust company may acquire stock or any other equity interest in settlement or reduction of a loan, or advance of credit or in exchange for an investment previously made in good faith and in the ordinary course of business, where such acquisition of stock or any

other equity interest is necessary in order to minimize or avoid loss in connection with any such loan, advance of credit or investment previously made in good faith. A trust company may acquire stock or any other equity interest from any estate, trust or fund with respect to which such trust company is acting in a fiduciary capacity, if a claim is asserted or may be asserted against it with respect to the purchase or retention of such stock or equity interest for such estate, trust or fund, (a) where such acquisition by the trust company has been authorized or directed by a court, or (b) where such trust company has been advised by its counsel in writing that it has incurred a contingent or potential liability with respect to the purchase or retention of such stock or equity interest and such trust company desires to relieve itself from such liability. Stocks or any other equity interest acquired pursuant to the provisions of this paragraph may be held for such period as the board of directors deems advisable.

A bank or trust company may continue to hold any bonds or other securities or stock which it holds in accordance with the provisions of law at the time this act takes effect.

No bank or trust company shall purchase, acquire, or hold any stock of, or any other equity interest in, any corporation or any other entity, except as provided in this section.

§ 98. Power to take and hold real estate; restrictions. 1. A bank or trust company may purchase, hold, lease and convey real property as follows:

(a) A plot whereon there is or may be erected a building suitable for the convenient transaction of its business, from portions of which not required for its own use a revenue may be derived, and a plot whereon parking accommodations are, or are to be, provided, with or without charge, primarily for its customers or employees or both, and a building or a portion or portions thereof for use by the bank or trust company in its business, provided that the aggregate of all investments of any bank or trust company in such plots and buildings and in a leased building or a portion or portions thereof or in the stock, debentures or other

obligations of any corporation holding such plots or buildings and of all loans to or upon the security of the stock of any such corporation shall not exceed forty per centum of the aggregate of the capital stock, surplus fund and undivided profits of such bank or trust company, except with the approval of the superintendent. Any bank or trust company having, prior to April twenty-third, nineteen hundred thirty-four, made loans and investments in excess of the limitations prescribed by this paragraph may retain any such loans and investments notwithstanding such limitations.

(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

(d) Such purchase, lease, conveyance or other acquisition or sale of real property which is located outside the United States, its territories and possessions, and which is used principally as the residence of one or more directors, officers, or employees of the bank or trust company as may be specifically approved by the superintendent.

(e) A whole or part interest in a "project", as defined in the New York state urban development corporation act, pursuant to sections six or eight of such act. An investment by a bank or trust company in a single project shall not exceed one per centum of the assets or fifteen per centum of the combined capital stock, surplus fund and undivided profits of such bank or trust company, whichever is less, and the aggregate of all investments of a bank or trust company in such projects and investments in securities of any "subsidiary" of the New York state urban development corporation, as defined in the New York state urban development corporation act, shall not exceed five per centum of the assets or seventy-five per centum of the combined capital stock, surplus fund and undivided profits of such bank or trust company, whichever is less.

2. All real estate purchased by any bank or trust company or taken by it in settlement of debts due it, shall be conveyed to it in its name or, subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, may be taken in the name of a duly authorized nominee. All such conveyances shall be

immediately recorded or registered in the office of the proper recording officer of the county in which such real estate is located.

§ 98-a. Club accounts. 1. No contract under which a bank or trust company agrees to repay deposits of fixed sums made at regular intervals at a given time with all interest or dividends credited thereon, or to repay said deposits when, together with interest or dividends credited thereon, they shall equal a specified sum, may provide for any forfeiture of the sums deposited in the event of the discontinuance of the regular payments. Interest or dividends on club accounts, if offered, must be credited at least quarterly and may not be forfeited once credited, in the event of the discontinuance of regular payments.

2. Any bank which provides for deposits in club accounts shall, in all advertising, announcements or brochures pertaining to such accounts, state whether or not interest or dividends are paid thereon and, if interest or dividends are paid, shall state the rate or form of interest or dividends so paid in accordance with any rules and regulations that may be prescribed by the superintendent.

§ 100. Fiduciary powers. Every trust company shall have, subject to the restrictions and limitations contained in this chapter, the following powers:

1. To act as the fiscal or transfer agent of the United States, any state, municipality, body politic or corporation; and in such capacity to receive and disburse money, to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness or other securities, and to act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

2. To act as trustee under any mortgage or bonds issued by any municipality, body politic or corporation, foreign or domestic, and accept and execute any other municipal or corporate trust not prohibited by the laws of this state.

3. To be appointed and to act under the order or appointment of any court of competent jurisdiction:

(a) As guardian, receiver, trustee, committee or conservator of the estate of any minor, person with a mental disability, or conservatee or in any other fiduciary capacity;

(b) As receiver, trustee, or committee of the property or estate of any person in insolvency or bankruptcy proceedings.

4. To be appointed and to accept the appointment of executor or of trustee under the last will and testament or administrator with or without the will annexed of the estate of any deceased person.

5. To take, accept and execute any and all such trusts, duties and powers of whatever nature or description as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic, corporation, domestic or foreign, or other authority by grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted or committed or transferred to it or vested in it by order of any court of competent jurisdiction, or any surrogate, and to receive, take, manage, hold and dispose of according to the terms of such trust, duty or power, any property or estate, real or personal, which may be the subject of any such trust, duty or power.

Provided that no trust company shall have any right or power to make any contract, or to accept or execute any trust whatever, which it would not be lawful for any individual to make, accept or execute.

§ 100-a. Fiduciary capacities; appointment by court authorized; bond; oath; accounting. 1. Executor. When any trust company is appointed executor in any last will and testament, the court or officer authorized to grant letters testamentary in this state, shall, upon the proper application, grant letters testamentary thereon to such trust company or to its successors by merger.

2. Guardian, trustee or administrator.

(a) Any trust company may be appointed guardian, trustee or administrator, on the application or consent of any person acting as such or as an executor or entitled to such appointment irrespective of whether such person would himself or herself be disqualified from acting by reason of his or her being a noncitizen or non-resident of this state, and in the place and stead of such person, or such trust company may be joined with any person so acting or entitled to such appointment; but such appointments shall be made upon such notice, as is required by law, to the persons interested in the estate or fund and on the consent of such of the principal legatees or other persons interested in the estate or fund as the court, surrogate or judge making the appointment shall deem proper. No appointment so made shall be deemed to increase the number of persons entitled to full compensation beyond the number so entitled under the terms of the will or deed creating the trust or appointing a guardian or authorized by law. Whenever a person is joined with such trust company in any appointment as guardian, trustee or administrator, his or her appointment may be under such limitation of powers and upon such terms and conditions as to deposit of assets by such person, with such trust company, or otherwise, and upon such reduced bond or security to be given by such person, as the court, surrogate or judge, making the appointment shall prescribe.

(b) When application is made to any court or officer having authority to grant letters of administration with the will annexed upon the estate of any deceased person, and there is no person entitled to such letters who is qualified, competent, willing and able to accept such administration, such court or officer may at the request of any party interested in the estate, grant such letters of administration with the will annexed, to any trust company.

(c) Any court or officer having authority to grant letters of guardianship of any infant may upon the same application as is required by law for the appointment of a guardian for such infant, appoint any trust company as the guardian of the estate of such infant.

3. Committee of incompetent or conservator of a conservatee. Any court having jurisdiction to appoint a trustee, guardian, receiver, committee of the estate of a person with a mental disability, or conservator of the estate of a conservatee, or to make any fiduciary appointment, may

appoint any trust company to be such trustee, guardian, receiver, committee or conservator, or to act in any other fiduciary capacity.

4. Receiver, trustee or committee. Any court, having jurisdiction to appoint a committee or trustee or a receiver in insolvency or bankruptcy proceedings or in any other proceeding, or action, under state or federal law, may appoint any trust company to be such receiver, trustee or committee.

5. Bonds. No bond or other security, except as hereinafter provided, shall be required from any trust company for or in respect to any trust, nor when appointed executor, administrator, guardian, trustee, receiver, committee or depositary or in any other fiduciary capacity nor when receiving commissions under the provisions of SCPA 2310 or 2311. The court, or officer making such appointment may, upon proper application, require any trust company, which shall have been so appointed to give such security as to the court or officer shall seem proper, or upon failure of such trust company to give security as required, may remove such trust company from and revoke such appointment.

6. Court orders, accounts. Such court or officer may make orders respecting such trusts and require any such trust company to render all accounts, which such court or officer might lawfully require if such executor, administrator, guardian, trustee, receiver, committee, depositary or such trust company acting in any other fiduciary capacity, were a natural person.

7. No official oath required. Upon the appointment of such trust company as such executor, administrator, guardian, trustee, receiver or committee, no official oath shall be required.

§ 100-b. Investments as fiduciary; when interest is to be paid; preference. 1. Investments. All investments of money received by any trust company as executor, administrator, guardian, trustee of a trust of any kind, receiver, committee, conservator or depositary, shall be at its sole risk, and for all losses of such money the capital stock,

property and effects of the trust company shall be absolutely liable, unless the investments are such as are proper when made by an individual acting as trustee, executor, administrator, guardian, receiver, committee, conservator or depositary, or such as are permitted in and by the instrument or words creating or defining the trust. But no corporate fiduciary shall purchase securities from itself. Any moneys of any such estate or fund awaiting investment or distribution may be held on deposit by such trust company in its own name, subject to the provisions of subdivision four of this section; provided that appropriate entries showing the share or interest of each such estate or fund in the moneys so held on deposit shall, at all times, appear upon the records of such trust company.

2. On and after September first, nineteen hundred thirty-six, no trust company shall invest in any part interest in a bond and mortgage or note and mortgage on behalf of any estate or fund held by such trust company as executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary except that if the instrument creating such estate or fund has authorized such trust company as executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary to invest in any part interest in a bond and mortgage or note and mortgage insured by the federal housing commissioner such trust company may so invest and if the instrument creating an employee benefit trust has authorized such trust company to invest in any part interest in a bond and mortgage or note and mortgage, such trust company may so invest. Any part interest in a bond and mortgage or note and mortgage heretofore apportioned to any estate or fund and held by such trust company as executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary, and outstanding at any time in the hands of any estate, fund or person may be repurchased at its face value by such corporation individually. Such trust company, in any case where it shall have apportioned or transferred a part interest in any bond and mortgage or note and mortgage whether to any estate or fund held by it alone or in conjunction with another person or otherwise, shall be authorized and empowered, in behalf of all persons interested therein, to collect the principal and interest and to satisfy and discharge the

mortgage on receiving payment thereof in the amount and in the manner specified in the bond and mortgage or note and mortgage, to pay the said principal and interest to the persons entitled thereto and generally to exercise all of the options reserved to the mortgagee, to enforce in its own name by appropriate action or proceeding, including foreclosure, any and all of the covenants in the said bond and mortgage or note and mortgage, to take such other measures for the protection of the mortgage loan and the preservation of the security and the management of, utilization and sale of any real estate which may be acquired on foreclosure as may be necessary and appropriate and to exercise all other rights of ownership in respect of the entire bond and mortgage or note and mortgage. In case any bond, note or mortgage shall be held by, or in the name of, such trust company and it shall hold any part interest therein, acting as a fiduciary, whether alone, or in conjunction with another person or otherwise, it may, prior to April first, nineteen hundred sixty-nine, waive or modify or agree to waive or modify, either with or without consideration and prior or subsequent to maturity, any terms and conditions thereof, including the rate of interest, and extend or re-extend or agree to extend or re-extend such bond and mortgage or note and mortgage, for a period of not more than five years from the time of such extension, by agreement with the owner of the real property subject to the lien thereof, upon the consent of the holders of such part interests to the extent of sixty-six and two-thirds per centum of the whole amount of such bond and mortgage or note and mortgage, notwithstanding that, at the time of such waiver, modification, extension or agreement, the value of such real property may be less than that required by law for an original investment of such an amount therein by such holder and, in case any such investment is guaranteed, such trust company may also extend or re-extend or agree to extend or re-extend the time of payment under the guaranty for a like period from its due date, and may release or agree to release such guaranty or from time to time waive or modify or agree to waive or modify any terms and conditions thereof, including the rate of interest; provided however, that no such waiver, modification, extension or agreement shall be made or agreed to unless, at least fifteen days prior thereto, such trust company shall have notified each holder of such a part interest in such bond and mortgage or note and mortgage of the

terms and conditions of such contemplated waiver, modification, extension or agreement. Such notice shall be given by mailing the same by registered mail to the address or place of residence of each holder according to the records of such trust company. The notice hereinbefore provided for shall not be required to be given to any holder of such a part interest in such bond and mortgage or note and mortgage (1) who, at the time of the mailing of such notice to holders of part interests in such bond and mortgage or note and mortgage, was not shown on the records of such trust company to be such holder, or (2) who, at any time whether before or after any such waiver, modification, extension or agreement shall have been made or agreed to, shall have consented to such waiver, modification, extension or agreement. Any such consent shall also be binding upon and shall be deemed to be the consent also of each and every holder of the part interest in such bond and mortgage or note and mortgage or of any part of such part interest with respect to which such consent was given who, at the time such consent was given, was not shown on the records of such trust company to be such holder whether or not such holder shall have become such holder before or after such consent was given. Any holder to whom the notice hereinbefore provided for is required to be given as hereinbefore provided and who objects to such waiver, modification, extension or agreement shall have the right to apply, within fifteen days after such notice shall have been mailed to such holder as hereinbefore provided, to the supreme court of the county in which the real property securing such mortgage is located and, subject to the discretion of the supreme court in the premises, to obtain an order enjoining such waiver, modification, extension or agreement. In the event of the granting of such an order, any holder shall have the right to apply to such supreme court and, subject to the discretion of the supreme court in the premises, to obtain an order directing a partition of such bond and mortgage or note and mortgage by a judicial sale thereof. Such sale shall be upon such notice and advertisement and at such time and place and in such manner as the court or a justice thereof may direct, but at least fifteen days' notice thereof shall be given to each holder. The proceeds of the sale of such bond and mortgage or note and mortgage after deducting the expenses of such sale, shall be paid into the supreme court and shall be distributed among such holders according to their respective interests

therein. Such trust companies shall have all the powers heretofore had under this section or any other provision of law with respect to investments in part interests in bonds and mortgages or notes and mortgages for the protection, preservation and liquidation of the trust property. It is the intent of this subdivision to prohibit after August thirty-first, nineteen hundred thirty-six, any future apportionments or investments of any part interests in bonds and mortgages and notes and mortgages to or investments in part interests of bonds and mortgages and notes and mortgages for any estate or fund of which such trust company is executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary, except as permitted by this subdivision. Such trust company, however, shall not transfer to any estate or fund any part interests in bonds and mortgages or notes and mortgages heretofore purchased, or invested in, from itself or from any other estate or fund.

Nothing contained in this act shall be construed to affect any investments in part interest in bonds and mortgages apportioned or transferred, prior to September first, nineteen hundred thirty-six, to any estate or fund of which such trust company is executor, administrator, guardian, personal or testamentary trustee, receiver, committee, conservator or depositary, nor to affect any action heretofore taken in accordance with law with respect to such bonds and mortgages or part interests in said bonds and mortgages; nor to affect the right of any such trust company to transfer or apportion any such investment from an estate or fund to a succeeding interest created by the same instrument under which the investment was made; nor shall it be construed to impair or otherwise affect the power of such trust company to apportion to any estate, fund or person interested in such mortgage its or his proportionate share of the consideration, consisting in whole or in part of evidences of indebtedness secured by mortgages on real property received by such trust company on the sale of real property acquired by foreclosure of such mortgage, or otherwise, and to exercise with respect to such mortgages on behalf of such estates, funds, or persons the same powers reserved with respect to the original mortgage.

3. Preference. If dissolved by the legislature or the court, or

otherwise, or liquidated by the superintendent or otherwise, the debts from any trust company as guardian, trustee, executor, administrator, committee, conservator or depositary, shall be entitled to priority of payment from the assets of such trust company on an equality with any other priority given by this chapter.

4. Interest. On all sums of money not less than one thousand dollars, which shall be collected, received and held as principal by a trust company acting as executor, administrator, guardian, trustee, receiver, committee or conservator under the appointment of any court or officer, or in any fiduciary capacity under such appointment, or as a depositary of moneys paid into court, interest shall be paid by such trust company from sixty days after the receipt thereof until the moneys so received shall be duly expended or distributed, at a rate equal to the maximum rate per annum then being paid by such trust company on savings deposits, except that in the case of a trust company acting as executor or administrator interest shall not be paid, and the grace period of sixty days herein provided for shall not be deemed to begin, until five months after the date of issuance of letters testamentary or of administration to it; provided however that such trust company shall not be required to allow any interest upon any such moneys payment of which is prohibited under any order, regulation or ruling issued under or pursuant to the "Trading with the Enemy Act" and any amendments thereto, or under or pursuant to any other law, so long as such prohibition shall remain in force and effect. If income be accumulated for a minor or surplus income in excess of expenditures be held for investment by the committee of an incompetent or the conservator of a conservatee, but not otherwise, any uninvested balance of such income shall be treated as principal upon which interest shall be paid as provided in this subdivision. If interest moneys payable hereunder or any part thereof shall not annually be expended or distributed pursuant to the terms or provisions of the trust under which such moneys are held, the amount thereof not so expended or distributed shall be accumulated by such trust company for the benefit of the parties interested in such trust fund, and shall be added to the principal to constitute a new principal upon which interest shall thereafter be computed. The word "trustee" as used in this subdivision shall mean a trustee appointed by will or by

any court, and the words "savings deposits" as used in this subdivision shall mean time deposits with respect to which the depositor is not required by the deposit contract, but may at any time be required by such trust company, to give notice in writing of an intended withdrawal not less than fourteen days before such withdrawal is made, and which is not payable on a specified date or at the expiration of a specified time after the date of deposit. For the purposes of this subdivision only, moneys on which interest is payable as provided herein shall not be deemed to be demand deposits.

§ 100-c. Common trust funds. 1. For the purpose of investment and reinvestment of moneys received and held by any trust company as executor, administrator, guardian, trustee, donee of power during minority to manage property vested in an infant, custodian under any Uniform Gifts to Minors Act, any Uniform Transfers to Minors Act or The New York Uniform Transfers to Minors Act, conservator or committee, such trust company may establish and maintain common trust funds and short term investment common trust funds. In any case where the instrument or the order, decree or judgment under which such moneys are held does not forbid, such trust company, either alone or in conjunction with one or more other persons acting with it in any fiduciary capacity, may invest and reinvest such moneys or any part thereof by adding the same to any such common trust funds and short term investment common trust funds. Such trust company shall have the same power to invest common trust funds in securities of any management type investment company or investment trust, registered pursuant to the federal investment company act of nineteen hundred forty, as is set forth in, and subject to the provisions of, sections 11-2.2 and 11-2.3 of the estates, powers and trusts law.

2. Notwithstanding any other provision of law, a trust company may deposit securities investments of a common trust fund, or arrange for the deposit of such investments through a subcustodian, (a) with a clearing corporation pursuant to EPTL 11-1.9, (b) with a federal reserve bank pursuant to EPTL 11-1.8, or (c) with a securities depository, clearing agency, or bank, whether or not subject to the laws of a

jurisdiction other than the United States of America, or any state or subdivision thereof, for the account of the trust company and such investments shall be deemed for the purposes of this section to be in the custody of such trust company.

3. A common trust fund shall not be deemed a separate trust fund on which commissions or other compensation is allowable and no trust company maintaining such a fund shall make any charge against such fund for the management thereof. Provided, however, that in those instances where a trust company invests common trust funds in securities of any management type investment company or investment trust pursuant to the provisions of subdivision one of this section, such trust company may charge the common trust fund for the fees and expenses of such securities pursuant to and consistent with the provisions of sections 11-2.2 and 11-2.3 of the estates, powers and trusts law.

4. If money of an estate, trust or fund or any part thereof held by a trust company in conjunction with one or more other persons in any fiduciary capacity is invested in a common trust fund, the participating interest therein so acquired shall be withdrawn therefrom upon the written request of any such other person acting in such fiduciary capacity with such trust company.

5. If any investment held in a common trust fund shall cease to be eligible as a new investment of such common trust fund, the trust company maintaining the common trust fund, prior to any further additions to or withdrawals from such fund, either shall sell such investment or shall set the same apart in a liquidating account for the benefit ratably of each participant then interested in such common trust fund.

6. At least once every ten years, each trust company maintaining a common trust fund shall file an account of its proceedings in respect thereof either in the office of the clerk of the supreme court or in the office of the surrogate in any county in which such trust company maintains an office.

Upon the filing of the petition for the settlement of such account, the court shall assign a time and place for a hearing on the settlement of such account and order notice thereof by: (a) one publication not less than twenty days prior to the date of such hearing, of a notice in a newspaper to be designated by the court, and (b) mailing on or before the day of publication a copy of the notice to all persons whose names and addresses appear, at the close of the period accounted for, upon the records maintained by the trust company pertaining to the common trust fund as well as to any estate, trust or fund, any part of which shall have been invested in the common trust fund and who at the close of the period accounted for were known by such trust company to be or to claim to be included in any of the following classes of persons: (i) those who at any time during the period accounted for were entitled to share in the income of any estate, trust or fund invested in the common trust fund at any time during the period accounted for; (ii) those who became entitled to share in the principal of any estate, trust or fund invested in the common trust fund which became distributable in whole or in part during the period accounted for; (iii) those who at the close of the period accounted for would have been entitled to share in the principal of any estate, trust or fund invested in the common trust fund if the event upon which such estate, trust or fund would become distributable in whole or in part had occurred at the close of the period accounted for, provided, however, that in the case of a trust which at the close of the period accounted for can be revoked in its entirety in favor of and by the grantor, donor, trustor or creator, it shall not be necessary for such trust company to include the names and addresses of any persons interested in the principal of such trust other than the grantor, donor, trustor, or creator; (iv) those living at the close of the period accounted for who had any interest in the income or principal, or both, of any estate, trust or fund invested in the common trust fund, and who prior to the close of the period accounted for shall have notified the trust company in writing to send a copy of the notice or citation of any proceeding for the settlement of any account or the trustee of such common trust fund to such person at an address furnished to the trust company by such person; (v) those who at any time during the period accounted for were acting with the trust company in a fiduciary capacity with respect to any such estate, trust or fund; (vi) the guardian of any

infant, the committee of any incompetent and the conservator of any conservatee included among the persons hereinbefore described; (vii) the personal representative of any deceased person included among the persons hereinbefore described in class (i), (ii), (iii), or (v).

Upon the filing of such petition, the court shall appoint a person to appear as guardian ad litem for each person who has or who may thereafter have any interest in the income of such common trust fund and a person to appear as guardian ad litem for each person who has or who may thereafter have any interest in the principal of such common trust fund. Each such interested person may appear in such accounting proceeding and on his failure to appear shall be deemed to be represented in such proceeding by the person designated respectively as such guardian ad litem.

Except as otherwise herein provided, such proceeding shall be conducted in the same manner as any other proceeding for the voluntary judicial settlement of the account of a testamentary trustee. The decree in such proceeding shall be thereafter binding and conclusive in respect of any matter embraced in the account or in such decree upon all persons having or who may thereafter have any interest in such common trust fund or in any participating estate, trust or fund.

7. As used in this section, subject to subdivision eight of this section the term "trust company" shall mean any trust company, any bank duly authorized to exercise fiduciary powers and any national bank having a principal, branch or trust office in this state and duly authorized to exercise fiduciary powers; the term "estate" shall mean the assets held by an executor or an administrator, with or without the will annexed, of the goods, chattels and credits of a decedent, but not a temporary administrator; the term "trust" shall mean the assets of any trust however created held by the trustee thereof, including, but without limitation, any assets held by a fiduciary as donee of a power during minority to manage property vested in an infant; the term "fund" shall include the assets of an infant held by the guardian thereof, the assets of an incompetent person held by the committee thereof, and the assets of a conservatee held by the conservator thereof. The term "donee

of a power during minority to manage property vested in an infant" shall for the purposes of this section include only a fiduciary who has power during a period measured by a minority to hold and invest moneys under the terms of an instrument under which the fiduciary had theretofore held such moneys as executor or as personal or testamentary trustee.

8. (a) A trust company, at least ninety per centum of the capital stock of which is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled or held with power to vote by a bank holding company may establish and maintain one or more common trust funds and short term investment common trust funds, or may utilize one or more common trust funds and short term investment common trust funds previously established by it, for funds held in any of the fiduciary capacities mentioned in subdivision one of this section, by itself and by other trust companies at least ninety per centum of the capital stock of each of which is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled or held with power to vote by such bank holding company. Each trust company, the capital stock of which is so owned, controlled or held, may invest and reinvest in one or more of such common trust funds and short term investment common trust funds moneys held in any of the fiduciary capacities mentioned in subdivision one of this section. The trust company establishing, maintaining, or so utilizing any such common trust funds and short term investment common trust funds shall comply with, and be subject to, all of the provisions of this section as though such trust company and the other trust companies participating in such fund were one and the same corporate entity.

(b) For the purpose of this subdivision, (i) the term "bank holding company" shall be given the same meaning as is contained in the definition of such term in section one hundred forty-one of this chapter, and (ii) the term "trust company" shall be given the same meaning as is contained in the definition of such term in subdivision seven of this section, except that such term shall be deemed to include, in addition to the entities listed in such subdivision, any banking, trust or financial company, corporation or association, organized under the laws of the United States, whether or not having its principal office outside this state, or of any state of the United States, which

is duly authorized to exercise fiduciary powers.

9. (a) As used in this subdivision, unless the context otherwise required:

(i) "Short term investment common trust fund" means a common trust fund maintained and administered by a trust company exclusively for the collective investment and reinvestment of moneys contributed thereto which are invested and reinvested in any short term investment by a trust company, in its capacity as a fiduciary or co-fiduciary.

(ii) "Short term investment" means bonds, notes or other evidences of indebtedness which are payable upon demand (including variable amount notes) or which have a maturity date of one year or less from the date of purchase, or which may be prescribed, from time to time, by rules or regulations promulgated by the superintendent of financial services, and which are acquired or held by a trust company in a short term investment common trust fund.

(iii) "Participant" means any estate, trust, donee of a power during minority, guardianship, committeeship, conservatorship, or custodian under any Uniform Transfers to Minors Act administered by a trust company, as fiduciary or co-fiduciary, having a participation.

(iv) "Participation" means the interest of a participant in a short term investment common trust fund.

(b) Any trust company may administer one or more short term investment common trust funds.

(c) Any trust company shall, at least once each year, cause an audit of each short term investment common trust fund administered by the trust company to be made by auditors who are independent certified public accountants. A copy of such audit shall be available at the office of the trust company maintained for the transaction of trust business, during all regular business hours, for inspection by any person having an interest in any participant, and upon request a copy of any such audit shall be furnished without any cost to such person. The reasonable expenses of any such audit made by independent certified public accounts or of any examination by the superintendent may be charged to the income of the short term investment common trust fund.

(d) A trust company administering a short term investment common trust fund shall not be required to render a court accounting with regard to

such fund.

10. The superintendent of financial services shall promulgate such regulations and rules as he or she considers appropriate to govern the administration of common trust funds and short term investment common trust funds.

§ 100-d. Foreign common trust funds. Any banking corporation or trust company incorporated under the laws of another state which is qualified to act as executor or testamentary trustee in this state pursuant to subdivision three of section one hundred thirty-one of the banking law may, when acting in either such capacity, invest any moneys received and held by it in such capacity, either alone or in conjunction with one or more other persons acting with it in such capacity, in any common trust fund or funds maintained by it in accordance with the laws of the state of its incorporation; provided that the will under which it is acting does not specifically prohibit such investment and that the will under which it is acting shall authorize the investment of such moneys in any of the following; (a) in such a common trust fund; (b) in such investments as such fiduciary or fiduciaries under such will may select in the discretion of such fiduciary or fiduciaries; (c) generally in investments other than those in which trustees are by law authorized to invest trust funds; and provided that any banking corporation or trust company incorporated under the laws of this state is permitted by the laws of the state of incorporation of such foreign banking corporation or trust company, when acting in similar fiduciary capacity in that state, to invest any moneys received and held by it in such capacity in any common trust fund or funds maintained by it in accordance with the laws of this state.

§ 101. Additional powers of certain trust companies. Every trust company which at the time this act takes effect lawfully possesses and exercises the power, for hire, to examine titles to real estate, to procure and furnish information in relation thereto, and to guarantee or insure the title to real estate to persons interested, in such real

estate or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon, such real estate, shall continue to possess such power, but no other trust company shall hereafter have or exercise such power.

§ 102. Powers of specially chartered trust companies. Every trust company incorporated by a special law shall possess the powers of trust companies incorporated under this chapter and shall be subject to such provisions of this chapter as are not inconsistent with the special laws relating to such specially chartered company.

§ 102-a. Limited liability trust companies. 1. Trust companies which (a) do not receive deposits from the general public and (b) have been exempted by the superintendent of financial services from the requirements of section thirty-two of this chapter, may be formed and operated as limited liability trust companies. Such limited liability trust companies shall be formed in accordance with, shall operate in compliance with, and shall meet all of the requirements of the limited liability company law and this chapter, except that to the extent any provision of the limited liability company law shall be inconsistent with the provisions of this chapter, the provisions of this chapter shall govern; provided, however, that limited liability trust companies shall not have perpetual existence.

2. Notwithstanding any other provision of this chapter, a limited liability trust company shall dissolve and its affairs shall be wound up upon the occurrence of any event specified in section seven hundred one of the limited liability company law. Upon such a dissolution, the provisions of this chapter shall govern the winding up of the affairs of the limited liability trust company and the distribution of its assets. Further, upon such a dissolution, if the members of a limited liability trust company wish to continue the existence of the company and meet the requirements of section seven hundred one of the limited liability company law, they shall apply for and may receive the approval of the superintendent for new articles of organization and a new authorization

certificate.

3. Trust companies which have been formed and are operating pursuant to this article and article fifteen of this chapter on the effective date of this section, and which meet the requirements of subdivision one of this section, may, with the approval of the superintendent of financial services, convert into limited liability trust companies, provided that they meet all of the other requirements of this chapter as if they were newly formed companies.

4. The superintendent is hereby authorized and empowered to make such general rules and regulations as may be necessary and proper to effectuate the provisions of this chapter relating to the formation and operation of limited liability trust companies.

§ 103.* Restrictions on loans, purchases of securities and total liabilities to bank or trust company of any one person.

* NB Effective until notification of the superintendent of financial services

* Restrictions on loans, purchases of securities, total liabilities and other credit exposures to a bank or trust company of any one person.

* NB Effective upon notification of the superintendent of financial services

No bank or trust company shall:

1. Lend to any person (which term shall mean, for the purposes of this subdivision, any individual, partnership, unincorporated association, corporation or body politic) an amount which will exceed fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company. Any extension of credit to a person by means of the issue or confirmation of irrevocable sight letters of credit upon the responsibility of such person, or by means of the discount or purchase of, or investment in, bills of exchange, notes, bonds, debentures or other obligations made, drawn or accepted by such person, shall be considered a loan to such person for the purposes of this

subdivision except that (1) in the case of an accepted bill of exchange, the loan shall be considered, subject to clause (2) below, to be made to the acceptor and not to the drawer; and (2) if any bill of exchange, note, bond, debenture or other obligation is endorsed without limitation or guaranteed by any person and discounted with, or sold to, such bank or trust company by such person, the loan shall be considered a loan to such person and not to the maker, drawer or acceptor of such bill of exchange, note, bond, debenture or other obligation. The foregoing limitation is subject to the following exceptions:

(a) The limitations in this subdivision shall not apply to (1) any loan to the extent that the United States, this state or any city, county, town, village or school district of this state, or any department, agency or instrumentality of the United States or this state designated by the superintendent by general or specific regulation, has agreed to pay the principal and interest thereof, or has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; or (2) any loan secured by not less than a like amount (based on their principal amount or market value, whichever is lower, at the time the loan is made) of direct obligations of the United States or of this state or of any city, county, town, village or school district of this state or of any such department, agency or instrumentality of the United States or this state or by obligations otherwise fully guaranteed as to principal and interest by the United States.

(b) The limitations in this subdivision shall not apply to any loan to the extent such loan is secured by cash collateral which is not subject to withdrawal.

In addition, the limitations in this subdivision shall not apply (i) to loans arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse; (ii) to loans to the student loan marketing association; (iii) to loans to any financial institution or to any receiver, conservator, superintendent of financial services, or other agent in charge of the business and property of such financial institutions when such loans are

approved by the superintendent; (iv) to the purchase of bankers' acceptances of the kind described in section 13 of an act of congress entitled the "Federal Reserve Act" and issued by other banking corporations; and (v) to loans made to facilitate prompt clearance or settlement arising from the purchase or sale of readily marketable securities which loans (A) are secured by readily marketable securities having a market value or a principal face amount (whichever is less) at the time the loan is made of not less than the principal amount of said loan, and (B) shall be required to be repaid upon settlement of such purchase or sale.

(c) Loans (exclusive of any loan described in paragraph (a) of this subdivision) to any state other than the state of New York, or to any foreign nation, the New York State thruway authority, the Triborough bridge and tunnel authority, The Port of New York Authority, a railroad corporation, a municipal corporation of this state, a corporation subject to the jurisdiction of a public service commission of this state, or any international lending facility or public benefit corporation designated by the superintendent by regulation, may equal but not exceed twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

(d) Loans to any person, other than loans described in paragraph (a), (b) or (c) of this subdivision, may equal but not exceed twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company, provided such loans either in whole or in part, but in any event that part thereof in excess of fifteen per centum of such capital stock, surplus fund and undivided profits:

(1) are upon, or with respect to, drafts or bills of exchange drawn in good faith against actually existing values, or upon bankers' acceptances or bills of exchange of the kinds and maturities made eligible by law for purchase in the open market by federal reserve banks; or

(2) are secured by collateral having an ascertained market value, or otherwise having a value as collateral as found in good faith by an officer of such bank or trust company, at least equal to the excess of such loans over fifteen per centum of such capital stock, surplus fund and undivided profits.

(d-1) Loans secured by bills of lading, warehouse receipts, or similar

documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company in addition to the general limitations if the market value of the staples securing each additional loan at all times equals or exceeds one hundred fifteen per centum of the outstanding amount of such loan. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(d-2) Loans secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen per centum of the face amount of the note covered, shall be subject to a maximum limitation equal to twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

In addition, loans which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject to a limitation of twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

(e) In computing the total loans by any bank or trust company (i) to any individual, there shall be included all loans by the bank or trust company to any partnership or unincorporated association of which he is a member, and all loans made for his benefit or for the benefit of such partnership or association; (ii) to any partnership or unincorporated association, there shall be included all loans by the bank or trust company to its individual members and all loans made by the bank or trust company for the benefit of such partnership or unincorporated association or any member thereof; and (iii) to any corporation, there shall be included all loans made by the bank or trust company for the benefit of the corporation. A loan shall be deemed to be made for the benefit of a corporation only to the extent that the proceeds of such loan (1) are to be loaned to the corporation; (2) are to be used for the acquisition (otherwise than in connection with a public offering) from the corporation by a person in control of, or under common control with,

the corporation, of any stock or other securities issued by the corporation, or (3) are to be transferred to the corporation without fair and adequate consideration, and the discharge of an equivalent amount of debt previously incurred in good faith and for value shall be considered fair and adequate consideration. A loan shall not be deemed to be made for the benefit of a corporation if such loan is made to a person other than the corporation and is secured as provided in subdivision four of this section or is secured by collateral having an ascertained market value, or otherwise having a value as collateral as found in good faith by an officer of such bank or trust company, at least equal to the amount of the loan; provided that stock or other securities issued by, or a lien on property of, such corporation shall not be considered collateral for the purposes of this provision.

(f) The limitations in this subdivision shall not apply to the acceptance of bills of exchange or the issue or confirmation of letters of credit calling for acceptances by a bank or trust company, but no bank or trust company shall make acceptances, or issue letters of credit calling for acceptances, upon the responsibility of any person to an amount in excess of fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company, unless that part thereof in excess of fifteen per centum of such capital stock, surplus fund and undivided profits is, and will remain, secured either by accompanying documents or by some other actual security growing out of the same transaction as the acceptance or by substituted security of similar character.

(g) Loans arising from the discount of negotiable or non-negotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the transferor of such paper shall be subject to a limitation of twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company. Within the meaning of this subdivision, the liability to such bank or trust company of any individual, partnership, unincorporated association or corporation as endorser or guarantor of negotiable or non-negotiable instalment consumer paper shall not be deemed a loan to such individual, partnership, unincorporated association or corporation to the extent of the value of the obligation thereon of the maker of such instalment consumer paper, as found in good faith in writing by an officer of such

bank or trust company, designated to make such evaluation and certification by the board of directors of the bank or trust company, and upon the further certification by the said officer that the bank or trust company is relying primarily on the maker of the instalment consumer paper for the payment of an amount owing upon the instalment consumer paper upon the security of which the bank or trust company is making the loan or in which it is making the investment. The certifications are to be made at the time of making the loan or investment, and are to be based on information contained in the files of the bank or trust company, or on the personal knowledge of the designated officer. Instalment consumer paper, for the purposes of this section, shall mean retail instalment contracts and retail instalment obligations as defined in subdivisions six and six-a of section four hundred ninety-one of this chapter, and similar agreements entered into outside of this state.

(h) The limitations in this subdivision shall not apply to any advance of federal funds by such bank or trust company to a commercial bank, provided such advance is made on the condition that it be repaid on the next business day following the day on which the advance is made. For purposes of this paragraph, the term "federal funds" shall mean funds on deposit at a federal reserve bank or funds on deposit at a commercial bank which are exchangeable for funds on deposit at a federal reserve bank; the term "commercial bank" shall mean any bank, trust company, private banker, national banking association, any banking corporation organized under the laws of the United States or any state of the United States and engaged in a commercial banking business, or any banking corporation organized under the laws of any foreign country and engaged in the commercial banking business that maintains a branch or agency licensed by any state of the United States or the comptroller of the currency; and the term "business day" shall mean any day on which the bank or trust company making the advance, the commercial bank obtaining the advance and any federal reserve bank or banks through which such advance was effected are all open for general business.

* (i) The limitations in this subdivision shall not apply to the investment of such bank or trust company in the bonds, debentures, notes or other obligations of any person, provided: (i) such bonds, debentures, notes or other obligations mature not less than one year

after their respective dates of issuance, and, at the time of such investment, are rated in one of the three highest rating grades by an independent rating service designated by the superintendent of financial services; (ii) such investment does not exceed fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company; and (iii) such investment complies with such additional limitations and conditions as the superintendent of financial services from time to time may prescribe by general regulation.

* NB Effective until notification of the superintendent of financial services

* (i) The limitations in this subdivision shall not apply to the investment of such bank or trust company in the bonds, debentures, notes or other obligations of any person, provided: (i) such bonds, debentures, notes or other obligations mature not less than one year after their respective dates of issuance, and, at the time of such investment, meet the standards of creditworthiness established by regulation by the superintendent; (ii) such investment does not exceed fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company; and (iii) such investment complies with such additional limitations and conditions as the superintendent from time to time may prescribe by regulation.

* NB Effective upon notification of the superintendent of financial services

* (j) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent of financial services from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the investment of such trust company in the bonds, debentures, notes or other obligations of, any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such investment, such bonds, debentures, notes or other obligations are rated in one of the three highest rating grades by an independent rating service designated by the superintendent of financial services; (ii) for any such bonds, debentures, notes or other obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such principal and interest, or

is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) such investments do not exceed the per centum applicable to such obligor of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve, and (iv) such investments comply with such limitations and conditions as the superintendent may from time to time prescribe.

* NB Effective until notification of the superintendent of financial services

* (j) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the investment of such trust company in the bonds, debentures, notes or other obligations of, any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such investment, such bonds, debentures, notes or other obligations meet the standards of creditworthiness established by regulation by the superintendent; (ii) for any such bonds, debentures, notes or other obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) such investments do not exceed the per centum applicable to such obligor of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve; and (iv) such investments comply with such limitations and conditions as the superintendent may from time to time prescribe.

* NB Effective upon notification of the superintendent of financial services

* (k) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent of financial services from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall

not apply to the purchase of securities under repurchase agreement provided that the repurchase agreement relates to not less than a like amount of direct obligations (based on their principal amount or market value, whichever is lower, at the time the purchase occurs) of any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such purchase, such direct obligations are rated in one of the three highest rating grades by an independent rating service designated by the superintendent of financial services; (ii) for any such direct obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of the principal and interest thereof, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) the purchase price of such securities does not exceed the per centum applicable to the obligor of such securities of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve; and (iv) such purchase complies with such limitations and conditions as the superintendent may from time to time prescribe.

* NB Effective until notification of the superintendent of financial services

* (k) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the purchase of securities under repurchase agreement provided that the repurchase agreement relates to not less than a like amount of direct obligations (based on their principal amount or market value, whichever is lower, at the time the purchase occurs) of any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such purchase, such direct obligations meet the standards of creditworthiness established by regulation by the superintendent; (ii) for any such direct obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of the principal and interest thereof, or is committed to supply, by loan,

subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) the purchase price of such securities does not exceed the per centum applicable to the obligor of such securities of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve; and (iv) such purchase complies with such limitations and conditions as the superintendent may from time to time prescribe.

* NB Effective upon notification of the superintendent of financial services

* The superintendent of financial services shall be empowered to promulgate rules and regulations as shall be appropriate to carry out the purposes of this subdivision.

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* The superintendent shall be empowered to promulgate rules and regulations as shall be appropriate to carry out the purposes of this subdivision.

* NB Effective upon notification of the superintendent of financial services

* The superintendent also shall be authorized to determine the manner and extent to which credit exposure resulting from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions and securities borrowing transactions shall be taken into account for purposes of this section. As used in this section, the term "derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note or option that is based, in whole or in part, on the value of, any interest in, any quantitative measure of, or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices or other assets. In making such determinations, the superintendent may, but is not required to, act by order or regulation.

* NB Effective upon notification of the superintendent of financial services

4. Make a loan upon the security of real estate within or without this state which does not comply with any such rules or regulations as the

superintendent of financial services may prescribe.

No loan shall be made under the provisions of this subdivision 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 his judgment.

The provisions of this subdivision shall not constitute the authority to make a loan to a natural person upon the security of a mortgage which is not a first lien.

Where the collateral for any loan consists partly of real estate security and partly of other security, including a guarantee or endorsement by or an obligation or commitment of a person other than the borrower, only the amount by which the loan exceeds the value as collateral of such other security, as found in good faith by a duly authorized officer of such bank or trust company, at the time of the making of the loan or commitment therefor, shall be considered a loan upon the security of real estate, provided, that in no event shall a loan be considered a loan upon the security of real estate (i) where the principal amount of any real estate security taken therefor is less than fifteen per centum of the amount of such loan or (ii) where the loan is payable in monthly or quarterly installments over a period not to exceed one hundred twenty-one months and does not exceed twenty thousand dollars and is for the purpose of paying the cost of any repairs, alterations or improvements upon, or in connection with, or, as the superintendent may authorize, the equipping of existing structures or the building of new structures by the owners thereof or by the lessees under a lease expiring not less than six months after the maturity of the loan or (iii) where the loan is fully guaranteed or insured by the United States or a state, or any department, agency or instrumentality thereof, and for the payment of which loan the full faith and credit of the United States or of such state is pledged and if under the terms of the guaranty or insurance agreement the bank or trust company will be assured of repayment in accordance with the terms of the loan or (iv) where there is a binding and valid commitment or agreement by a financially responsible lender, purchaser or other financially

responsible party either directly with the lending bank or trust company or which is for the benefit of, or has been assigned to, the lending bank or trust company and pursuant to which commitment, agreement or assignment, the lender, purchaser or other party is required to advance to the lending bank or trust company within thirty months from the date of such commitment or agreement the full amount of the loan to be made by the lending bank or trust company upon the security of real estate improved by a building or buildings, or to be improved by a building or buildings in the process of construction, the major portion of which building is used, or in the case of a building under construction is to be used, for residential, business, manufacturing or agricultural purposes, and where pursuant to the terms and provisions of such commitment or agreement such advance shall be made prior to or upon the maturity of the loan by the lending bank or trust company.

Real estate security for purposes of this section shall not include (a) an assignment of rents under a lease, (b) a mortgage or other lien upon a leasehold, (c) a mortgage or other lien upon leasehold, royalty or other rights in oil, gas, minerals, standing timber, or other products of land, (d) a mortgage or other lien made or given upon real estate and taken as collateral security for loans to a borrower, provided, that at the time of the making of the loan or commitment therefor, repayment thereof is reasonably expected to be made out of the operations of such borrower or of the mortgagor, or (e) such mortgages or other liens on property as may be specifically exempted from the limitations and restrictions of this subdivision by the superintendent of financial services by general or specific regulations. Nothing in this paragraph shall be construed to imply that security of a kind not mentioned herein is to be deemed real estate security.

The limitations and restrictions contained in this subdivision shall not prevent the acceptance of any real estate security to secure the payment of a debt previously contracted in good faith. Every mortgage and every assignment of a mortgage taken or held by such bank or trust company shall immediately be recorded or registered in its name in the office of the clerk or the proper recording officer of the county in which the real estate described in the mortgage is located, except that

where the underlying real estate is located outside the state of New York such mortgage or assignment may be recorded or registered in the name of a duly authorized nominee, and except that if such mortgage or assignment of mortgage or of an interest therein shall be taken from a corporation organized under the banking law or all of the capital stock of which is owned by not less than twenty savings banks of this state, the bank or trust company may hold such mortgage or assignment unrecorded unless the superintendent shall direct the bank or trust company to record the same. The recording or registering of assignments of mortgages shall not be required when not less than ten mortgages are assigned as security for a loan, the term of which does not exceed twelve months.

Any bank or trust company may renew from time to time any loan upon the security of real estate lawfully made by it prior to June thirtieth, nineteen hundred thirty-seven.

None of the prohibitions and restrictions contained in this subdivision shall apply to any corporation all of the capital stock of which is owned by not less than twenty savings banks of this state.

4-a. A bank or trust company may, in addition to the authority granted under any other provisions 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 bank or trust company 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. Make any loan 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, unsecured except to the extent of an assignment or transfer of the stock certificates or other evidence of ownership interest of the borrower and the proprietary lease within ninety days from the making of the loan, which shall exceed the maximum per cent of the loan 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 such certificates of stock or other evidence of an ownership interest and which shall fail to provide for full repayment of principal and interest within the same number of years as a conventional mortgage loan previously described in this subdivision, provided that all real estate owned by such corporation or partnership shall be located within the state; and provided, further, that such loan shall be subject to such regulations as the superintendent of financial services may from time to time promulgate. 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 by no more than one and one-half per centum per annum.

6. Make any loan or discount on the security of the shares of its own capital stock, or, except as provided in section five thousand twelve of this chapter, be the purchaser of any such shares, unless such security or purchase shall be necessary to minimize or avoid loss upon a debt previously contracted in good faith, and stock so purchased shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase unless the superintendent shall authorize such bank or trust company in writing to hold such shares for

a longer period. Any bank or trust company violating any of the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan or purchase.

7. Knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained market value of at least fifteen per centum more than the amount of the loan. Any bank or trust company violating the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan.

8. Except in conformity with such rules and regulations as may be promulgated by the superintendent, lend any sum of money to any executive officer or director of such bank or trust company. The superintendent shall have power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer and what shall be considered, under the provisions of this subdivision, to be a loan to an executive officer or director. In making such determination, the superintendent shall have power to include or exclude, subject to such conditions and limitations, if any, as he shall prescribe, any or all of the following: (1) any transaction as a result of which an executive officer or director of a bank or trust company becomes obligated to such bank or trust company upon any note, draft, bill of exchange or other indebtedness, as maker, drawer, endorser, guarantor, surety or otherwise; and (2) any transaction as a result of which a corporation, in which an executive officer or director or any combination of such persons, owns or controls a majority of the stock, or as a result of which a partnership in which an executive officer or director is a partner, becomes obligated or renews its obligation to such bank or trust company upon any note, draft, bill of exchange or other indebtedness, as maker, drawer, endorser, guarantor, surety or otherwise. Every bank or trust company violating this provision or any regulation issued pursuant thereto and every officer or director of such bank or trust company knowingly participating in such violation shall, for each offense, forfeit to the people of the state twice the amount of the loan.

No executive officer or director of a bank or trust company shall borrow from the bank or trust company of which he is an executive officer or director except as permitted by this section.

§ 104. Entries in books; restrictions; amortization of securities. 1. No bank or trust company shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any individual, partnership, unincorporated association or of any other corporation, or under any title or designation that is not truly descriptive thereof, except as authorized by the provisions of this article.

2. The stocks, bonds and other interest-bearing securities purchased by a bank or trust company shall be entered on its books at the actual cost thereof, and shall not thereafter be carried upon the books at a valuation exceeding their cost as adjusted by amortization for the purpose of bringing them to par at maturity except that the same may be carried at cost if appropriate amortization reserve is set up for the purpose of bringing them to par at maturity. Where securities purchased at a premium are callable prior to maturity, the rate of amortization thereof shall be increased where necessary to such extent as shall reduce the amount at which such securities are carried upon the books to the call price at the date or dates upon which a call may be made; provided, however, that no adjustment for amortization or amortization reserve shall be required to be made on the books except when net profits are computed. The superintendent may by regulation vary the requirements of this subdivision to permit the amortization of premiums at the same rate as that required by federal tax statutes or regulations.

3. No bank or trust company shall, except with the written approval of the superintendent, enter on its books its real estate and the building or buildings thereon, or its fixtures, vaults, furniture and equipment, at a valuation exceeding the actual cost to such bank or trust company, or carry such real estate, building or buildings, fixtures, vaults,

furniture or equipment at a valuation exceeding the actual cost less appropriate allowances for depreciation except that the same may be carried at cost if appropriate depreciation reserve is set up; provided, however, no adjustment for depreciation or depreciation reserve shall be required to be made on the books except when net profits are computed.

4. Real estate acquired by a bank or trust company, other than that acquired for use as a place of business, shall be entered on the books of the bank or trust company in conformity with the method of accounting for troubled debt restructurings approved by the financial accounting standards boards or such other method of accounting as may be authorized or required by rules and regulations of the superintendent of financial services.

The provisions of this subdivision shall not, except as the superintendent may otherwise require, apply to any parcel of real estate as to which the bank or trust company has exercised its option to transfer or convey such real estate to the veterans administration or the federal housing commissioner pursuant to insurance or guaranty.

5. Every bank and every trust company shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to article two of this chapter. Any bank or trust company that refuses or neglects to obey such order shall be subject to a penalty in an amount as determined pursuant to section forty-four of this chapter for each day it so refuses or neglects.

6. Every bank and every trust company holding any funds or money paid into court shall keep records in which it shall make an exact account thereof, including appropriate references to the order or orders pursuant to which such funds are held.

§ 105. Branch offices; prohibition against doing business at unauthorized places. 1. (a) No bank or trust company or officer, director, agent or employee thereof, shall transact any part of its

usual business of banking at any place other than its principal office, except that a bank or trust company may open and occupy one or more branch offices at any location in the state, provided: (i) that the requirements of section twenty-nine of this chapter are met and (ii) that, except for the city or village in which its principal office is located, in no event shall a branch be opened and occupied pursuant to this subdivision in a city or village with a population of fifty thousand or less in which is already located the principal office of another bank, trust company or national banking association, other than a bank holding company, if such bank holding company is a banking institution, or a banking subsidiary of a bank holding company (as such terms "bank holding company", "banking institution" and "banking subsidiary" are defined in section one hundred forty-one of this chapter) except that the definition of "bank holding company" is modified to change the phrase "a banking institution" wherever it appears therein to "two or more banking institutions" and the definition of "banking institution" is modified to add a national banking association, the principal office of which institution is located in this state, except, in the case of a conversion pursuant to the provisions of this article, branch offices occupied immediately prior thereto or except for the purpose of acquiring by merger, sale or otherwise the business and property of a bank, trust company or national banking association, whether in liquidation or doing business in the usual course.

(b) An office of an affiliated bank at which the customers of a bank or trust company may make deposits, renew time deposits, make withdrawals, close loans, service loans, and receive payments on loans and other obligations shall not be deemed a branch office of such bank or trust company. For the purposes of this section, the term "affiliated bank" means any bank, as such term is defined in section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1)), that is a subsidiary of the same bank holding company, as that term is defined in section 2 of the Bank Holding Company Act (12 U.S.C. 1841).

2. Hereafter before any branch or branches shall be opened and occupied pursuant to subdivision one of this section the superintendent shall have given his written approval as provided in article two of this

chapter.

3. (a) Any bank or trust company may with the written approval of the superintendent, open and occupy a branch office or branch offices in one or more places located without the state of New York, either in the United States of America or in foreign countries.

(b) If any bank or trust company has opened and occupied a branch office in a foreign country pursuant to the provisions of paragraph (a) of this subdivision, it may, unless otherwise advised by the superintendent, open and occupy an additional branch office or branch offices in such country without having to apply for the approval of the superintendent, provided that it gives the superintendent notice of at least thirty days (or such shorter period as the superintendent in individual cases may approve) before opening and occupying any such additional branch office.

4. The term "village" as used in this section shall mean either an incorporated or an unincorporated village.

5. (a) A bank or trust company may, if the merger or asset acquisition is permitted by law, and if the merger or asset acquisition agreement so provides, maintain as a branch office or branch offices or trust office or trust offices, the place or places of business of any bank, trust company, safe deposit company, national banking association, out-of-state state bank or out-of-state trust company (as such terms are defined in section two hundred twenty-two of this chapter), savings bank, or savings and loan association, federal savings bank or federal savings and loan association which it has received into itself by merger or by acquisition of assets thereof pursuant to the provisions of this chapter and, if the merger or acquisition agreement so provides, may maintain, as its principal office rather than as a branch or trust office, the principal office of such banking institution with which it has merged or from which it has acquired assets (so long as such principal office is located in this state), in which event the former principal office of the receiving or acquiring bank or trust company may be maintained as a branch office. A state bank or trust company resulting from the conversion of a national banking association may, if

the conversion agreement so provides, maintain as a branch office or branch offices or trust office or trust offices the place or places of business of the national banking association. As used in this subdivision, the term "place or places of business" shall include any branch office or trust office of the banking institution that was converted, merged or the assets of which were acquired which has been approved pursuant to this chapter or federal law or the law of another state, as the case may be, even if such branch office or trust office is not in operation at the time said merger, asset acquisition or conversion becomes effective.

(b) Notwithstanding anything to the contrary in paragraph (a) of this subdivision, any public accommodation office of a merging or acquired banking organization or association, including any such office which has been approved pursuant to section one hundred ninety-one of this chapter but which is not in operation at the time said merger or acquisition becomes effective, may be maintained by the receiving or acquiring bank or trust company as a public accommodation office only.

§ 105-a. Electronic facilities. A bank or trust company may conduct a banking business, at automated teller machines, point-of-sale terminals, and similar facilities subject to regulations which may be promulgated by the superintendent of financial services. Such facilities shall not be deemed to be branches and shall not be subject to any of the provisions of this chapter applicable to branches; provided however that notwithstanding the foregoing, for purposes of clause (ii) of subdivision one of section one hundred five of this chapter, such facilities shall be deemed to be branches, and such facilities shall be subject to the terms and conditions of section one hundred five, and for purposes of section twenty-eight-b of this chapter, such facilities shall be deemed to be branches.

§ 105-b. Trust offices. 1. A trust company may establish or acquire and maintain one or more trust offices anywhere in this state, or outside the state of New York, either in the United States or in foreign countries.

2. A trust company seeking to establish or acquire and maintain a trust office shall submit a written notice to the superintendent describing the proposed activities and such other information as the superintendent shall request. The notice shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

3. The trust office may commence operation thirty days after the superintendent receives such notice, unless the superintendent notifies the trust company in writing within such time period that the office may not commence operation or that additional information or time is required for the superintendent to consider such notice.

4. The superintendent may deny approval of the trust office if the superintendent finds that the maintenance of such office would not be consistent with the goals set forth in the declaration of policy contained in section ten of this chapter.

§ 106. Deposits by banks and trust companies with other banking corporations and private bankers; restrictions. 1. No bank or trust company shall deposit any of its funds with any other foreign or domestic banking corporation or private banker in an amount exceeding one hundred per centum of the capital stock, surplus fund and undivided profits of such bank or trust company unless such other banking corporation or private banker has been approved by the superintendent as a depositary for the purpose of this section, in which case the amount so deposited may equal but shall not exceed such per centum of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve.

2. The restrictions contained in this section shall not apply to deposits by any bank or trust company with a federal reserve bank.

§ 107. Reserves against deposits. 1. Every bank and trust company

shall maintain total reserves against its demand and time deposits in such ratios as the superintendent of financial services shall by regulation impose. If the principal office or any branch of such bank or trust company is located in a special requirement area, as designated in or pursuant to subdivision two of this section said bank or trust company shall maintain such additional reserves as may be prescribed by the superintendent of financial services.

2. The cities of Albany and Buffalo and the boroughs of Brooklyn, Manhattan and The Bronx are hereby designated as special requirement areas. The superintendent of financial services may at any time add to the number of cities or boroughs designated as special requirement areas, or may terminate the designation of any city or borough as such.

3. Any part of total reserves may be deposited, subject to call, with a federal reserve bank in the district in which such bank or trust company is located, or with reserve depositaries, and the reserves on hand not so deposited shall consist of any form of currency authorized by the laws of the United States. Any bank or trust company which is or shall become a member of the federal reserve system shall maintain such reserves with a federal reserve bank as are required by or pursuant to the federal reserve act and so long as it complies with the requirements of such federal reserve act with reference to reserves shall be exempt from the preceding provisions of this section.

4. If any bank or trust company shall fail to maintain its total reserves in the manner prescribed and authorized by this section, it shall be liable to, and shall pay any assessment or assessments levied by the superintendent pursuant to the provisions of article two of this chapter.

§ 107-a. Security for public deposits. 1. As used in this section, the following terms shall have the following meanings:

(a) "Public depositary". A bank, trust company or other depositary, whether state or federally chartered, authorized to accept and hold deposits of public funds under the laws of this state.

(b) "Public funds". Funds of a political subdivision.

(c) "Political subdivision". Any municipal corporation, school district, board of cooperative educational services, district corporation, special improvement district governed by a separate board of commissioners or a public library.

(d) "Public deposits". Deposits of public funds in a public depositary which are available for all uses generally permitted by the public depositary to the depositing political subdivision for actually and finally collected funds under the public depositary's account agreement or policies.

2. Whenever a political subdivision is required by any general or special law to obtain a pledge of assets or other security from a public depositary for its public deposits and such political subdivision has entered into a written agreement with such public depositary relating to such public deposits and has provided written notice in a form specified by such written agreement to the public depositary of such public deposits, the public depositary shall comply with the provisions of such law at the time it accepts any public deposits from the political subdivision; provided, however, that where the public depositary and political subdivision have agreed in writing as to the maximum amount of security which such depositary shall provide, and the terms, conditions and timing of the provisions of security pursuant thereto, and the depositary has at all times complied with such agreement, it shall be deemed to have complied with the provisions of such law for so long as it shall comply with such agreement.

§ 108. Rates of interest; installment obligations; personal loan departments. 1. Except as otherwise provided in this section, no bank or trust company shall take, receive, reserve or charge on any loan or discount made, or upon any note, bill of exchange or other evidence of debt, negotiable or otherwise, interest, as computed pursuant to this subdivision, at a rate greater than the rate prescribed by the superintendent of financial services pursuant to section fourteen-a of this chapter, or, if no rate has been so prescribed, six per centum per annum, or two dollars if the interest so computed is less than that

amount. Such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run. If interest is so taken in advance and the maturity of the debt is accelerated and judgment is obtained, or the debt is otherwise paid prior to its normal date of maturity, the bank or trust company shall refund to the obligor or his legal representative, as the case may be, the unearned interest previously deducted and the unused portion of any premiums charged for insuring the obligor under a group credit insurance policy, such refund to be calculated in accordance with the method described in paragraph (e) of subdivision four of this section. A reasonable charge by a bank or trust company for the collection of a bona fide bill of exchange, note or other evidence of debt payable at a place other than the place where purchased, discounted or sold, in addition to the interest, shall not be considered interest for the purpose of any law regulating the maximum rate of interest which may be charged, taken or received.

Anything contained in this subdivision to the contrary notwithstanding, the charging of interest or discount on a loan or discount made outside this state at a rate allowed by the laws of the jurisdiction where such loan is made, or the acquisition by a bank or trust company of a part interest or the entire interest in any loan or discount heretofore or hereafter made by a bank or trust company or any other banking institution, shall not be a violation of this section.

2. Any bank or trust company may purchase or otherwise acquire from the payee, owner or holder thereof any obligation in writing to pay in installments all or part of the price of personal property or that of the performance of services, whether that obligation be a negotiable promissory note or other evidence of debt, or any accounts receivable, whether or not they are obligations in writing, or any lease of personal property, and may lease personal property acquired by it, doing so for such price or rentals or other consideration and upon such additional terms and conditions as may be mutually agreeable.

3. Upon advances of money, repayable on demand, to an amount not less than five thousand dollars, made upon documents of title within article seven of the uniform commercial code or negotiable instruments within

article three or article eight of the uniform commercial code pledged as collateral security for such repayment, any bank or trust company may receive or contract to receive and collect as compensation for making such advances any sum which may be agreed upon by the parties to such transaction.

4. (a) A bank or trust company may operate a personal loan department at all or at any one or more of its authorized places of business in accordance with the requirements of this subdivision. The records of such department shall be kept in such form as the superintendent may from time to time prescribe. The superintendent may, after giving notice of the contemplated action and reasonable opportunity to be heard, order that the operation of such department be discontinued if he shall find that the bank or trust company has failed to conform to any requirement of this subdivision. The superintendent may forthwith, and for a period not to exceed thirty days pending further investigation, order that the operation of any such department be temporarily discontinued if he shall have reasonable cause to believe that the requirements of this subdivision are not having compliance. Such order of discontinuance or temporary discontinuance may apply to one or more of the authorized places of business of a bank or trust company. The superintendent may terminate or modify such orders if he shall be satisfied that such department will be operated in accordance with the requirements of this subdivision. No order of discontinuance or temporary order of discontinuance shall impair or affect the obligation of any preexisting lawful loan or advance from a bank or trust company to any borrower.

(b) A bank or trust company which operates a personal loan department may make loans and charge interest thereon, which may be calculated on the actual unpaid principal balances of the loan or in the case of a loan commitment from the date of each advance thereunder for the actual time outstanding, according to a generally accepted actuarial method at a fixed or variable rate in accordance with the provisions of the evidence of the indebtedness, or taken in advance, computed from the date of the loan, or in the case of a loan commitment from the date of each advance thereunder, to the date of the last installment payable thereunder, at the rate or rates agreed to by the bank or trust company and the borrower, with respect to any loan which is repayable at regular

periodic intervals of not more than one month over a period from the date of the loan not exceeding (i) thirty-seven months, if the face amount of the loan is for not more than twelve hundred dollars, or (ii) any number of months agreed to by the bank or trust company and the borrower, (A) if the face amount of the loan is for more than twelve hundred dollars, (B) if the loan is for more than twelve hundred dollars, and is made for a commercial or business use or purpose or for investment in or purchase of an unincorporated business or commercial enterprise, (C) if the loan or loan commitment is made for educational purposes as specified in subdivision five-b of this section, or (D) if the loan or advance of credit is made 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 corporations or partnerships formed for the purpose of the cooperative ownership of real estate. The total unpaid principal balances of any one or more loans made by such bank or trust company to the borrower pursuant to this subdivision shall be determined by agreement between such bank or trust company and the borrower. If the loan is made for a period of one year or more, provision may be made in the note, instrument or other evidence of debt, for the omission of payments during not more than any three specified months in any twelve-month period, but the maximum period of thirty-seven months, shall not be exceeded. On any loan with a variable rate of interest made pursuant to this paragraph, the rate shall be determined at regular intervals as set forth in the evidence of indebtedness and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the bank or trust company and (d) approved by the superintendent.

The superintendent of financial services shall adopt regulations, including but not limited to: (a) providing for disclosure to the borrower by the bank or trust company of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the borrower by the bank or trust company of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the borrower from the bank or trust company prior to any rate increase or change in the terms of payment.

(c) The rate of interest authorized by this subdivision shall be inclusive of all charges incident to investigating and making any loan. No fee, commission, expense, or other charge whatsoever in addition thereto shall be taken, received, reserved, or contracted for, 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 bank or trust company 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 bank or trust company 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 bank or trust company 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 under the authority of this subdivision except as provided in subdivision five-b of this section. Notwithstanding the foregoing, a bank or trust company may, with the prior approval of the superintendent, offer a loan product that encourages personal savings by requiring a borrower to place a portion of the principal of the loan into an interest-bearing savings account as a condition precedent to granting a loan under the authority of this subdivision. In deciding whether to approve a loan product pursuant to the preceding sentence, the superintendent may consider the recent results of examinations of the bank or trust company, the terms and structure of, and the underwriting criteria and marketing plan for the proposed loan product, other loans offered by the bank or trust company, and such other factors the superintendent deems to be relevant. Notwithstanding the provisions of this paragraph no refund of excess fines shall be required if it amounts to less than one dollar.

(d) In each note, instrument or other evidence of debt given by a borrower to evidence a loan under this subdivision, where such loan is not subject to the provisions of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, the rate of charge (stating any minimum as permitted by this subdivision four), shall be expressed either in accordance with the method prescribed by such act of congress or: (i) as a rate in dollars per annum discount per one hundred dollars face amount of loan, or (ii) as the rate or rates agreed to by the bank or trust company and the borrower.

(e) A borrower may prepay the loan in full or, with the consent of the bank or trust company, may refinance the loan. If the interest is calculated on the actuarial basis, or if the evidence of the indebtedness provides that the rate of interest may vary from time to time, a borrower may prepay the loan in full without penalty. If the

interest was taken in advance, in the event of such prepayment or refinancing, the bank or trust company 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 bank or trust company 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 bank or trust company, if such premiums were paid or payable by the bank or trust company periodically, or the refund for such insurance premium received or receivable by the bank or trust company, if such premium was paid or payable in a lump sum by the bank or trust company, 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.

(f) A bank or trust company may, upon agreement with the borrower, extend the scheduled due date or defer the scheduled payment of all or any part of any installment or installments payable under the loan. The agreement for such extension or deferment must be in writing and signed by the borrower. The bank or trust company may charge and contract for the payment of an extension or deferral charge by the borrower and collect and receive the same, at the rate or rates agreed to by the bank or trust company and the borrower, on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the

date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the borrower of the additional cost to the bank or trust company of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided in connection with the loan subject to the other provisions of this subdivision.

(g) If the borrower is obligated in connection with the loan to maintain insurance on a motor vehicle securing the loan and if subsequent to the making of the loan the borrower fails to maintain the insurance, the bank or trust company may make advances to procure the equivalent limits of insurance for either the interests of the borrower and the bank or trust company or of either of them, and any amount so advanced may be the subject of an interest charge from the date of such advance as though such amount was part of the unpaid principal balance of the loan. Each amount so advanced shall be secured by the personal property if so provided in the security agreement covering the personal property and if the bank or trust company notifies the borrower in writing of the advance of such amount and of his or her option to repay such amount in any one of the following ways:

(1) Full payment within ten days from the date of giving or mailing the notice;

(2) Full amortization during the term of the insurance or the remaining term of the loan, at the option of the bank or trust company;

(3) If offered by the bank or trust company, as a final balloon payment payable one month after the last scheduled payment in connection with the loan;

(4) If offered by the bank or trust company, full amortization after the term of the loan, to be payable in instalments which do not exceed the average instalment payable in connection with the loan; or

(5) If offered by the bank or trust company, any other amortization plan.

If the borrower neither pays in full the amount so advanced nor notifies the bank or trust company in writing of his or her choice regarding amortization options before the expiration of ten days from the date of giving or mailing of the notice by the bank or trust company, the bank or trust company shall amortize the amount so advanced pursuant to subparagraph two of this paragraph.

5. (a) A bank or trust company which operates a personal loan department pursuant to paragraph (a) of subdivision four hereof may establish credits under written agreements with borrowers, pursuant to which one or more loans or advances to or for the account of a borrower may be made from time to time, by means of honoring one or more checks or other written, electronic or telephonic orders or requests of the borrower and may charge interest on such loans and advances at the rate permitted by paragraph (b) of this subdivision, provided such loans and advances comply with the provisions of this subdivision. This subdivision does not authorize any bank or trust company to make any loan or advance in connection with the purchase or lease of goods or services by means of a credit card as defined in section five hundred eleven of the general business law, except for a loan or advance resulting from the use of a card which may be used to access a deposit account and line of credit associated with that account. The records of such loans and advances shall be kept in such form as the superintendent may from time to time prescribe.

(b) Such agreement may provide for interest on the unpaid aggregate principal amount of such loans and advances from time to time outstanding at the rate or rates agreed to by the bank or trust company and the borrower, as computed pursuant to this section, including, in accordance with the provisions of the agreement, rates that may vary from time to time 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 date, 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. For purposes of this subdivision, a month may but need not be a calendar month, and a bank or trust company computing interest on a daily basis may charge for each day one thirtieth of the monthly interest rate. No amendment to any agreement shall take effect unless at least 30 days prior to the effective date of such amendment, imposition or increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such amendment, imposition or increase and the indebtedness to which it applies and if the amendment has the effect of increasing the rate of interest, either (a) the notice states that the incurrence by the borrower or another person authorized by him of any further indebtedness under the plan to which the agreement relates on or after the effective date of such change specified in the notice shall constitute acceptance of such change, and either the borrower agrees in writing to such change or the borrower or another person authorized by him incurs such further indebtedness on or after the effective date of the change stated in the notice, or (b) the notice advises the borrower that he has thirty days from the earlier of the mailing or delivery of the notice to advise the bank or trust company in writing that he does not accept such amendment, provided that such notice contains an address to which the borrower may send notice of his election not to accept the amendment and also provided that the notice specifies that the amendment will take effect absent receipt of the borrower's written objection to the amendment. Any borrower who has received a notice pursuant to clause (a) who does not agree in writing to the amendment and no further indebtedness is incurred under the plan to which the agreement relates, and any borrower who gives a timely notice, pursuant to clause (b), electing not to accept the amendment shall be permitted to pay his outstanding indebtedness in accordance with the terms of the agreement

but the bank or trust company may terminate the amount of credit available to the borrower and may require the borrower to return all credit cards and checks issued in connection with the agreement. If such a borrower subsequently obtains credit under the agreement, such use shall constitute acceptance of the change of terms and shall be deemed to have been accepted and shall become effective as to the borrower as of the date such change would have become effective but for the giving of notice by the borrower. If notice is given pursuant to clause (b) and the borrower does not timely object in writing to the amendment, such amendment shall become effective without action on the part of the borrower; provided that in no event shall any such amendment or increase take effect with respect to (i) the unpaid aggregate principal amount of loans or advances representing indebtedness outstanding prior to January 1, 1981 and (ii) the unpaid aggregate principal amount of loans or advances representing indebtedness incurred, under or pursuant to an agreement in effect on December 1, 1980, between January 1, 1981, and the effective date of such amendment or increase specified in the first notice mailed or delivered pursuant to clause (a). Indebtedness outstanding prior to January 1, 1981, for purpose of clause (i) above and indebtedness outstanding prior to the effective date of an increase for purposes of clause (ii) above shall be determined on the basis of crediting payments and other credits first to that portion of any such indebtedness representing interest charges, insurance premiums, service charges and fines and then to that portion representing the principal amount of loans or advances in the order in which made. The provisions of this paragraph permitting an increase in a rate of interest shall not apply in the case of an agreement which expressly prohibits changing of interest rates or which provides limitations on changing of interest rates which are more restrictive than the requirements of this paragraph. An amendment to an agreement deleting a provision that the rate of interest may vary from time to time may not become effective within one year from the later of the effective date of the agreement or the effective date of an amendment to an agreement adding a variable rate provision. On any loans or advances with rates of interest that may vary from time to time made pursuant to this paragraph, such variable rates of interest shall be determined at regular intervals as set forth in the agreement and in accordance with such regulations as the

superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the bank or trust company and (d) approved by the superintendent, (e) such loan rate shall be based on the index values, or the index numbers plus or minus additional percentage points provided, however, that variations in the rate must correspond directly to the movements of the index values plus or minus additional percentage points only. Once such rate is established no lending institution may add any factors to increase the rate other than variations in the established index without the prior approval of the superintendent of financial services. For purposes of this paragraph, an adjustment in the rate of interest as a consequence of movement in the selected index shall not constitute an amendment to that agreement. A reduction in the grace period for the assessment of a fee on any installment not paid when due, shall be considered an amendment to an agreement as set forth in this paragraph.

The superintendent of financial services shall adopt regulations with respect to agreements that provide for a variable rate of interest, including but not limited to: (a) providing for disclosure to the borrower by the bank or trust company of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the borrower by the bank or trust company of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the borrower from the bank or trust company prior to any rate increase or change in the terms of payment. The regulations shall allow a bank or trust company after choosing an approved index to choose a spread and a minimum and maximum rate of interest at its discretion.

A written agreement, whether it provides for a fixed or variable interest rate, may provide for an introductory rate of interest at either a fixed or a variable rate, provided that the terms of such introductory rate, including, if applicable, the date on which the introductory rate shall terminate, are disclosed to the borrower. Such

disclosure shall be contained on an application form or pre-approved written solicitation as specified pursuant to subdivisions one and one-a of section five hundred twenty of the general business law. A change in the interest rate upon expiration of an introductory rate shall not be considered a variable rate or a change in terms. The interest rate in effect after expiration of an introductory rate may apply to all amounts due under the agreement regardless of when incurred and disclosure of the same shall be provided to the borrower in the written agreement.

Any interest charge, whether assessed by a fixed or variable rate, may be reduced on such terms as the bank or trust company may determine, provided that the terms of such reduction, including, if applicable, the date on which the reduction will terminate, are disclosed to the borrower on the written notice announcing the reduction, prior to the effective date of the reduction. A new method of determining an interest charge is a reduction in the interest charge if the charge determined under the new method never exceeds the charge under the original method. The original interest charge or original method of determining the interest charge may be applied after the reduction ends to the entire outstanding indebtedness, including any indebtedness incurred when a reduced interest charge applied and disclosure of the same shall be provided to the borrower in the written notice announcing the reduction. A reduction to an interest charge, including the resumption of the original interest charge or the original method of determining the interest charge, shall not be considered an amendment of the agreement for purposes of this paragraph.

(c) The aggregate unpaid principal amount of all such loans and advances to a borrower made pursuant to this subdivision by a bank or trust company at any one time outstanding shall be determined by agreement between such bank or trust company and the borrower except to the extent that such loans or advances are made pursuant to a written agreement providing for establishing credits for a primarily commercial or business use or purpose or for investment in or purchase of an interest in an unincorporated business or commercial enterprise.

(d) The aggregate unpaid principal amount of all loans and advances outstanding at any time pursuant to this subdivision shall be repayable at regular periodic intervals of not more than one month and for such

term as agreed upon by such bank or trust company and the borrower; provided, however, that nothing herein shall prohibit a bank or trust company from providing in any agreement for the omission of payments for three consecutive specified months during any consecutive twelve month period. The initial installment of any loan or advance may be deferred for a period of not more than sixty-five days from the date of such loan or advance; provided, however, that the installments payable during any such period on any prior loans or advances shall not be affected by any such deferment. Provided, however, that an agreement may require a minimum installment as agreed upon by the parties.

The borrower may at any time prepay the amount owing in part or in full, with interest to the date of prepayment.

Notwithstanding the foregoing provisions of this paragraph, each installment or other amount paid by the borrower to the bank or trust company may be applied to interest, insurance premiums, service charges, fines and principal in the order named, or in any such manner as the agreement may provide. The term "installment" may be deemed to include or exclude amounts to be applied to interest, insurance premiums, service charges and fines.

(e) The fees and charges authorized by this paragraph and paragraph (b) of this subdivision shall be inclusive of all charges to the borrower incident to investigating and making any such loan or advance. No fee, commission, expense, or other charge to the borrower whatsoever shall be taken, received, reserved, or contracted for, except as provided in this subdivision. In addition to the interest charge permitted under paragraph (b) of this subdivision, the bank or trust company may charge, receive and collect any one or more of the fees and charges described in this paragraph, provided that any such fee or charge is set forth in the written agreement with the borrower. The bank or trust company may contract with the borrower for the payment by the borrower of: (i) a service charge either as a percentage or an amount upon each such check or other written, electronic or telephonic order or request which is approved; (ii) a charge in an amount or percentage for each check or other written, electronic or telephonic order or request to obtain money from a credit line that cannot be approved since the

borrower is in violation of the terms of the agreement or payment of such order or request would cause borrower to be in violation of the terms of the agreement; (iii) a fee for any installment which is not paid on or before the date on which it is due. A bank or trust company that imposes the charge described in this subparagraph without allowing a grace period of at least ten days must credit any cash payment made by a borrower to a teller at a branch where deposits are accepted by the bank or trust company, as of the date of receipt of the payment; (iv) the actual expenditures, including reasonable attorneys' fees for necessary court process; (v) in case the bank or trust company insures a borrower in accordance with applicable insurance law, including but not limited to 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, an amount for each month which, notwithstanding any other law, may be computed on the amount of the borrower's entire unpaid indebtedness under this subdivision except in the case of a loan or loan commitment made under this subdivision for educational purposes as specified in subdivision five-b of this section, and then on an amount no greater than the unpaid balance of the borrower's scheduled periodic payments, whether due or not due, upon the loan or loan commitment, at a rate not in excess of the premiums chargeable for such month in accordance with rate schedules then in effect and on file with the superintendent of financial services for such insurance by the insurer; (vi) if loans or advances may be obtained by use of a credit card issued by the bank or trust company to the borrower, an annual fee for membership in the credit card plan. If the borrower has requested the issuance of a credit card, the fee for the first year may be charged by the bank or trust company at any time. The bank or trust company shall in each subsequent year in which an annual fee is payable, send the borrower in or with the statement for the monthly billing period before that in which the fee is to be billed, a notice that the annual fee will be billed in the next monthly statement. A borrower who is not delinquent or otherwise in breach of any term of the agreement with the bank or trust company shall have the right during the first six months after the annual fee is billed to notify the bank or trust company in writing, at its address on the credit agreement, to terminate the borrower's account and request a

refund of the unused portion of the annual fee previously paid. Upon receipt of the termination notice and refund request from such borrower, the bank or trust company shall refund to the borrower the unused pro rata share of any annual fee previously paid as of the first billing statement date after receipt of the termination notice; and (vii) an overlimit charge which may be imposed whenever the specified credit limit is exceeded but not more than once in a monthly billing cycle. If the overlimit charge is imposed, the credit limit must be disclosed on the monthly billing statement; and (viii) a returned payment charge, in the amount set forth in section 5-328 of the general obligations law, for any check or other method of payment that is returned unpaid, excluding payment made by automated teller machine or other electronic media; (ix) a charge for replacement of lost or stolen credit cards, which charge shall be applied only where a borrower has suffered a lost or stolen credit card after two replacements thereof; (x) a charge for additional credit cards for the borrower's account; and (xi) a charge for copies of sales slips, cash advance slips, monthly statements and other documents when such copies are not required by federal or state law governing billing error disputes.

The fees and charges set forth in this paragraph shall not be considered in applying sections 190.40 and 190.42 of the penal law. For purposes of 12 U.S.C. §§ 85, 1831d, 1463(g) and 1785(g), the fees and charges permitted under this paragraph are interest under New York law, and all terms, conditions, and other provisions of a written agreement between a bank or trust company and a borrower, including without limitation, fees and charges, provisions related to the method of determining the outstanding balance on which an interest charge is imposed and circumstances in which an interest charge may be avoided, are material to the determination of the interest rate under New York law.

(f) No bank or trust company shall require a borrower to keep 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 the entering into of the agreement or granting of a loan or advance under the authority of this subdivision, except as provided in subdivision

five-b of this section, provided, however, that nothing herein shall be construed to prohibit a borrower from agreeing that such loans and advances may be disbursed by crediting a demand deposit account to be opened or maintained by the borrower on the same terms as are offered generally by the bank or trust company to all or any class or classes of demand deposit customers, and provided further, that a bank or trust company may require a pledge to such bank or trust company of a specifically identified interest-bearing deposit account at such bank or trust company as collateral security for a loan made by such bank or trust company under the authority of this subdivision.

5-a. A bank or trust company may make 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 subdivision:

(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 shall not exceed one hundred per cent of the sum of (a) the manufacturer's invoice price of such mobile home (including any installed equipment), excluding freight, plus (b) the

invoice price of the manufacturer of any new equipment installed or to be installed by the dealer, excluding freight.

(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 of the loan, and

(ii) the amount advanced shall not exceed one hundred per cent of the purchase price of the used mobile home actually paid or the wholesale value of such mobile home (including any installed equipment) as established in the dealer's market, whichever is the lower.

(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 or ten dollars, if the interest so computed is less than that amount; provided that the interest which may be charged, if it exceeds ten dollars, shall not exceed one per cent per month on the unpaid principal balance.

(5) The authorized interest shall include all charges incident to investigating and making any loan. No fee, commission, expense, or other charge shall be permitted except that the bank or trust company 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 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 bank or trust company 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 period of delinquency; (iii) the actual expenditures, including reasonable attorney's fees for necessary court process, and (iv) in case the bank or trust company insures a borrower under a credit unemployment insurance policy, group life, health, accident, 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 bank or trust company 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 of a mobile home loan, as the superintendent may from time to time approve. No refund or excess fines shall be required if it amounts to less than one dollar.

(6) A borrower may prepay the loan in full or, with the consent of the bank or trust company, may refinance the loan. In such event, the bank or trust company 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 that if the interest previously deducted (i) was less than ten dollars, no refund shall be required; or (ii) exceeded ten dollars and the earned interest is less than that amount, the bank or trust company may retain such an additional amount as will bring the earned interest to 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 bank, if such premiums were paid or payable by the bank or trust company periodically, or the refund for such insurance premium received or receivable by the bank or trust company, if such premium was paid or payable in a lump sum by the bank or trust company. No such refund need be made 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.

(7) As a condition of any loan made pursuant hereto, the borrower shall certify that the mobile home, for the purchase of 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 six 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.

(8) No investment shall be made by a bank or trust company pursuant to this subdivision if the total amount invested by it pursuant to this subdivision exceeds, or by the making of such investment will exceed, an amount equal to fifteen per cent of the assets of the bank or trust company.

(9) Subject to such limitations and conditions as the superintendent of financial services may prescribe by general regulation, a bank or trust company may make a loan pursuant to this subdivision 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 1944." 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 paragraph.

5-b. Notwithstanding any inconsistent provision of this section, a bank or trust company may make loans for the purpose of defraying the cost of education of one or more students at a university or college, or at an elementary or secondary school providing education required of minors which may provide for (i) payment of origination fees, or guarantee fees in such amounts as the superintendent may from time to time approve; (ii) capitalization of interest, provided that the borrower has the option to avoid capitalization by paying such interest without penalty; and (iii) deferral and forbearance of payments under circumstances for which such deferral or forbearance could be granted for loans made pursuant to Title IV of the Higher Education Act of 1965 (20 USC 1070 et seq.).

6. The knowingly taking, receiving, reserving or charging a greater rate of interest than that authorized by this section as computed by this section, shall be held and adjudged a forfeiture of the entire interest which the note, bill of exchange or other evidence of debt carries with it, or which has been agreed to be paid thereon, and if a greater rate of interest has been paid, the person paying the same or his legal representative may recover from the bank or trust company twice the entire amount of the interest thus paid.

7. Upon an advance of money, whether or not repayable on demand, to an amount not less than five thousand dollars, made upon documents of title within article seven of the uniform commercial code or negotiable instruments within article three or article eight of the uniform commercial code pledged as collateral security for such repayment, any bank or trust company may receive or contract to receive and collect as compensation for making such advance any sum which may be agreed upon by the parties to such transaction; provided that such advance is (a) to or for any partner of a firm which is a member firm of a national securities exchange registered with the securities and exchange

commission as a national securities exchange under the federal securities exchange act of 1934, as amended, to enable such partner to make a contribution of capital to such firm or to purchase stock of an affiliated corporation of such firm, provided that such partner is actively engaged in the business of such firm and devotes the major portion of his time thereto, or (b) to or for any person who is or will become a holder of stock of a corporation which is a member corporation of such a national securities exchange to enable such person to purchase stock of such corporation or to purchase stock of an affiliated corporation of such corporation, provided that such person is actively engaged in the business of such corporation and devotes the major portion of his time thereto.

8. (a) The superintendent shall have the power to prescribe by regulation (i) the maximum charge which may be imposed in this state by a bank or trust company in connection with a check or other written order drawn upon it on insufficient funds, irrespective of whether the instrument is paid, accepted, or returned by the bank, and (ii) the maximum charge which may be imposed in this state by a bank or trust company in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee.

(b) No bank or trust company shall, in connection with the payment, acceptance or return of such check or order, impose any fee, fine, commission or other charge, however designated, in addition to the maximum charge established therefore by the superintendent of financial services pursuant to paragraph (a) of this subdivision, except that nothing herein expressed shall prevent a bank or trust company from taking, receiving, reserving or charging interest, as authorized by law in connection with credit extended in connection with the payment of such check or order or from imposing any charge in accordance with a written agreement established in accordance with the provisions of subdivision five of this section. A bank or trust company may, as an accommodation to its customers, pay, accept, or return a check or order without charge, or at a lesser charge than the maximum charge established by the superintendent of financial services.

(c) In prescribing a maximum charge pursuant to paragraph (a) of this

subdivision, the superintendent shall consider the following factors: (i) the cost of processing an overdraft or returned check or order, as the case may be, (ii) the charge necessary to deter overdrafts or returned checks or orders, as the case may be, and (iii) such other economic or cost factors that the superintendent shall deem to be appropriate. Prior to the superintendent's prescribing any such maximum charge, the superintendent shall issue a written determination as to such maximum charge, reciting the cost and other data upon which the determination is based.

(d) The superintendent of financial services may promulgate such regulations as he or she deems necessary and proper to implement and define the provisions of this subdivision. The superintendent of financial services may prescribe maximum charges from time to time, but not more often than once in any six month period, and shall provide reasonable notice to the public of any change in such maximum charges, of the effective date of such change, which shall not be less than seven days following the adoption of such change by the superintendent of financial services, and of any rule or regulation adopted pursuant to this subdivision.

9. A bank or trust company may, in the case of business or agricultural loans in the amount of twenty-five thousand dollars or more, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than five per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank of New York, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

§ 108-a. Acceptance of United States currency. No bank or trust company shall impose a fee, commission or service charge for accepting for deposit or exchanging for other United States currency any United States currency provided that any coins are properly rolled and have the customer's account number for that bank or trust company displayed on the coin roll, provided further that no more than ten rolls of coins in any denomination are presented for deposit or exchange at any one time.

§ 109. Closing of books; profits; how to be computed. 1. Every bank and every trust company shall close its books not less frequently than annually for the purpose of transferring its net profits to the undivided profits and surplus fund accounts.

2. To determine the amount of gross income of any bank or trust company for the purpose of computing its net profits for any period, the following items may be included:

(a) All income received or properly accrued, provided that no interest shall be accrued upon interest-bearing assets upon which a default of principal or interest has existed for a period which shall be determined by the superintendent except interest-bearing assets secured by collateral the ascertained value of which is at least equal to the amount at which the asset plus all interest accrued thereon is carried on its books.

(b) Realizable profits resulting from a revaluation to ascertained current market of a foreign exchange position, provided that a consistent practice is followed in the deduction from gross income of losses so resulting.

(c) Amounts added to cost or charged to amortization reserve for the purpose of amortizing discounts on securities purchased for less than par, provided that no discount shall be amortized on securities upon which a default exists.

(d) Any profits actually realized from the sale or other disposition of securities, real estate or other property.

(e) Amounts recovered on assets previously charged off, including amounts allowed by the superintendent on account of assets previously disallowed by him and other amounts allowed by the board of directors on account of assets previously disallowed by it. For the purpose of this paragraph amounts transferred to valuation reserves shall be considered as amounts charged off.

(f) Provided the superintendent shall have approved, and only to the extent of such approval, any increase in the book value of the real estate and building or buildings thereon used by it as its place or places of business.

(g) Such other items as the superintendent, in his discretion, may permit to be included.

3. To determine the amount of net profits for such period, the following items shall be deducted from gross income:

(a) All expenses paid or properly accrued in the transaction of its business and the management of its affairs.

(b) Interest paid or properly accrued upon debts owing by it.

(c) Amounts deducted from cost or credited to amortization reserve for the purpose of amortizing premiums on securities purchased for more than par.

(d) All losses sustained, including assets, or portions thereof, disallowed by the superintendent, and other assets, or portions thereof, disallowed by the board of directors. With the approval of the superintendent, any items referred to in this paragraph may be excluded. For the purposes of this paragraph, provision for disallowances may be effected by charge off or by establishment of valuation reserve and any existing valuation reserve may be deducted from the related asset in determining the amount of loss sustained.

4. The balance thus obtained shall constitute the net profits of such bank or trust company for such period.

§ 110. Surplus fund; of what composed, and for what purposes used. Every bank and every trust company shall create a fund to be known as a surplus fund. Such fund may be created or increased by contributions, by transfers from undivided profits, or from net profits. Such fund shall not be available for the payment of dividends, except with the prior approval of the superintendent, and may be used to pay expenses or absorb losses only in the event such bank or trust company has no undivided profits against which such expenses or losses may be charged.

§ 111. Profits; credits to surplus fund and to undivided profits. In any case where the combined capital stock, surplus fund and undivided profits of a bank or trust company do not equal ten per centum of its

net deposit liabilities, the superintendent of financial services may in his or her discretion require such bank or trust company at the close of each accounting period to credit its surplus fund with a portion of its net profits for such period, not to exceed ten per centum thereof, until its combined capital stock, surplus fund and undivided profits equal ten per centum of its net deposit liabilities. For the purposes of this section, the term "net deposit liabilities" shall mean total deposits including all amounts due to national banks, banks, bankers, trust companies and savings banks, the amounts due on certified and cashier's checks, and for unpaid dividends less the amounts of balances due from national banks, banks, bankers, and trust companies and cash items in process of collection payable immediately upon presentation in the United States.

§ 112. Dividends; payable from net profits; restrictions. 1. The directors of a bank or trust company may annually, semi-annually or quarterly, but not more frequently unless authorized by the superintendent by regulation or otherwise, declare such dividends as they deem judicious to be paid from net profits. No dividend shall be declared, credited or paid so long as there is any impairment of capital stock. No bank or trust company having outstanding preferred stock shall, except as otherwise authorized by the superintendent, declare dividends upon common stock for any period other than a period for which dividends are declared upon preferred stock.

2. The approval of the superintendent shall be required if the total of all dividends declared by a bank or trust company in any calendar year shall exceed the total of its net profits for that year combined with its retained net profits of the preceding two years, less any required transfer to surplus or a fund for the retirement of any preferred stock.

3. For the purposes of this section, the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses,

accrued dividends on preferred stock, if any, and all federal and state taxes.

§ 113. Change of location; change of designation of principal office. Any bank or trust company may make a written application to the superintendent, such application to be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter, for leave to change its place or one of its places of business to another place in the state or for leave to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office. The application shall state the reasons for such proposed change.

Such change may be made upon the written approval of the superintendent. If the superintendent shall grant his certificate authorizing the change of location, as provided in article two of this chapter, the bank or trust company may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein.

§ 114. Assessment of stockholders to make good impairment of capital stock; sale of stock.

Whenever the superintendent shall have made requisition upon any bank or trust company pursuant to the provisions of article two of this chapter to make good the amount of an impairment of its capital stock, the directors of the bank or trust company shall immediately give notice of such requisition to each stockholder and of the amount of the assessment which he must pay for the purpose of making good such deficiency, by a written or printed notice mailed to such stockholder at his last address appearing upon the records of the bank or trust company, or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in such notice within sixty days from the date thereof, the directors of such bank or trust company shall have the right to sell to the highest bidder at public auction the

stock of such stockholder, after giving previous notice of such sale once a week for two successive weeks in a newspaper of general circulation in the county where the principal office of such bank or trust company is located; or such stock may be sold at private sale, and without such published notice, provided, however, that before making a private sale thereof an offer in writing to purchase such stock shall first be obtained, and a copy thereof served upon the owner of record of the stock sought to be sold either personally or by mailing a copy of such offer to such owner at his last address appearing upon the records of the bank or trust company; and if, after service of such offer, such owner shall still refuse or neglect to pay such assessment within two weeks from the time of service of such offer, the said directors may accept such offer and sell such stock to the person or persons making such offer, or to any other person or persons making a larger offer than the amount named in the offer submitted to such stockholder; but said stock shall in no event be sold for a smaller sum than the amount of the assessment called for and the necessary costs of sale. Out of the avails of the stock sold the directors shall pay the necessary costs of sale and the amount of the assessment called for thereon. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock as herein provided shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall render the same null and void and a new certificate or certificates shall be issued to the purchaser or purchasers of said stock.

§ 121. Reports to directors. The board of directors shall, at least once in each year by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit, either to each director present at each regular meeting of the board, or to each member of an executive committee of not less than five members of such board, present at a regular meeting of such committee, a written report as described in this section. Except as otherwise provided by the superintendent by regulation, which regulation may define the terms contained herein and establish such requirements according to size and/or business activities of a bank or trust company, such report shall

include all the purchases and sales of securities, and every discount, loan or other advance, including all renewals made and the maximum overdraft permitted in each account, since the date of the last preceding similar report, describing the collateral to such indebtedness as of the date of the report; but such officer or officers may omit from such report discounts, loans or advances, including overdrafts and renewals, of an amount less than one-half of one per centum of the combined capital stock, surplus fund and undivided profits of such bank or trust company, or less than one thousand dollars, whatever the combined capital stock, surplus fund and undivided profits may be. Unless the superintendent shall provide otherwise by regulation, which regulation may define the terms contained herein and establish such requirements according to size and/or business activities of a bank or trust company, such report shall also contain a list giving the aggregate of loans, discounts and advances, including overdrafts and renewals, to each individual, partnership, unincorporated association, corporation or person whose liability to the bank or trust company has been increased, since the date of the last preceding similar report to an amount equal to or more than the amount above required to be reported, and such report shall also include any further increase thereafter provided that the amount of any such increase, either itself, or together with other increases since such loan, discount, advance, overdraft or renewal was last reported is equal to more than one-tenth of one per centum of the combined capital stock, surplus fund and undivided profits of such bank or trust company. Each such report shall also contain a description of the collateral to such indebtedness held by the bank or trust company as of the date of the report unless the superintendent shall provide otherwise by regulation. Such aggregate liabilities shall be computed as provided in paragraph (e) of subdivision one of section one hundred three of this article. A copy of such report, together with a list of the directors present at such meeting, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such report shall be filed with the records of the bank or trust company within five business days after such meeting, and be presumptive evidence of the matters therein stated.

§ 122. Examinations of banks and trust companies by directors; employment of assistants. 1. It shall be the duty of the board of directors of every bank and every trust company once in each calendar year to examine, or cause a committee of at least three of its members to examine, such bank or trust company for the purpose of determining its financial condition and reviewing its investment, loan and audit and control policies and in such examination particular attention shall be given to the loans or discounts made directly or indirectly to its officers or directors, or for the benefit of such officers or directors, or for the benefit of other corporations of which such officers or directors are also officers or directors, or in which they have a beneficial interest as stockholders, creditors, or otherwise, with the special view of ascertaining their safety and present value, and the value of the collateral security, if any, held in connection therewith, and to such other matters as the superintendent may require. Such directors shall have the power to employ such assistants in making such examination as they may deem necessary, and shall employ the assistance of independent auditors if the superintendent deems inadequate the internal auditing and control procedures established by such bank or trust company. The various offices, departments and phases of business of any such bank or trust company may be examined as of different dates during the year.

2. With respect to any bank or trust company subject to the provisions of section one hundred twelve of the Federal Deposit Insurance Corporation Act of 1991, as implemented by the provisions of part three hundred sixty-three of the rules and regulations of the Federal Deposit Insurance Corporation, as they may be amended from time to time, compliance with such provisions shall be deemed to satisfy the examination requirement of this section.

§ 123. Reports of directors' examinations. 1. A report in writing of any examination made pursuant to the requirements of section one hundred twenty-two of this article, shall be presented to the board of directors of such bank or trust company at their next regular meeting after

completion of such examination, and placed on file in such bank or trust company, and a duplicate thereof filed in the office of the superintendent. Such report shall contain such information as the superintendent shall require.

2. A report prepared pursuant to part three hundred sixty-three of the rules and regulations of the Federal Deposit Insurance Corporation, as the same may be amended from time to time, may, in the sole discretion of the superintendent, satisfy the reporting requirements of this section.

3. Any report filed in the office of the superintendent shall include a certificate that such report was presented to the board of directors, in the form prescribed by the superintendent.

§ 124. Communications from department of financial services to be submitted to directors and noted in minutes. Any officer of a bank or trust company who receives from the office of the superintendent an official communication as defined in article two of this chapter shall submit such communication to the board of directors at the next meeting of such board, and such communication shall be duly noted in the minutes of the meetings of such board.

§ 125. Reports to superintendent; penalty for failure to make. 1. Within fifteen days after service upon it of the notice provided for by section thirty-seven of this chapter, every bank and every trust company shall make a written report of its financial condition to the superintendent, which report shall be in such form and contain such information as the superintendent of financial services may prescribe.

2. Every bank and every trust company shall also make such other special reports to the superintendent as he may from time to time require, in such form and at such date as may be prescribed by him and such reports shall, if required by him, be subscribed and affirmed as true under the penalties of perjury.

3. If any bank or trust company shall fail to make any report required by or pursuant to this section, on or before the day designated for the making thereof, or shall fail to include therein any prescribed matter, such bank or trust company shall forfeit to the people of the state an amount as determined pursuant to section forty-four-a of this chapter for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided in article two of this chapter.

§ 128. Preservation of books and records. Every bank and every trust company shall preserve all its records of final entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon; provided, however, that preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with the requirements of this section. Notwithstanding the foregoing, the superintendent of financial services may prescribe by regulation such period of time longer or shorter than six years during which all records kept by banks and trust companies as fiduciary shall be preserved in original form.

§ 129. Requirement of notice on withdrawal of certain time deposits; notice to superintendent. In the event that any bank or trust company shall elect to require that thirty or more days' notice be given before time deposits payable only on presentation of a passbook may be withdrawn the bank or trust company shall upon the day such election is made notify the superintendent thereof by telephone or telegraph.

§ 129-a. Requirement of written notification; alternative payment schedules. In the event that any bank or trust company shall permit a customer to establish an alternative payment schedule for an existing loan, the bank or trust company shall provide written notification that

accepting such alternative payment schedule may have a negative impact on such customer's credit score or rating. Such notification shall be provided at the time a loan application is made, at the time a loan is granted and at the time a customer requests that an alternative payment schedule be established for a loan, but prior to the actual establishment of an alternative payment schedule.

§ 130. Restrictions on officers, directors and employees. 1. No officer, director, clerk or other employee of any bank or trust company, and no person in any way interested or concerned in the management of its affairs, shall, acting on his own behalf or for any partnership or unincorporated association of which he is a member or for any corporation, of which he owns or controls a majority of the capital stock, discount, or directly or indirectly make any loan upon, any note or other evidence of debt which he shall know to have been offered for discount to such bank or trust company, and to have been refused. Every person violating the provisions of this subdivision shall, for each offense, forfeit to the people of the state twice the amount of the loan which he shall have made.

2. No officer, director, clerk or other employee of any bank or trust company shall, directly or indirectly, purchase or be interested in the purchase of any promissory note or other evidence of debt issued by it on terms more favorable than those available to the general public, provided, however, that every director, and every officer, clerk or other employee who is a stockholder of such bank or trust company, may purchase promissory notes or other evidences of debt issued by it in the same ratio as to amount and on the same terms as any other stockholder.

3. (a) No executive officer of a bank or trust company may be an executive officer, director or trustee of another bank or trust company, savings bank, savings and loan association, national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, bank holding company or foreign banking corporation maintaining a branch in this state, unless permission therefor has been granted by the superintendent of financial

services pursuant to the provisions of paragraph (b) of this subdivision, except that an executive officer of a bank or trust company which is a subsidiary of a bank holding company may be (i) an executive officer and (ii) a director of the bank holding company and of one or more banking institutions which are subsidiaries of such bank holding company.

(b) The superintendent of financial services shall have the power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer, and by a general or specific regulation to grant permission to an executive officer of a bank or trust company to be an executive officer, director or trustee or both an executive officer and director or a trustee of another bank or trust company, savings bank, or savings and loan association, national bank, federal savings bank or federal savings association, the principal office of which is located in this state, bank holding company, or foreign banking corporation maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent of financial services such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent of financial services shall have the power to revoke such permission whenever he or she finds, after reasonable notice and an opportunity to be heard, that the public interest requires such revocation.

(c) For the purposes of this subdivision, the terms "subsidiary", "banking institution" and "bank holding company" shall each be given the same meaning as is contained in their respective definition in section one hundred forty-one of this chapter, except that the definition of the term "banking institution" is modified to include a national bank, federal savings bank or federal savings association, the principal office of which institution is in this state, and a foreign banking corporation maintaining a branch in this state.

(d) All other restrictions and limitations imposed by this chapter on executive officers and directors of banks and trust companies shall continue in effect.

5. Every director of a bank or trust company who is obligated on any loan or other extension of credit made by such bank or trust company to

such director or to any other individual, partnership, unincorporated association or corporation, shall file a statement of his financial condition with such bank or trust company at least once in each year and at such other times as the superintendent may require. This subdivision shall not apply to directors whose obligations are secured by collateral having an ascertained market value of at least fifteen per centum more than the amount of such obligations. The superintendent shall have the power to determine by regulation what shall be considered, under the provisions of this subdivision, to be a loan or an extension of credit.

6. If any officer of a bank or trust company becomes indebted to any domestic or foreign banking organization, other than the bank or trust company of which he is an officer, or becomes indebted to any banking institution organized under the laws of the United States, he shall within ten calendar days after he becomes so indebted make a written report to the board of directors of the bank or trust company of which he is an officer, stating the date and amount of any such loan or indebtedness, and the security therefor. In addition to the foregoing reports he shall render written reports of such other indebtedness as the board of directors of the bank or trust company may by resolution require of its officers. The superintendent shall have the power to determine by regulation who shall be considered an officer and what shall be considered a loan or indebtedness under the provisions of this subdivision.

The provision of this subdivision shall not be applicable if the amount of the indebtedness does not exceed an amount which shall be determined by the superintendent.

7. (a) Every person who is directly or indirectly the beneficial owner of more than ten per centum of any class of any equity security of a bank or trust company or who is a director or officer thereof, shall file, within ten days following (i) the effective date of this section, or (ii) the date on which he becomes such beneficial owner, director or officer, whichever is later, a statement with the superintendent of the amount of all equity securities of such bank or trust company of which he is the beneficial owner, and within ten days after the close of each

calendar month thereafter, if there has been any change in such ownership during such month, shall file with the superintendent a statement indicating his ownership at the close of the calendar month and such changes in such ownership as have occurred during such calendar month.

(b) Any such beneficial owner, director or officer of a bank or trust company shall not be subject to the requirements of this section if

(1) he is required by section sixteen (a) of the securities exchange act of nineteen hundred thirty-four, as amended, to file with the board of governors of the federal reserve system in accordance with regulation f of such board or with the federal deposit insurance corporation in accordance with part three hundred thirty-five of title twelve of the regulations of such corporation, a statement as to his stock ownership and he files with the superintendent at his New York city office four copies of each such statement filed with such board or corporation, or

(2) he is such beneficial owner, director or officer of a bank or trust company, all of the voting securities of which, excepting only directors' qualifying shares, are owned, controlled or held with power to vote by a bank holding company as defined in section one hundred forty-one of this chapter or by a single corporation, or

(3) he is such beneficial owner, director or officer of a bank or trust company, all of the voting securities of which, excepting only directors' qualifying shares, are owned, controlled or held with power to vote by one or more banks organized under the laws of a foreign country, or

(4) he is such beneficial owner, director or officer of a trust company, all of the capital stock of which is owned by twenty or more savings banks chartered by the state of New York.

(c) The superintendent shall have power to adopt such regulations as the superintendent shall deem necessary or proper to implement the provisions of this section.

§ 131. Prohibitions against encroachments upon certain powers of banks and trust companies. 1. No person unauthorized by law shall subscribe to or become a member of, or be in any way interested in any association, institution or company formed or to be formed for the purpose of issuing

notes or other evidences of debt to be loaned or put in circulation as money; nor shall any such person subscribe to or become in any way interested in any bank or trust company or fund created or to be created for the like purposes or either of them. No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, making discounts, receiving for transmission or transmitting money in any manner whatsoever, or issuing notes or other evidences of debt to be loaned or put into circulation as money, except that a small business investment company as defined in and operating pursuant to the provisions of an act of congress entitled "Small Business Investment Act of 1958," may act as depository or fiscal agent of the United States when so designated by the secretary of the treasury without violating the provisions of this section, except that a corporation duly licensed by the superintendent under article thirteen-B of this chapter or therein expressly excepted from the application of said article may engage in the business of selling or issuing checks or the business of receiving money for transmission or transmitting the same and except that services of an agent or representative may be performed in connection with the obligations of issuers where each such marketable obligation has a face value of not less than one hundred thousand dollars. The discounting of bills, notes or evidences of debt by a corporation organized solely for the purpose of enabling producers of farm, dairy, horticultural or other agricultural products or cooperative corporations of such producers to avail themselves of the provisions of an act of congress approved March fourth, nineteen hundred and twenty-three, known as the agricultural credits act of nineteen hundred and twenty-three, same being subchapter three of chapter seven of title twelve of the code of laws of the United States as adopted by congress January third, nineteen hundred thirty-five, and amendments thereto, where such discounting is solely in connection with the rediscount of such bills, notes or evidences of debt under the provisions of said act of congress shall not be deemed or construed to be a form of banking, nor shall the making of such discounts be deemed to violate any provisions of law pertaining to banking. Except as otherwise provided in article twelve-D of this

chapter, engaging in the business of loaning money in this state on bonds, notes or other evidences of indebtedness, secured by deeds of trust or mortgages upon real property or personal property situated in, upon or appurtenant thereto, and/or purchasing of or otherwise acquiring existing bonds, notes or other evidences of indebtedness, deeds of trust or mortgages of or upon such properties, or any interest therein, and the holding of the same, or the endorsing, selling, assigning, transferring or disposing of the same to another corporation, by a domestic business corporation, or by a foreign corporation which is authorized to transact business in this state, shall not be deemed or construed to violate any of the provisions of this chapter. The purchase or other acquisition on original issue or subsequent transfer for less than the principal amount thereof or otherwise at a discount of any evidences of indebtedness or other obligations for the payment of money shall not by reason of such discount be or be deemed to be a violation of the provisions of this section.

2. No person, association of persons or corporation, unless expressly authorized by law, shall keep any office for the purpose of issuing any evidences of debt, to be loaned or put in circulation as money; nor shall they issue any bills or promissory notes or other evidences of debt for the purpose of loaning them or putting them in circulation as money, unless thereto specially authorized by law.

3. Except as otherwise provided in article five or article five-C of this chapter or subdivision four of this section, no corporation other than a trust company shall have or exercise in this state the power of receiving deposits of money, securities or other personal property from any person or corporation in trust, or have or exercise in this state any of the powers specified in section one hundred of this article, or have or maintain an office in this state for the transaction of, or transact, directly or indirectly, any such or similar business, except that a federal reserve bank may exercise the powers conferred by subdivision one of such section if authorized so to do by the laws of the United States and any domestic corporation legally exercising any of the powers conferred by such subdivision at the time this act takes effect may continue to exercise such powers, and a foreign banking

corporation or trust company incorporated under the laws of another state, which by the law of the state of its incorporation may act as trustee, guardian, executor, administrator, or in any other fiduciary capacity under any last will and testament or codicil thereto or other testamentary writing or under any deed of trust inter vivos or other written instrument establishing a trust, or by the appointment of any court of said state, may act in this state in any such fiduciary capacity, provided similar domestic corporations which have the power under the law of this state to act herein in any such fiduciary capacity, are permitted to act in like fiduciary capacity in the state where such foreign corporation has its domicile, provided that if such foreign corporation proposes to act in any fiduciary capacity in this state and to do so is required to file its qualification in the surrogate's court of this state, it shall file in the office of the clerk of the surrogate's court of the county in which application for such appointment is pending (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing such clerk and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against such fiduciary, affecting or relating to the state, trust or fund represented or held by such fiduciary or the acts of defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (b) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office; provided further that if such foreign corporation proposes to act in any other fiduciary capacity in the state, it shall file in the office of the superintendent (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the superintendent and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against such fiduciary affecting or relating to the estate, trust or fund held or represented by such fiduciary or the acts or defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, (b) a written certificate of designation, which may be changed from time

to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the superintendent, and (c) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office.

4. (a) Except as otherwise provided in article five or article five-C of this chapter, no foreign corporation, having authority to act in this state as trustee, guardian, executor, administrator, or in any other fiduciary capacity shall establish or maintain, directly or indirectly, any branch office or agency in this state.

(b) Notwithstanding any other provisions of this chapter, a bank or trust company incorporated under the laws of another state, which is authorized by its charter and by the laws of the state of its incorporation to exercise in such state any or all of the fiduciary powers that trust companies are authorized to exercise in this state pursuant to sections one hundred, one hundred-a, one hundred-b, one hundred-c and one hundred-d of this article, may establish and maintain a trust office in this state for purposes of exercising any or all of the fiduciary powers authorized by the laws of the state of its incorporation; provided, however, that (i) such trust office is not its principal office; (ii) such exercise does not exceed the powers authorized under sections one hundred, one hundred-a, one hundred-b, one hundred-c and one hundred-d of this article; and (iii) a bank or trust company organized under the laws of this state and authorized to exercise any or all fiduciary powers under sections one hundred, one hundred-a, one hundred-b, one hundred-c and one hundred-d of this article is permitted to establish a trust office and exercise substantially similar fiduciary powers on substantially the same basis as permitted an out-of-state state bank or trust company pursuant to this subdivision, in the state where such out-of-state state bank or trust company is so incorporated. A trust office established or maintained by such an out-of-state state bank or trust company pursuant to this subdivision shall not be considered to be a branch office pursuant to any other provisions of this chapter.

(c) An out-of-state state bank or trust company seeking to establish and maintain a trust office or open any additional trust offices in this

state shall file a notice with the superintendent in the form prescribed by the superintendent describing the proposed activities of the office and such other information as the superintendent shall request. The trust office may commence operation thirty days after the superintendent receives such notice, unless the superintendent notifies the out-of-state state bank or trust company in writing within such time period that such office may not commence operation or that additional information or time is required for the superintendent to consider such notice.

(d) Such out-of-state state bank or trust company may establish and maintain additional trust offices in this state pursuant to and consistent with the provisions of this subdivision, provided that the superintendent finds that the establishment and maintenance of any and all trust offices by such out-of-state state bank or trust company is and continues to be consistent with the goals set forth in the declaration of policy contained in section ten of this chapter. The superintendent shall have the power at any time in his or her discretion to examine any trust office established pursuant to this section to the same extent as is provided for in the case of banking organizations pursuant to the provisions of this chapter. If any such foreign corporation or out-of-state state bank or trust company violates this provision, such foreign corporation or out-of-state state bank or trust company shall not thereafter be appointed or act in any such fiduciary capacity in this state. The validity of any mortgage heretofore given by a foreign corporation to a trust company doing business within a foreign domicile of such mortgagor to secure the payment of an issue of bonds shall not be affected by any of the provisions of this section and such mortgage shall be enforceable in accordance with the laws of this state against property covered thereby within the state of New York.

5. Any out-of-state state bank or trust company subject to the provision of subdivision three or four of this section may be either in corporate form or organized as a limited liability company.

6. Every person, and every corporation, director, agent, officer or member thereof, who shall violate any provision of this section, directly or indirectly or assent to such violation, shall forfeit an

amount as determined pursuant to section forty-four of this chapter to the people of the state.

§ 132. Use of sign, or words, indicating bank or trust company by unauthorized persons prohibited.

No person, except a national bank, a federal reserve bank, or a corporation duly authorized by the superintendent to transact business in this state, shall make use of any office sign at the place where such business is transacted having thereon any artificial or corporate name, or other words indicating that such place or office is the place of business or office of a bank or trust company; nor shall any such person or persons make use of or circulate any letterheads, billheads, blank forms, notes, receipts, certificates, circulars, or any written or printed or partly written and partly printed paper whatever, having thereon any artificial or corporate name, or other word or words, indicating that such business is the business of a bank or trust company; provided, however, that nothing in this section shall be deemed to prevent a bank holding company from using any corporate name it is duly authorized to use under subdivision (b) of section three hundred two of the business corporation law.

§ 133. Use of banking institution name. 1. No person shall use the name of a banking institution when advertising, marketing or soliciting business which is likely to induce, directly or indirectly, the purchase of goods or services, if the reference to such institution is:

(a) without the consent of the banking institution; and

(b) which would cause a reasonable person to conclude that the advertising or marketing material or solicitation either originated from, or is endorsed by or is any other way the responsibility of a banking institution.

2. Nothing in this section shall prohibit the use of or reference to the name of a banking institution in advertising or marketing materials or solicitations, if the use or reference to such institution does not

deceive or confuse a reasonable person regarding whether the advertising or marketing material or solicitation (a) originated from, (b) is endorsed by or (c) is in any other way the responsibility of a banking institution.

3. The department is authorized to enforce the provisions of this section.

4. For purposes of this section, "banking institution" shall mean any state or federally chartered bank, trust company, savings bank, savings and loan association or credit union which has an office or branch in this state, or a private banker, safe deposit company or investment company.

§ 134. Repayment of deposits standing in the names of minors, trustees or joint depositors; repayment where adverse claim is asserted; interpleader in certain actions; effect of claims or advices originating in, and statutes, rules or regulations purporting to be in force in occupied territories. 1. Any minor may endorse a check payable to his order for the purpose of depositing the proceeds in a deposit in his name and when any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon to the person or upon the order by check or otherwise of the person in whose name the deposit shall stand, and the receipt, acquittance or order of payment of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the bank or trust company.

4. A bank or trust company need not recognize or give any effect to a claim of authority to order the payment or delivery of any funds or other property standing on its books to the credit of, or held by it for the account of, any person, corporation, unincorporated association or partnership, which claim conflicts with a claim of authority of which the bank or trust company had prior notice, unless the person or persons

asserting such subsequent claim shall procure a restraining order, injunction or other appropriate process against said bank or trust company from a court of competent jurisdiction in the United States, or, in lieu thereof, with the consent of said bank or trust company, shall execute to said bank or trust company, in form and with sureties acceptable to it, a bond, indemnifying it for any and all liability, loss, damage, costs and expenses for or on account of any payment or delivery of such property by it pursuant to such subsequent claim of authority or for or on account of the dishonor of any check or other order of any person or persons asserting the claim of authority of which such bank or trust company already had notice at the time the subsequent conflicting claim of authority is asserted by the person or persons furnishing such bond.

5. Notice to any bank or trust company of an adverse claim to any property, or to a deposit of cash or securities standing on its books to the credit of, or held for the account of, any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank or trust company from a court of competent jurisdiction in the United States in a cause therein instituted by him wherein the person to whose credit the deposit stands, or for whose account the property or deposit is held, or his executor or administrator is made a party and served with summons, or shall execute to said bank or trust company, in form and with sureties acceptable to it a bond, indemnifying said bank or trust company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of or delivery pursuant to such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company or for whose account the property or deposit is held by said bank or trust company.

6. (a) In all actions against any bank or trust company to recover for moneys on deposit therewith, if there be any person or persons not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such bank or trust company,

and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in any other interpleader provision.

(b) The funds on deposit which are the subject of such an action may remain with such bank or trust company to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such bank or trust company in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such bank or trust company shall be struck out as a party to the action, and its liability for such deposit shall cease.

(c) The costs in all actions against a bank or trust company to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

7. (a) A bank or trust company need not recognize or give any effect to (1) any claim to a deposit of cash, securities, or other property standing on its books to the credit of, or held by it for the account of, any corporation, firm or association in occupied territory or (2) any advice, statute, rule or regulation purporting to cancel or to give notice of the cancellation of the authority of any person at the time appearing on the books of such bank or trust company as authorized to withdraw or otherwise dispose of cash, securities, or other property of such corporation, firm or association, unless such bank or trust company is required so to do by appropriate process procured against it in a court of competent jurisdiction in the United States in a cause therein instituted by or in the name of such corporation, firm or association, or unless the person making such claim or giving such advice or invoking such statute, rule or regulation, as the case may be, shall execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying it from any and all liability, loss, damage, costs and expenses for and on account of recognizing or giving any effect to

such claim, advice, statute, rule or regulation.

(b) For the purposes of this subdivision (1) the term "occupied territory" shall mean territory occupied by a dominant authority asserting governmental, military or police powers of any kind in such territory, but not recognized by the United States as the de jure government of such territory, and (2) the term "corporation, firm or association in occupied territory" shall mean a corporation, firm or association which has, or at any time has had, a place of business in territory which has at any time been occupied territory.

(c) The foregoing provisions of this subdivision shall be effective only in cases where (1) such claim or advice purports or appears to have been sent from or is reasonably believed to have been sent pursuant to orders originating in, such occupied territory during the period of occupation, or (2) such statute, rule or regulation appears to have emanated from such dominant authority and purports to be or to have been in force in such occupied territory during the period of occupation.

(d) The foregoing provisions of this subdivision shall apply to claims, advices, statutes, rules or regulations made, given or invoked either prior to, or on or subsequent to the effective date of this act.

9. Deposits by custodian for a minor under part six of article seven of the estates, powers and trusts law. When any deposit of cash or securities shall be made by a person purporting to act as custodian for a minor under part six of article seven of the estates, powers and trusts law or under a similar law of another state, the deposit together with any interest or dividends credited thereon may be paid or delivered to or upon the order of such person, or his successor as custodian, or to a minor upon the minor's attaining either eighteen years or twenty-one years, as provided in accordance with part six of article seven of the estates, powers and trusts law, if no custodian is acting at the time of such payment or delivery, and any receipt or order of such person, successor or minor shall be valid and sufficient release and discharge of the depositary for any payment or delivery so made. No depositary dealing with a person purporting to act as a custodian for a minor under said article shall be bound to inquire into any facts bearing upon the designation of such person as such custodian or the propriety of or authority for any act of such person under said article

or otherwise or the age of the person designated as a minor. No depositary shall be liable for any act performed pursuant to the instruction or direction of any person purporting to act as custodian under said article unless the depositary has actual knowledge that such act, or the instruction or direction therefor, constitutes a breach of such person's obligations as such custodian, or unless the depositary performs such act with knowledge of such facts that acting pursuant to such instruction or direction amounts to bad faith.

§ 136. Change of national banking association into state bank by conversion or merger. 1. A national banking association may convert into or merge with a state bank under a state charter, provided that the action taken complies with federal law. Each such conversion or merger shall be subject to the requirements of this chapter.

2. In the case of each conversion, a written plan of conversion shall be submitted, in duplicate, to the superintendent. Such plan shall be in form satisfactory to the superintendent, shall prescribe the terms and conditions of the conversion and the mode of carrying it into effect and shall have annexed thereto and forming a part thereof an organization certificate of the state bank which is to result from the conversion. Such organization certificate shall be in the form prescribed by section four thousand one of this chapter with such variations, if any, as shall be satisfactory to the superintendent. With such plan of conversion there shall be submitted, in duplicate, to the superintendent a certificate of the president, secretary or cashier of the national banking association certifying that all steps have been taken which are necessary under federal law to the consummation of the conversion. The superintendent shall approve or disapprove such plan of conversion within ninety days of such submission thereof to him or her. If the superintendent shall approve such plan, he or she shall file one duplicate thereof, together with one duplicate of such certificate submitted therewith and the original of the approval of the superintendent, in the office of the superintendent, and the other duplicate of such plan, together with a duplicate of such certificate and a duplicate of the superintendent's approval, shall be filed in the

office of the clerk of the county in which the principal office of the state bank is to be located. Upon such filing in the office of the superintendent, the conversion shall become effective, unless a later date is specified in the plan, in which event the conversion shall become effective upon such later date, and the organization certificate attached to such plan shall thereafter be the organization certificate of the state bank for all purposes.

3. In the case of each merger, a written plan of merger shall be submitted, in duplicate, to the superintendent. Such plan shall be in form satisfactory to the superintendent and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the state bank, as receiving corporation, if such name is to be changed. Such plan may also name the persons who shall constitute the first board of directors of the state bank after the merger shall have been accomplished, provided that the number and qualifications of such persons shall be in accordance with the provisions of this chapter relating to the number and qualifications of directors of a state bank; or such plan may provide for a meeting of the stockholders to elect a board of directors within sixty days after such merger, and may make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the superintendent the following: (a) by the national banking association, a certificate of the president, secretary or cashier of such association certifying that all steps have been taken which are necessary under federal law to the consummation of the merger; (b) by the state bank, a certificate of the president, secretary or cashier certifying that such plan of merger has been approved by the board of directors of the state bank by a majority vote of all the members thereof, that such plan has been submitted to the stockholders of the state bank at a meeting thereof held upon notice of at least fifteen days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published at least once a week for two successive weeks in one newspaper in the county in which the state bank has its principal place of business, and that such plan of merger has been approved at such meeting by the vote of the stockholders owning at

least two-thirds in amount of the stock of the state bank, except that such certificate submitted by the state bank need not certify that such plan was submitted to or approved by vote of the stockholders of the state bank if (i) the total assets of the national banking association do not exceed ten per centum of the total assets of the state bank and (ii) the plan of merger does not change the name or the authorized shares of capital stock of the state bank or make or require any other change or amendment for which the approval or consent of stockholders of the state bank would be required under provisions of law other than this section.

4. As used in this section, the term "state bank" means a bank or trust company. For purposes of merger under this section the term "national banking association" means one or more national banking associations.

5. With the written plan of conversion submitted under subdivision two of this section, there shall be paid to the superintendent an investigation fee as prescribed pursuant to section eighteen-a of this chapter, and with the written plan of merger submitted under subdivision three of this section there shall be paid to the superintendent an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

§ 136-a. Purchase of assets of national banking association by bank or trust company. 1. A state bank or trust company may acquire, whether by purchase or otherwise, other than by merger, all or a substantial part of the assets of a national banking association, provided that the action taken complies with federal law.

2. In the case of each such acquisition, a written plan providing for the acquisition by the bank or trust company of the assets of the national banking association shall be submitted, in duplicate, by the bank or trust company to the superintendent. Such plan shall be in form satisfactory to the superintendent, shall specify the selling and the acquiring corporation, and shall prescribe the terms and conditions of

the acquisition and the mode of carrying it into effect.

At the time of submission for action by the superintendent of the written plan of acquisition of assets, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent.

3. With such plan of acquisition of assets there shall also be submitted, in duplicate, to the superintendent the following: (a) by the national banking association, a certificate of the president, secretary or cashier of such association certifying that all steps have been taken which are necessary under federal law to the sale of its assets; (b) by the bank or trust company, if the assets of the national banking association exceed ten per centum of the assets of the bank or trust company, a certificate of the president, secretary or cashier certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place, and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in the county in which the bank or trust company has its principal place of business and that such plan has been approved at such meeting by the vote of stockholders owning at least two-thirds in amount of the stock of such corporation.

4. Nothing contained in this section one hundred thirty-six-a shall be construed to prohibit any other purchase of assets which is otherwise permitted by applicable law.

§ 136-b. Approval of superintendent. The superintendent shall approve or disapprove of a proposed merger as authorized by section one hundred thirty-six of this article or a proposed acquisition of all or a substantial part of the assets of a national banking association as authorized by section one hundred thirty-six-a of this article, as the

case may be, within one hundred twenty days after the submission of the proposed plan thereof to him or her. In determining whether to so approve, the superintendent shall take into consideration (i) the declaration of policy contained in section ten of this chapter, (ii) whether the effect of such merger or acquisition shall be either to expand the size or extent of the resulting or acquiring institution beyond limits consistent with adequate and sound banking and the preservation thereof or result in a concentration of assets beyond limits consistent with effective competition, (iii) whether such merger or acquisition may result in such a lessening of competition as to be injurious to the interests of the public or tend toward monopoly and (iv) primarily, the public interest and the needs and convenience thereof. If the superintendent shall approve such proposed merger or acquisition, he or she shall file the plan, together with such certificates and the original of the approval of the superintendent, in the office of the superintendent, and, in the case of merger, a duplicate of the plan, together with a duplicate of each of such certificates and a duplicate of the superintendent's approval, shall be filed in the office of the clerk of the county in which the principal office of the receiving corporation is located. Upon such filing in the office of the superintendent, the merger or acquisition shall become effective, unless a later date is specified in the plan, in which event the merger or acquisition shall become effective upon such later date.

§ 136-c. Effect of merger or conversion of national banking association into state bank. 1. At the time when a merger or conversion under sections one hundred thirty-six and one hundred thirty-six-b of this chapter becomes effective.

(a) the resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers and duties, the resulting bank is a state bank;

(b) all of the property, rights, powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and be deemed to have assumed all of the debts, liabilities, obligations and duties of the national banking association and to have succeeded to all of its relationships,

fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the resulting state bank; provided, however, that the resulting state bank shall not, through such conversion or merger, acquire power to engage in any business or to exercise any right, privilege or franchise which is not conferred by the provisions of this chapter upon such resulting state bank;

(c) any reference to the national banking association in any contract, will or document, whether executed or taking effect before or after the conversion or merger, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will or document;

(d) a pending action or other judicial proceeding to which the national banking association is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion or merger, but may be prosecuted to final judgment, order or decree in the same manner as if the conversion or merger had not been made; or the resulting state bank may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against the national banking association if the conversion or merger had not occurred.

2. As used in this section, the term "state bank" means a bank or trust company.

§ 137. Change of state bank into national banking association by conversion, merger or consolidation. 1. A state bank may, by vote of the stockholders owning at least two-thirds in amount of its stock, convert into, or merge or consolidate with, a national banking association under the charter of a national banking association in the manner provided by federal law and without approval of any state authority.

2. The franchise of a state bank as a state bank shall automatically terminate when its conversion into or its merger or consolidation with a national banking association under a federal charter is consummated and

the resulting national banking association shall be considered the same business and corporate entity as the state bank, although as to rights, powers and duties the resulting bank is a national banking association.

3. At the time when such conversion, merger or consolidation becomes effective

(a) all of the property, rights, powers and franchises of the state bank shall vest in the national banking association and the national banking association shall be subject to and be deemed to have assumed all of the debts, liabilities, obligations and duties of the state bank and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the national banking association; provided, however, that nothing in this section shall be deemed to authorize the national banking association to maintain as its own office any office previously maintained by the state bank, and authority, if any, to maintain any such office shall be governed by applicable federal law;

(b) any reference to the state bank in any contract, will or document, whether executed or taking effect before or after the conversion, merger or consolidation, shall be considered a reference to the national banking association if not inconsistent with the other provisions of the contract, will or document;

(c) a pending action or other judicial proceeding to which the state bank is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion, merger or consolidation, but may be prosecuted to final judgment, order or decree in the same manner as if the conversion, merger or consolidation had not been made; or the national banking association may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against the state bank if the conversion, merger or consolidation had not occurred.

4. As used in this section, the term "state bank" means any bank, trust company or other banking organization engaged in the business of receiving deposits other than a mutual savings bank. For purposes of

merger or consolidation under this section the term "national banking association" means one or more national banking associations, and the term "state bank" means one or more state banks.

§ 138. Foreign branches; performance of contracts and repayment of deposits. 1. Notwithstanding section 1--301 of the uniform commercial code, any bank or trust company or national bank located in this state which in accordance with the provisions of this chapter or otherwise applicable law shall have opened and occupied a branch office or branch offices in any foreign country shall be liable for contracts to be performed at such branch office or offices and for deposits to be repaid at such branch office or offices to no greater extent than a bank, banking corporation or other organization or association for banking purposes organized and existing under the laws of such foreign country would be liable under its laws. The laws of such foreign country for the purpose of this section shall be deemed to include all acts, decrees, regulations and orders promulgated or enforced by a dominant authority asserting governmental, military or police power of any kind at the place where any such branch office is located, whether or not such dominant authority be recognized as a de facto or de jure government.

2. Notwithstanding section 1--301 of the uniform commercial code, if by action of any such dominant authority which is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in such foreign territory and carried as an asset of any branch office of such bank or trust company or national bank in such foreign territory is seized, destroyed or cancelled, then the liability of such bank or trust company or national bank for any deposit theretofore received and thereafter to be repaid by it, and for any contract theretofore made and thereafter to be performed by it, at any branch office in such foreign territory shall be reduced pro tanto by the proportion that the value (as shown by the books or other records of such bank or trust company or national bank at the time of such seizure, destruction or cancellation) of such assets bears to the aggregate of all the deposit and contract liabilities of the branch office or offices of such bank or trust

company or national bank in such foreign territory, as shown at such time by the books or other records of such bank or trust company or national bank.

2-a. Notwithstanding the provisions of any law to the contrary, a bank or trust company or national bank located in this state shall not be required to repay any deposit made at a foreign branch of any such bank if the branch cannot repay the deposit due to (i) an act of war, insurrection, or civil strife; or (ii) an action by a foreign government or instrumentality, whether de jure or de facto, in the country in which the branch is located preventing such repayment, unless such bank has expressly agreed in writing to repay the deposit under such circumstances. The superintendent of financial services may promulgate regulations necessary to effectuate the provisions of this subdivision, including regulations providing for adequate disclosure to retail depositors in the United States of the restrictions on repayment contained in this subdivision. The provisions of this subdivision shall not alter or diminish the liability of a custodian of assets of a fund under section one hundred seventy-eight-a of the retirement and social security law.

3. If any provision of this section, or the application of such provision to any bank, trust company or national bank, shall be held invalid, the remainder of this section, and the application of such section to banks, trust companies and national banks other than those to which it is held invalid, shall not be affected thereby.

§ 139. Saving clause. All banks which shall have been authorized by the superintendant to exercise fiduciary powers pursuant to this chapter, as from time to time in effect, shall be known as trust companies subject to the provisions of this article applicable to trust companies, but nothing contained in this chapter shall require any such bank to change its name to include the term "trust company". All trust companies organized under or subject to the provisions of this chapter, as from time to time in effect, shall be subject to all the provisions of this article applicable to trust companies. Notwithstanding any other

provision or law, a corporation formed under this article to acquire the banking business previously done by a partnership doing business pursuant to this chapter may have as its corporate name the name under which such partnership did business, with the addition of a word or words, indicating that it is a corporation.

§ 140-a. Stock option plans. Subject to such regulations and restrictions as may be prescribed by the superintendent, every bank and every trust company may grant options to purchase authorized and unissued shares of its capital stock to officers, directors and employees, for a consideration as authorized by section five thousand four of this chapter of not less than one hundred per cent of the fair market value of the shares on the date the option is granted, pursuant to the terms of a stock option plan which has previously been adopted by the board of directors of the bank or trust company and approved by the holders of a majority of the outstanding shares of capital stock of the bank or trust company and by the superintendent. Stock options issued hereunder shall not extend beyond a period of ten years from date of issuance.

ARTICLE III-A

BANK HOLDING COMPANIES; CONTROL OF BANKING INSTITUTIONS

Section 141. Definitions.
142. Limitations on, and regulation of, bank holding companies.
142-a. Limitation on acquisition of newly chartered banking institutions.
143. Limitations on directors, officers and employees.
143-a. Acquisitions by companies of all the capital stock of banks and trust companies; no change of ultimate control.
143-b. Acquisition by companies of control of banking institutions.
145. Penalties; restraining orders and injunctions.
146. Saving provision.

147. Separability of provisions.

§ 141. Definitions. 1. "Banking institution," when used in this article, means a bank, a trust company, a stock-form savings bank or a stock-form savings and loan association.

2. "Company," when used in this article, means any corporation, partnership, trust, unincorporated association, joint stock association or similar organization organized under the laws of the state of New York, or if not so organized, doing business in the state of New York, or any individual residing or doing business in the state of New York, or any combination of individuals which combination is residing or is doing business in the state of New York, any combination of the foregoing which combination is residing or is doing business in the state of New York, or any such individual and any of the foregoing acting in concert, but shall not include (a) any corporation the majority of the stock of which is owned by the United States or by any state unless the superintendent determines that it would be in the public interest to deem such a corporation to constitute a company, or (b) any corporation or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is the carrying on of propaganda, or otherwise attempting to influence legislation unless the superintendent determines that it would be in the public interest to deem such a corporation, community chest, fund, or foundation to constitute a company, or (c) any corporation or partnership owning or controlling stock acquired in connection with an underwriting of securities and which is held only for such period of time as will permit the sale thereof upon a reasonable basis.

3. "Bank holding company," when used in this article, means any company which (a) directly or indirectly, or through a subsidiary or subsidiaries, owns, controls, or holds with power to vote (i) ten per centum or more of the voting stock of a company which is or becomes a

bank holding company by virtue of this article, or (ii) ten per centum or more of the voting stock of a banking institution, or (b) controls in any manner the election of a majority of the directors of (i) a banking institution, or (ii) a company which is or becomes a bank holding company by virtue of this article, or (c) is a company, for the benefit of whose stockholders or members ten per centum or more of the voting stock of a banking institution or of a company which is or becomes a bank holding company by virtue of this article is held, directly or indirectly, by a trustee or trustees, or (d) through a combination of (i) ownership, control or holding, directly or indirectly, of voting stock and (ii) voting stock and held, directly or indirectly, by a trustee or trustees for the benefit of the members or stockholders of such company, if such voting stock is voting stock of one or more banking institutions or of one of more companies which are or become bank holding companies by virtue of this article, as the case may be, is a company which would be a bank holding company if the aggregate of such voting stock were either entirely owned, controlled or held, directly or indirectly, by such company or entirely held, directly or indirectly, by a trustee or trustees for the benefit of the members or stockholders of such company. Notwithstanding the foregoing, no company shall be a bank holding company by virtue of its ownership or control of either stock acquired in a fiduciary capacity, except where such stock is held for the benefit of the stockholders or members of such company; or voting rights of stock acquired in the court of a proxy solicitation by a company formed and operated for the sole purpose of participating in proxy solicitations by virtue of its control of voting rights of stock in any banking institution or bank holding company acquired in the course of such solicitations.

4. "Subsidiary," when used in this article, means (a) any company ten per centum or more of whose voting stock is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled, or held with power to vote, by a bank holding company; or (b) any company the election of a majority of whose directors is controlled in any manner by a bank holding company; or (c) any company ten per centum or more of whose voting stock is directly or indirectly owned, controlled, or held with power to vote, by a trustee or trustees for the benefit of the

stockholders or members of a bank holding company; or (d) any company at least ten per centum of the voting stock of which is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled or held with power to vote by a combination of a bank holding company and by a trustee or trustees for the benefit of the stockholders or members of such bank holding company. For purposes of this subdivision, voting stock shall not be deemed to include voting stock owned by the United States or by any company wholly owned by the United States. Any company having any of the relationships with a bank holding company described in clauses (a), (b), (c) or (d) of this subdivision shall be deemed to be a subsidiary of such bank holding company.

5. "Doing business," when used in this article, shall include the maintenance by a foreign company of a place of business in this state, or the conduct by a foreign company of operations in this state, or the acquisition, owning or holding by a foreign company of any stock or assets of any banking institution or any company which directly or indirectly owns, controls or holds with power to vote ten per centum or more of the voting stock of a banking institution.

6. "Banking subsidiary," when used in this article, means a subsidiary that is a banking institution, and a "non-banking subsidiary" means a subsidiary that is not a banking institution.

§ 142. Limitations on, and regulation of, bank holding companies. 1. It shall be unlawful for any person knowingly to borrow, directly or indirectly, any money or property for the purpose of enabling such person to pay for or to hold shares of stock of a bank holding company from any subsidiary of such bank holding company, unless such borrowing is made upon security having an ascertained market value of at least fifteen per centum more than the amount thereof. Any person knowingly violating the provisions of this subdivision shall, for each offense, forfeit to the people of the state twice the amount of such borrowing.

2. Except in conformity with such rules and regulations as may be promulgated by the superintendent, it shall be unlawful for any

executive officer or director of a bank holding company to borrow any sum of money from any subsidiary of such bank holding company. Every executive officer or director of such bank holding company violating the provisions of this subdivision shall, for each offense, forfeit to the people of the state twice the amount of such borrowing or borrowings.

§ 142-a. Limitation on acquisition of newly chartered banking institutions. 1. No bank holding company may acquire control of any banking institution which has been chartered for less than five years and has its principal office in a city or village with a population of fifty thousand or less if the principal office of a bank, trust company or national bank the principal office of which institution is located in this state and which institution is not a subsidiary of a bank holding company is located in such city or village; provided, however, such an acquisition may be consummated upon the obtaining of the appropriate supervisory approvals if: (a) application is pending for the institution being acquired to merge with or acquire the assets of another banking institution having its principal office in the same city or village and chartered for over five years, or if; (b) the superintendent finds that the banking institution being acquired was not chartered directly or indirectly by the acquiring bank holding company, its officers, directors or stockholders, and does not have the capacity to continue to conduct its business independently in a fashion consistent with the public interest and the interests of depositors, creditors, shareholders and stockholders.

2. As used in this section, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a banking institution, whether through the ownership of voting stock of such banking institution, the ownership of voting stock of any company which possesses such power or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock of any banking institution or of any company which owns, controls or holds with power to vote ten percent or more of the voting stock of such banking institution, but no person

shall be deemed to control a banking institution solely by reason of his being an officer or director of such banking institution or company. As used in this section, the terms "bank holding company" and "banking institution" shall have the meanings as defined in section one hundred forty-one of this article, except that the definition of "bank holding company" is modified to change the phrase "a banking institution" wherever it appears therein to "two or more banking institutions" and the definition of "banking institution" is modified to add a national banking association, the principal office of which is located in this state.

3. As used in this section, the term "village" shall mean either an incorporated or unincorporated village.

§ 143. Limitations on directors, officers and employees.

1. Every director of a bank holding company who is contingently obligated on any loan or other extension of credit made by a banking subsidiary of the bank holding company of which he is a member of the board of directors to any other individual, partnership, unincorporated association or corporation, shall file a statement of his financial condition with such bank holding company at least once in each year and at such other times as the superintendent may require. This subdivision two shall not apply with respect to directors whose obligations are secured by collateral having an ascertained market value of at least fifteen per centum more than the amount of such obligations.

2. (a) No executive officer of a bank holding company may be an executive officer or director of another bank holding company or of a bank or trust company, savings bank, or savings and loan association, or of a national bank, federal savings bank or federal savings association, the principal office of which is located in this state, or of a foreign banking corporation maintaining a branch in this state, unless permission therefor has been granted by the superintendent of financial services pursuant to the provisions of paragraph (b) of this subdivision, except that an executive officer of a bank holding company

may be (i) an executive officer and (ii) a director of one or more banking institutions or bank holding companies which are subsidiaries of such bank holding company.

(b) The superintendent shall have the power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer, and by regulation to grant permission to an executive officer of a bank holding company to be at the same time an executive officer, director or trustee or both an executive officer and a director or a trustee of another bank holding company or of a bank or trust company, savings bank, savings and loan association, national bank located in this state, federal savings and loan association located in this state or foreign banking corporation maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent shall have the power to revoke such permission whenever the superintendent finds, after a reasonable notice and an opportunity to be heard, that the public interest requires such revocation.

(c) For the purposes of this subdivision, the terms "subsidiary", "banking institution" and "bank holding company" shall each be given the same meaning as is contained in their respective definition in section one hundred forty-one of this article, except that the definition of the term "banking institution" is modified to include national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, and a foreign banking corporation maintaining a branch in this state.

(d) All other restrictions and limitations imposed by this chapter on executive officers and directors of bank holding companies shall continue in effect.

§ 143-a. Acquisitions by companies of all the capital stock of banks and trust companies; no change of ultimate control. 1. A company having capital stock or membership interests may acquire all the capital stock or membership interests of one or more corporations organized under or subject to the provisions of article three, six, or ten of this chapter,

provided that (a) such corporation or corporations are directly or indirectly controlled prior to such acquisition by the persons or entities that directly or indirectly control such company and (b) such persons or entities will continue to control such company thereafter. Such company and such corporation or corporations shall submit in duplicate to the superintendent a written plan of acquisition of such stock. Such plan shall be in form satisfactory to the superintendent, shall specify each corporation the stock of which is to be acquired by the company and shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect, including the manner of exchanging the shares of each of the corporations for shares or other securities of the company. Any such plan may provide for the payment of cash in lieu of the issuance of fractional shares of the company.

At the time of submission to the superintendent of the written plan of acquisition of stock, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent.

2. There shall be submitted, in duplicate, to the superintendent with the plan of acquisition of stock, a certificate of the president or secretary of the company, certifying that such plan has been approved by the board of directors or other governing body of his company by a majority vote of all the members thereof, and a certificate of the president, secretary or cashier of each corporation, the acquisition of all the capital stock of which is provided for, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in the county in which such corporation has its principal place of business and that such plan has been approved at such meeting by the vote of the stockholders owning at least two-thirds in amount of the stock of such corporation.

3. If no action to be taken pursuant to the plan of acquisition requires approval of the superintendent pursuant to section one hundred forty-three-b of this article, the superintendent shall approve or disapprove of a proposed plan of acquisition within one hundred twenty days after the submission of such plan of acquisition, and in determining whether or not to approve any such plan the superintendent shall take into consideration the declaration of policy contained in section ten of this chapter. If the superintendent shall approve such plan of acquisition, the superintendent shall file the plan, together with such certificates and the original of the approval of the superintendent in the office of the superintendent. Upon such filing in the office of the superintendent, the plan, and the acquisitions provided for therein, shall become effective, unless a later date is specified in the plan, in which event the plan and such acquisitions shall become effective upon such later date.

4. Any stockholder of any such corporation, entitled to vote on such plan of acquisition, who does not assent thereto shall, subject to and by complying with section six thousand twenty-two of this chapter, have the right to receive payment of the fair value of such stockholder's shares and the other rights and benefits provided by such section.

5. Notwithstanding the provisions of subdivisions one, two, three and four of this section, the superintendent of financial services, by general regulation, may establish particular procedures enabling the acquisition of all the capital stock of a stock-form savings bank or stock-form savings and loan association by a company having capital stock divided into shares, provided that such acquisition occurs as part of a transaction in which such savings bank or savings and loan association is converted from mutual to stock form.

6. Notwithstanding the provisions of subdivision three of section two-b of this chapter, when applying this section to limited liability trust companies, the term "capital stock" shall mean the equity interest of a member as set forth in the company's articles of organization or, in the absence of such a provision, the equity interest represented by a

member's right to a proportionate share of the profits of the company.

§ 143-b. Acquisition by companies of control of banking institutions. 1. It shall be unlawful except with the prior approval of the superintendent for any company to acquire control of any banking institution, directly or indirectly, provided, however, that the provisions of this section shall not apply to a company which has submitted to the superintendent a plan of acquisition pursuant to section one hundred forty-three-a of this article for an acquisition not involving a change of control of the banking institution. As used in this section, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a banking institution, whether through the ownership of voting stock of such banking institution, the ownership of voting stock of any company which possesses such power or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock of any banking institution or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock of such banking institution, but no person shall be deemed to control a banking institution solely by reason of his or her being an officer or director of such banking institution or company. The superintendent may in the superintendent's discretion, upon the application of a banking institution or any company which, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such banking institution, determine whether or not the ownership, control or holding of such voting stock would constitute control of such banking institution for purposes of this section.

2. A company desiring to acquire control of a banking institution may file application therefor, in writing, with the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination

required by subdivision three of this section.

3. Upon receipt of such application, the superintendent shall post notice of the receipt thereof upon the bulletin board of the department of financial services. The superintendent shall by order grant or deny the application and shall state the reasons for such grant or denial. An order shall be issued within one hundred twenty days after the date of the submission of the application to the superintendent and a copy thereof shall be posted upon the bulletin board of the department of financial services. In determining whether or not to approve any such application, the superintendent shall take into consideration (i) the declaration of policy contained in section ten of the chapter, (ii) whether the effect of such action shall be consistent with adequate or sound banking and the preservation thereof, or result in a consolidation of assets beyond limits consistent with effective competition, (iii) whether such acquisition of control may result in such a lessening of competition as to be injurious to the interest of the public or tend toward monopoly, and (iv) primarily, the public interest and the needs and convenience thereof.

4. A company does not control a banking institution by virtue of its ownership or control of: (a) stock acquired by a company in good faith in a fiduciary capacity, except where such stock is held for the benefit of stockholders or members of such company; (b) voting rights of stock acquired in the course of a proxy solicitation by a company formed for the sole purpose of participating in proxy solicitations by virtue of its control of voting rights of stock acquired in the course of such solicitation; (c) stock acquired by a company in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis; (d) stock acquired by a company in settlement or reduction of a loan, or advance of credit, or in exchange for an investment previously made in good faith and in the ordinary course of business, provided that any stock so acquired shall be disposed of within a period of two years from the date upon which it was acquired unless the superintendent shall, in writing, authorize such banking institution to hold such stock for a longer period; or (e) stock dividends, stock splits, or additional stock

acquired by a bank holding company, or by any subsidiary thereof, in exercise of its preemptive right as a stockholder.

5. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe in writing, the provisions of subdivisions one, two and three of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of a company which has control of a banking institution. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivision three of this section shall be applicable to an application made under this section by a legal representative.

The term "legal representative," for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

If any provision of this section, or the application of such provision to any individual, company, corporation or circumstance, shall be held invalid, the remainder of this section, and the application thereof to anyone other than one to which it is held invalid, shall not be affected thereby.

§ 145. Penalties; restraining orders and injunctions. 1. Any company which wilfully violates any provision of this article is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars for each day during which such violation continues.

2. Any individual who wilfully participates in a violation of any provision of this article is guilty of a misdemeanor and upon conviction thereof shall be fined not more than ten thousand dollars or shall be imprisoned not more than one year, or both.

3. If any action violates or would violate any of the provisions of this article, the superintendent or his duly authorized agent may apply to the supreme court of this state for the enforcement of this article; and such court shall have jurisdiction to enforce obedience thereto, to order divestment of stock illegally acquired, held or voted, by injunction or by other process, mandatory or otherwise, and to restrain violation of this article.

§ 146. Saving provision. Nothing herein contained shall be interpreted or construed as approving any act, action or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding, pending or hereafter instituted on account of any act, action, or conduct prohibited by law.

§ 147. Separability of provisions. If any provision of this article, or the application of such provision to any individual, company or circumstance, shall be held invalid, the remainder of the article, and the application of such provision to individuals, companies or circumstances other than those to which it is held invalid, shall not be affected thereby.

ARTICLE 3-B

SUBSIDIARY TRUST COMPANIES

Section 150. Definitions.
151. Organization of subsidiary trust companies.
152. Business of subsidiary trust companies; limitation on powers.
153. Offices.
154. Transfer of fiduciary relationships from affiliated banks or trust companies to subsidiary trust companies.
155. Applicable laws and regulations.

§ 150. Definitions. 1. "Subsidiary trust company", when used in this article, means a trust company which is subject to the provisions of this article.

2. "Bank holding company" and "subsidiary", when used in this article, shall each have the same meaning specified in section one hundred forty-one of this chapter.

3. "Owning bank holding company", when used in this article with respect to a subsidiary trust company, means the bank holding company which owns all of the outstanding voting stock of such subsidiary trust company.

4. When used in this article, an "affiliated bank" or "affiliated trust company" of a subsidiary trust company means any bank, trust company, savings bank, savings and loan association, national bank, federal savings bank, federal savings association, or out-of-state state bank (as such term is defined in section two hundred twenty-two of this chapter), or such other banking institution as the superintendent of financial services may permit specifically or by general rule or regulation, which is a subsidiary of the bank holding company which owns such subsidiary trust company.

5. "Trust office", when used in this article with respect to a subsidiary trust company, means an office of the subsidiary trust company maintained for the purpose of conducting its business.

6. "Trust officer", when used in this article with respect to a trust company which is not a subsidiary trust company, means an office maintained solely for the purpose of conducting business relating to the exercise of its fiduciary powers.

§ 151. Organization of subsidiary trust companies. A subsidiary trust company shall be organized in accordance with the provisions of this chapter relating to the organization of trust companies. All of the

outstanding voting stock of a subsidiary trust company shall be owned by a bank holding company.

§ 152. Business of subsidiary trust companies; limitation on powers. A subsidiary trust company shall have all of the powers of and be entitled to engage in the business of a trust company, provided that a subsidiary trust company shall not have the power to accept deposits.

§ 153. Offices. Notwithstanding the provisions of sections twenty-nine and one hundred five of this chapter, (a) a subsidiary trust company may open and occupy a trust office, including its principal office, at any one or more locations in the state of New York at which the owning bank holding company, any affiliated bank, or any affiliated trust company has a banking office, and (b) an affiliated trust company may open and occupy a trust office at the location in the state at which such subsidiary trust company has its principal office. A subsidiary trust company or an affiliated trust company, as the case may be, which proposes to open and occupy a trust office pursuant to this section shall make written application to the superintendent for leave to do so in the manner provided in section twenty-nine of this chapter with respect to branch offices and shall pay the investigation fee specified therein.

§ 154. Transfer of fiduciary relationships from affiliated banks or trust companies to subsidiary trust companies. 1. (a) At any time or times after the issuance to it by the superintendent of the authorization certificate specified in article two of this chapter, a subsidiary trust company may apply by verified petition to the supreme court, special term, in and for the county in which its principal office is located requesting that it be substituted for each of its affiliated banks or trust companies specified in the petition (i) in every existing fiduciary capacity designated therein and (ii) in the case of the first such petition, in every fiduciary capacity which may take effect after the date of the hearing provided for below. Each such specified

affiliated bank or trust company shall join in such petition. Notice of the filing of such petition shall be given prior to the filing thereof to the superintendent.

(b) Such petition shall indicate the county wherein the principal office of each affiliated bank or trust company joining in the petition is located and shall designate each fiduciary relationship existing at the date thereof with respect to which such subsidiary trust company requests substitution. Such petition shall additionally set forth, with regard to each existing fiduciary relationship designated therein, the name and address last known to the petitioner of each person entitled to receive notice of hearing thereon, to wit:

(i) in the case where an affiliated bank or trust company specified in the petition is acting with one or more cofiduciaries in respect to such fiduciary relationship, each such cofiduciary; and

(ii) in the case where the instrument creating such fiduciary relationship so provides, each person who, alone or together with others, is empowered to revoke, terminate or amend such instrument or to remove the corporate fiduciary; and

(iii) in the case of any fiduciary relationship not specified in subparagraph (ii) of this paragraph, each beneficiary currently receiving income and any other beneficiary interested in the income and any person presumptively entitled to share in distributions of principal were such fiduciary relationship terminated at the date of such petition; and

(iv) in the case of any fiduciary relationship, including those specified in subparagraphs (i), (ii) and (iii) of this paragraph, which is an estate of a deceased person or which is a guardianship or conservatorship, the clerk of the court in which such estate, guardianship or conservatorship matter is pending, together with a statement that a notice has been, or is being, given to the persons specified in such subparagraphs. If any of the persons specified in subparagraph (i), (ii) or (iii) of this paragraph is an infant or an incompetent, such notice shall be given to the guardian or committee, as the case may be, of his property. If any such infant, or incompetent shall not have a guardian or committee to so represent him, or if any of the persons specified in subparagraph (i), (ii) or (iii) of this paragraph is incapacitated, unknown (or a person whose whereabouts are

unknown) or confined as a prisoner in a penal institution, the court may, in its discretion, appoint one or more guardians ad litem to represent any one or more of such persons.

2. When any petition described in subdivision one of this section shall have been filed, the supreme court for the county where filed shall enter an order fixing a date and time for hearing thereon, which date shall not be less than thirty-five days after the filing of the petition, and approving the form of notice to be given by the petitioner as hereinafter provided. At least twenty-five days prior to the hearing date, the petitioner shall cause a copy of such notice to be mailed by first class mail to each person identified in the petition as being entitled to receive notice under the provisions of this article, at such person's address last known to the petitioner as set forth in the petition. In addition, the petitioner shall cause a copy of such notice to be published at least once a week for three successive weeks preceding the hearing date, the first such publication to be at least twenty-five days prior to the hearing date, such publication to be in a newspaper of general circulation published in each county in which the principal office of an affiliated bank or trust company specified in the petition is located, or if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county.

3. The notice to be mailed and published with respect to each such petition shall state (a) the time and place of the hearing thereon, (b) the name of the subsidiary trust company which has filed the petition, (c) the name of each affiliated bank or trust company which has joined in such petition, (d) that the petition requests that the subsidiary trust company be substituted for each of its affiliated banks or trust companies specified in the petition in every existing fiduciary capacity designated therein and, if appropriate, in every fiduciary capacity which may take effect after such hearing, and (e) that any person to whom such notice is addressed may file an objection as provided in, and in accordance with, subdivision four of this section. All costs incurred in connection with the printing, mailing and publishing of such notice shall be borne by the petitioner.

4. Any person entitled to receive notice under the provisions of this article may, as to the fiduciary relationship by which he is affected, object to the substitution of the subsidiary trust company as fiduciary. Any such person wishing to so object must file a written objection to such substitution, setting forth the reasons therefor, with the clerk of the court in which the hearing is to be held, and serve a copy thereof upon the attorney for the petitioner, at least three days before the date of hearing and must appear at such hearing in person or by attorney.

5. On the date fixed for the hearing on such petition, upon making a determination that notice has been properly given as required by this section, the said supreme court shall enter an order substituting the subsidiary trust company for each of its specified affiliated banks or trust companies in every designated existing fiduciary capacity and, in the case of the first petition by the petitioner, in every fiduciary capacity which may take effect thereafter, excepting fiduciary capacities in any existing relationship with respect to which an objection has been filed pursuant to and in accordance with subdivision four of this section; provided, that in the case of a fiduciary relationship where more than one person would be entitled under this article to object to substitution of the subsidiary trust company, the properly made objection by less than all of such persons shall be considered by the court which shall, in its sole discretion, determine whether such substitution shall be so ordered. In the case of a fiduciary relationship in which an objection has been properly made by any person who is entitled pursuant to this article to object to such substitution, the court may, in its discretion, determine that the resignation of the affiliated bank or trust company will be accepted in respect of such fiduciary relationship; if the court shall determine that such resignation will be accepted, it shall enter an order substituting a different banking institution or subsidiary trust company, which shall have given its written consent to such substitution prior to the entry of such order. In construing the language of any instrument which is the subject of a proceeding pursuant to this article, nothing contained herein shall be considered to abrogate or affect the intent or written language of the instrument creating the

fiduciary relationship. Upon entry of the court's order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity.

6. In respect of each fiduciary capacity, existing and future, as to which substitution has been ordered pursuant to this article, each designation of a petitioning affiliated bank or trust company as fiduciary in any capacity contained in any contract, will or other document or instrument shall be deemed a designation of the subsidiary trust company substituted for such bank or trust company pursuant to this section. Any grant in any such contract, will or other document or instrument of any rights, powers, duties or authorities, whether or not discretionary, shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

7. Upon substitution pursuant to this section, each affiliated bank or trust company shall deliver to the subsidiary trust company all assets held by such trust company as fiduciary (except assets held in capacities with respect to which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance. A trust company shall account, in respect of each of its existing fiduciary relationships designated in the petition and as to which a substitution has been ordered under this section, for that portion of the accounting period in which such substitution was ordered ending on the date of such order; thereafter the subsidiary trust company which has been substituted as fiduciary for such bank or trust company shall account in respect of each such fiduciary relationship. Notwithstanding any provision in this chapter to the contrary, after a substitution of existing fiduciary capacities pursuant to this article, an affiliated bank or trust company shall remain jointly liable with the subsidiary trust company which has been substituted for it in respect of each of the existing fiduciary relationships as to which such substitution has been ordered, but such affiliated bank or trust company shall be entitled to a right of subrogation against such subsidiary trust company for all amounts paid by such affiliated bank or trust company as a result of such joint

liability.

§ 155. Applicable laws and regulations. To the extent not inconsistent with provisions of this article, a subsidiary trust company shall be subject to the laws of the state of New York generally applicable to trust companies. Nothing in this article shall be deemed to affect in any way the powers of the superintendent of financial services to adopt, alter or amend rules and regulations with respect to trust companies, provided that no such rule or regulation shall be applicable to a subsidiary trust company to the extent it is inconsistent with, or purports to limit the powers or rights of a subsidiary trust company expressly granted by, the provisions of this article.

ARTICLE IV.
PRIVATE BANKERS.

Section 160. Verified certificate.
161. Authorization certificate.
162. Permanent capital; increase or decrease.
163. Restrictions as to place of business.
164. Change of location.
165. Segregation of investments; title to be taken in descriptive name.
166. Depositors preferred in case of failure or suspension.
167. Reserves against deposits.
168. Restrictions on acceptance of deposits and payment of interest.
171. Repayment of deposits standing in the names of minors, trustees or joint depositors; repayment where adverse claim is asserted; interpleader in certain actions; effect of claims or advices originating in, and statutes, rules or regulations purporting to be inforce in occupied territory.
172. Restrictions on investments.
173. Rate of interest; effect of usury.
174. Restrictions on purchases of, and loans on real estate.

175. Books and records.
176. Reports required by superintendent; penalty for failure to make.
177. Official communications from superintendent.
178. Business of deceased private banker; continuation; liquidation.
179. Effect of revocation of authorization certificate.
180. Prohibitions against encroachment upon certain powers of private bankers, savings banks and savings and loan associations.
181. Exemptions of certain private bankers.

§ 160. Verified certificate. Any individual or partnership desiring to engage in business as a private banker shall submit to the superintendent a verified certificate in duplicate which shall state:

1. The full name, residence and post office address of such individual or of each member of such partnership.

2. The state or country of which each individual named in such certificate is a citizen.

3. The amount of permanent capital such individual or partnership will invest in his business as a private banker which shall be not less than one million dollars.

4. The place where his office is to be located.

§ 161. Authorization certificate. If the superintendent shall issue an authorization certificate as provided in article two of this chapter, such individual or partnership may engage in the business of banking including receiving deposits subject to check or for repayment upon the presentation of a pass book, certificate of deposit or other evidence of debt, or upon the request of the depositor, or in the discretion of such individual, or partnership; receiving money for transmission;

discounting or negotiating promissory notes, drafts, bills of exchange or other evidences of debt; and buying or selling exchange, coin or bullion at the location specified in such authorization certificate, subject to all the restrictions and limitations contained in this chapter. In conducting such business a private banker may make use of the words "bank," "banker" or "banking" or their equivalent or any derivative or compound thereof.

§ 162. Permanent capital; increase or decrease. Every private banker shall keep unimpaired in his banking business the amount of permanent capital specified in his verified certificate. From time to time, with the written approval of the superintendent and upon good cause shown, such permanent capital may be increased or decreased.

§ 163. Restrictions as to place of business. The office of a private banker shall not be located in the same room with, or in a room connecting with, any bank, trust company, savings bank, or national bank.

§ 164. Change of location. Any private banker may make a written application to the superintendent to change the location of his office to another place in the same city or village. The application shall state the reason for such proposed change and shall be verified by such private banker, or if such private banker is a partnership, by a majority of the members thereof, and shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter. Such change may be made upon the written approval of the superintendent.

§ 165. Segregation of investments; title to be taken in descriptive name. 1. Every private banker shall segregate and keep separate and apart from all other property and assets of the individual or partnership all securities and property, and the evidences of title

thereto, in which funds held by him as a private banker and the surplus used by him in his private banking business have been invested. The phrase "funds held by him as a private banker" shall for the purpose of this chapter mean such private banker's permanent capital and moneys received by him on deposit.

2. All conveyances, deeds, mortgages, assignments, contracts and agreements received, taken, or entered into by any private banker, in connection with his banking business, shall be received, taken, or entered into in the firm name if such private banker is a partnership or in the name of such private banker with the addition of the descriptive name "private banker" if such private banker is not a partnership.

§ 166. Depositors preferred in case of failure or suspension. In case of the failure or suspension of any private banker, the claims of persons for money on deposit or delivered for transmission shall be preferred against such assets as shall be shown by the books of such private banker, or by other legal evidence, to have been derived from the investment of such moneys, or from the investment of permanent capital, such claimants shall also share pro rata with other creditors in any other assets of such individual or of such partnership and of the individual members thereof.

§ 167. Reserves against deposits. Every private banker shall maintain total reserves against his deposits of the same amount and kind and on hand or on deposit to the same extent as is at the time required by or pursuant to the provisions of this chapter of a bank doing business in the same place.

If any private banker shall fail to maintain the reserves required by this section, he shall be liable for and shall pay any assessments levied by the superintendent as provided in article two of this chapter.

§ 168. Restrictions on acceptance of deposits and payment of interest.

No private banker shall:

(1) Accept any amount for deposit if after the acceptance of such amount the average amount of the deposits received from all depositors during the twelve month period ending upon the day upon which such deposit is tendered, or during such period, if less than twelve months, that such private banker has been engaged in business, would be less than one thousand dollars. The term "deposit" as used in this paragraph shall mean coin or currency of the United States or of any foreign country, and checks, drafts and other funds credited by such private banker to the account of any one depositor on any one day, but shall not include dividend checks, coupons, or other similar items collected by such private banker for the account of a depositor, or remittances made by a depositor for the purpose of repaying, in whole or in part, any existing indebtedness due to such private banker, or interest credited by such private banker to the account of a depositor, or amounts delivered for transmission; or

(2) Pay or credit interest, or pay, credit or give any bonus or gratuity or thing of value, on any deposit balance, if the average of the daily credit balances in such deposit account during the period for which interest is paid or credited is less than seven thousand five hundred dollars.

§ 171. Repayment of deposits standing in the names of minors, trustees or joint depositors; repayment where adverse claim is asserted; interpleader in certain actions; effect of claims or advices originating in, and statutes, rules or regulations purporting to be in force in occupied territory. 1. When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the private banker.

4. A private banker need not recognize or give any effect to a claim

of authority to order the payment or delivery of any funds or other property standing on his books to the credit of, or held by him for the account of, any person, corporation, unincorporated association or partnership, which claim conflicts with a claim of authority of which the private banker had prior notice, unless the person or persons asserting such subsequent claim shall procure a restraining order, injunction or other appropriate process against said private banker from a court of competent jurisdiction in the United States, or, in lieu thereof, with the consent of said private banker, shall execute to said private banker, in form and with sureties acceptable to him, a bond, indemnifying him for any and all liability, loss, damage, costs and expenses for or on account of any payment or delivery of such property by him pursuant to such subsequent claim of authority or for or on account of the dishonor of any check or other order of any person or persons asserting the claim of authority of which such private banker already had notice at the time the subsequent conflicting claim of authority is asserted by the person or persons furnishing such bond.

5. Notice to any private banker of an adverse claim to any property, or to a deposit of cash or securities standing on his books to the credit of, or held for the account of, any person shall not be effectual to cause said private banker to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said private banker from a court of competent jurisdiction in the United States in a cause therein instituted by him wherein the person to whose credit the deposit stands, or for whose account the property or deposit is held, or his executor or administrator is made a party and served with summons, or shall execute to said private banker, in form and with sureties acceptable to him a bond, indemnifying said private banker from any and all liability, loss, damage, costs and expenses, for and on account of the payment of or delivery pursuant to such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands, or for whose account the property or deposit is held, on the books of said private banker.

6. (a) In all actions against any private banker to recover for moneys

on deposit therewith, if there be any person or persons, not parties to the action who claim the same fund, the court in which the action is pending, may, on the petition of such private banker, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in any other interpleader provision.

(b) The funds on deposit which are the subject of such an action may remain with such private banker to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such private banker in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such private banker shall be struck out as a party to the action, and its liability for such deposit shall cease.

(c) The costs in all actions against a private banker to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

7. (a) A private banker need not recognize or give any effect to (1) any claim to a deposit of cash, securities, or other property standing on his books to the credit of, or held by him for the account of, any corporation, firm or association in occupied territory, or (2) any advice, statute, rule or regulation purporting to cancel or to give notice of the cancellation of the authority of any person at the time appearing on the books of such private banker as authorized to withdraw or otherwise dispose of cash, securities, or other property of such corporation, firm or association, unless such private banker is required so to do by appropriate process procured against him in a court of competent jurisdiction in the United States in a cause therein instituted by or in the name of such corporation, firm or association, or unless the person making such claim or giving such advice or invoking such statute, rule or regulation, as the case may be, shall execute to

such private banker, in form and with sureties acceptable to him, a bond indemnifying him from any and all liability, loss, damage, costs and expenses for and on account of recognizing or giving any effect to such claim, advice, statute, rule or regulation.

(b) For the purposes of this subdivision (1) the term "occupied territory" shall mean territory occupied by a dominant authority asserting governmental, military or police powers of any kind in such territory, but not recognized by the United States as the de jure government of such territory, and (2) the term "corporation, firm or association in occupied territory" shall mean a corporation, firm or association which has, or at any time has had, a place of business in territory which has at any time been occupied territory.

(c) The foregoing provisions of this subdivision shall be effective only in cases where (1) such claim or advice purports or appears to have been sent from, or is reasonably believed to have been sent pursuant to orders originating in, such occupied territory during the period of occupation, or (2) such statute, rule or regulation appears to have emanated from such dominant authority and purports to be or to have been in force in such occupied territory during the period of occupation.

(d) The foregoing provisions of this subdivision shall apply to claims, advices, statutes, rules or regulations made, given or invoked either prior to, or on or subsequent to the effective date of this act.

§ 172. Restrictions on investments. 1. Every private banker may, subject to the limitations and restrictions contained in this article, make such investments of funds held by him as a private banker in real or personal securities, or personal property, as are consistent with safety and prudence of management.

2. No private banker shall appropriate to his own use or lend to any person with whom he is associated as a partner, or invest in any business conducted by a partnership of which he is a member, any funds held by him as a private banker.

3. No private banker shall, after June thirtieth, nineteen hundred thirty-eight, make with funds held by him as a private banker any loan

to, or investment in the capital stock of, any corporation of which fifty per centum of the capital stock is owned or controlled directly or indirectly, or as a result of any such investment would be so owned or controlled by such private banker, as a private banker and as an individual, or if such private banker is a partnership, by such partnership and the individual members thereof, if as a result thereof the total amount of outstanding loans and investments so made after such date will exceed ten per centum of his permanent capital with respect to any one such corporation, or will exceed twenty-five per centum of his permanent capital with respect to all such corporations.

§ 173. Rate of interest; effect of usury. 1. No private banker shall take, receive, reserve or charge on any loan or discount made, or upon any note, bill of exchange or other evidence of debt, interest as computed pursuant to this section, at a rate greater than the rate prescribed by the superintendent of financial services pursuant to section fourteen-a of this chapter, or, if no rate has been so prescribed, six per centum per annum, or two dollars if the interest so computed is less than that amount. Such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run. The knowingly taking, receiving, reserving or charging a greater rate of interest shall be held and adjudged a forfeiture of the entire interest which the note, bill of exchange or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid, the person paying the same or his legal representatives may recover twice the entire amount of the interest thus paid from the private banker. The purchase, discount or sale of a bona fide bill of exchange, note or other evidence of debt payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight draft, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered interest for the purpose of any law regulating the maximum rate of interest which may be charged, taken or received.

Anything contained in this subdivision to the contrary

notwithstanding, the charging of interest or discount on a loan or discount at an office of a private banker located outside of the states of the United States of America and the District of Columbia at a rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession or other political subdivision where such office is located, or the acquisition by a private banker of a part interest or the entire interest in any loan or discount heretofore or hereafter made by a bank or trust company or any other banking institution at an office located outside of the states of the United States of America and the District of Columbia, shall not be a violation of this section.

1-a. Anything contained in this section to the contrary notwithstanding, any private banker, in purchasing or otherwise acquiring, any note or other evidence of debt, which has arisen out of the sale of personal property or the performance of services on credit and which is repayable in instalments from the payee or holder thereof, may take, receive, reserve or charge an amount not exceeding twelve per centum per annum, computed pursuant to this section on unpaid principal balances, or the sum of ten dollars, whichever is the greater; provided, however, that nothing contained in this subdivision shall authorize a private banker to take, receive, reserve or charge upon the purchase or other acquisition of any two or more notes or other evidences of debt, arising out of the same transaction, an amount greater than such private banker would be entitled to take, receive, reserve or charge if all of such obligations constituted a single obligation. In the event that the private banker insures, under a group insurance policy, the life of the person primarily liable on any such obligation, or in the event that the private banker requires insurance on personal property securing any such obligation, the actual cost of such insurance may be added to the amount which such private banker may take, receive, reserve or charge upon the purchase or other acquisition of such obligation. This subdivision shall not be in derogation of any powers, rights or privileges possessed by any private banker prior to the effective date this subdivision.

2. Upon advances of money repayable on demand to an amount not less than five thousand dollars made upon warehouse receipts, bills of

lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments, pledged as collateral security for such repayment, a private banker may receive or contract to receive and collect as compensation for making such advances any sum which may be agreed upon by the parties to such transaction.

3. Upon an advance of money, whether or not repayable on demand, to an amount not less than five thousand dollars, made upon documents of title within article seven of the uniform commercial code or negotiable instruments within article three or article eight of the uniform commercial code pledged as collateral security for such repayment, any private banker may receive or contract to receive and collect as compensation for making such advance any sum which may be agreed upon by the parties to such transaction; provided that such advance is (a) to or for any partner of a firm which is a member firm of a national securities exchange registered with the securities and exchange commission as a national securities exchange under the federal securities exchange act of 1934, as amended, to enable such partner to make a contribution of capital to such firm or to purchase stock of an affiliated corporation of such firm, provided that such partner is actively engaged in the business of such firm and devotes the major portion of his time thereto, or (b) to or for any person who is or will become a holder of stock of a corporation which is a member corporation of such a national securities exchange to enable such person to purchase stock of such corporation or to purchase stock of an affiliated corporation of such corporation, provided that such person is actively engaged in the business of such corporation and devotes the major portion of his time thereto.

§ 174. Restrictions on purchases of, and loans on real estate. 1. No private banker shall purchase with funds held by him as private banker any real estate except a plot upon which there is or may be erected a building suitable for the convenient transaction of his business; nor make a loan of such funds upon the security of real estate, if such real estate is unimproved, in excess of two-thirds, and if such real estate is improved by a building or buildings or is to be improved by a

building or buildings in the process of construction, the major portion of which building or buildings is used, or in the case of a building under construction is to be used, for residential, business, manufacturing or agricultural purposes, in excess of three-fourths, of the appraised value of such real estate, or in an amount which when added to the amount unpaid upon prior mortgages, liens and encumbrances upon such real estate exceeds the foregoing respective proportions of such appraised value, or if such real estate is subject to a prior mortgage, lien or encumbrance and the amount unpaid upon such prior mortgage, lien or encumbrance or the aggregate amount unpaid upon all prior mortgages, liens and encumbrances exceeds ten per centum of the permanent capital of such private banker.

2. All real estate acquired by a private banker in satisfaction or reduction of loans of funds held by him as a private banker, shall be sold within five years from the date of its acquisition, unless the superintendent upon application shall extend the time within which such sale shall be made.

§ 175. Books and records. 1. Every private banker shall keep separate and complete books of account in which shall be promptly entered the details of all business transacted by him as a private banker including statements in detail of the liabilities incurred by him as a private banker and of the securities or property in which funds held by him as a private banker have been invested.

2. Every private banker shall conform his or her methods of keeping his or her books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to article two of this chapter. Any private banker who refuses or neglects to obey any such order shall be subject to a penalty of an amount as determined pursuant to section forty-four of this chapter for each day that such refusal or neglect continues.

3. Every private banker shall preserve all his records of final entry, including cards used under the card system and deposit tickets, for a

period of at least six years from the date of making the same or from the date of the last entry thereon; provided, however, that preservation of photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section.

§ 176. Reports required by superintendent; penalty for failure to make. Within fifteen days after service upon any private banker of the notice provided for by section thirty-seven of this chapter, he shall make a written report to the superintendent of the financial condition of his business as a private banker, which report shall be in such form and shall contain such information as the superintendent of financial services may prescribe. Such report shall be published by such private banker in such manner as the superintendent of financial services may prescribe in a newspaper published in the place where the office of such private banker is located or if no newspaper is published there, in a newspaper of general circulation in such place.

Every private banker shall also make such other special reports to the superintendent as he may from time to time require in such form and on such dates as may be prescribed by the superintendent, which reports shall if required by the superintendent be verified in such form as he may prescribe.

If any private banker shall fail to make any report required by this section on or before the date designated for the making thereof or shall fail to include therein any prescribed matter, such private banker shall forfeit to the people of the state an amount as determined pursuant to section forty-four-a of this chapter for every day that such report shall be delayed or withheld and for every day that he or she shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent, as provided in article two of this chapter.

§ 177. Official communications from superintendent. Every official communication, as defined in article two of this chapter, directed to

any private banker, shall, if such private banker is a partnership, be submitted by the person receiving it to the members thereof present at their next meeting and duly noted on the records of such private banker.

§ 178. Business of deceased private banker; continuation; liquidation. In case of the death of an individual engaged in the business of a private banker, his executor, administrator or other legal representative, and in case of the death of a member of a partnership so engaged, the surviving members of the partnership, may continue such business for a period of six months from the date of such death if such continuation is necessary, in order to bring about the liquidation of such business. If the liquidation shall not have been accomplished within such period of six months, the superintendent may extend the time for a further period not to exceed one year or may, at his option, take over such private banking business and complete the liquidation, but the provisions of this chapter shall be applicable to the business of such deceased private banker while the business is being continued pursuant to the provisions of this section. Nothing herein contained shall prevent the surviving partner or partners of or a successor to a deceased private banker from applying for and receiving, if otherwise entitled thereto, an authorization certificate to engage in business as a private banker.

§ 179. Effect of revocation of authorization certificate. Whenever the superintendent shall have revoked the authorization certificate of any private banker, and shall have taken the action to make such revocation effective specified in article two of this chapter, all the rights and privileges resulting from such authorization, shall forthwith cease and determine.

§ 180. Prohibitions against encroachment upon certain powers of private bankers, savings banks and savings and loan associations. Except as authorized by this chapter, no individual, either for himself or as trustee, and no partnership or unincorporated association shall:

(1) Engage in the business of receiving deposits;

(2) Make use of the words "bank," "banker" or "banking" or any derivative or compound of any such words or any word or words in a foreign language having the same or similar meanings in any sign, advertisement, circular, letterhead or in other written or printed matter, in such manner as might indicate that such individual, partnership or unincorporated association is authorized to engage in business as a bank or private banker;

(3) As principal, agent or trustee engage in the business of receiving payments of money in installments, for cooperative, mutual loan, savings or investment purposes in sums of less than five hundred dollars each under a declaration of trust or otherwise;

(4) Personally or by the publication or circulation of advertisements solicit such payment of money to any unauthorized individual, trustee, partnership or unincorporated association or the execution of a declaration of trust to or a contract with, any unauthorized individual, trustee, partnership or unincorporated association, under which such payments will become due and payable;

(5) Engage in or conduct a business similar to the business of a savings bank or of a savings and loan association, or promise to make loans at any time, either fixed or uncertain, upon real estate security for building, home-owning, savings or investment purposes as an inducement for the payment of sums of money in installments of less than five hundred dollars each to any unauthorized person, trustee, partnership or unincorporated association;

(6) Engage in the business of transmitting money or receiving money for transmission in any manner whatsoever; provided, however, that nothing contained in this paragraph shall apply to an individual, partnership or unincorporated association licensed pursuant to the provisions of article thirteen-B of this chapter.

Any person who shall violate any provision of this section shall be guilty of a misdemeanor.

§ 181. Exemptions of certain private bankers. 1. Every individual and partnership conducting the business of a private banker on June

thirtieth, nineteen hundred thirty-eight, pursuant to an authorization certificate issued by the superintendent may thereafter continue to conduct such business under the authority of such existing authorization certificate.

2. Nothing in this article shall be construed to render unlawful the continued ownership or holding by a private banker of any investments, loans, or other real or personal property lawfully acquired prior to June thirtieth, nineteen hundred thirty-eight.

ARTICLE IV-A
PUBLIC ACCOMMODATION OFFICES OF BANKS, TRUST COMPANIES, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS AND FOREIGN BANKING CORPORATIONS

Section 190. Application of article; definition.
191. Public accommodation offices authorized.
192. Location of public accommodation office.
193. Limitation upon business which may be transacted at public accommodation office.
194. Public accommodation office not deemed branch office.
195. Rules, regulations and orders.

§ 190. Application of article; definition. This article shall apply to banks, trust companies, savings banks, savings and loan associations and foreign banking corporations licensed, pursuant to section twenty-six of this chapter, to maintain a branch in the state, as those terms are defined, respectively, in subdivisions one, two, four and eight of section two, and subdivision five of section two hundred of this chapter. As used in this article, the term "banking institution" shall mean and include banks, trust companies, savings banks, savings and loan associations and foreign banking corporations licensed, pursuant to section twenty-six of this chapter, to maintain a branch in the state, as so defined.

§ 191. Public accommodation offices authorized. A banking institution may apply for the approval of the superintendent to establish, maintain and operate not more than one public accommodation office as an adjunct to its principal office, and not more than one public accommodation office as an adjunct to each branch office now occupied by it or hereafter lawfully opened and occupied by it, provided, however, that no public accommodation office may be established as an adjunct to any electronic facility established pursuant to section one hundred five-a, two hundred forty-a or three hundred ninety-six-a of this chapter.

§ 192. Location of public accommodation office. 1. Each public accommodation office established pursuant to this article shall be located in the same city, town or village in which the banking institution maintains the office of which such public accommodation office is an adjunct and within one thousand feet from the principal office or branch office of the banking institution of which it is an adjunct.

2. For the purposes of this article, distances shall be measured along a straight line drawn between the wall of the principal office or branch office of a banking institution and the nearest wall of the public accommodation office.

§ 193. Limitation upon business which may be transacted at public accommodation office. No business other than that actually and necessarily involved in connection with the performance of one or more of the functions enumerated in this section shall be transacted at any public accommodation office:

(a) the receipt of deposits of money, currency, checks and other similar items;

(b) the payment of withdrawals;

(c) the cashing of checks, drafts and other similar items;

(d) the receipt of moneys due to the banking institution;

(e) the issuance of cashier's checks, treasurer's checks, money orders and other similar items; and

(f) the disbursement of funds pursuant to an existing loan agreement or extension of credit which provides for advances to or for the account of the borrower, by means of honoring one or more checks or other written orders or by use of a credit card or other similar arrangement.

Nothing contained in this section shall be construed to authorize the performance of any function or the rendition of any service in any public accommodation office which such banking institution is not otherwise authorized to engage in by other provisions of this chapter or other law.

§ 194. Public accommodation office not deemed branch office. A public accommodation office shall not be deemed a branch office as that term is used in this chapter and shall not be subject to any other provision of this chapter specifically relating to the establishment of branch offices. Each public accommodation office shall be deemed to be an integral part of the banking institution or branch office of which it is an adjunct, and all business transacted at such public accommodation office shall be deemed to be transacted at the office of which it is an adjunct.

§ 195. Rules, regulations and orders. The superintendent shall have power to adopt, amend and enforce such rules, regulations and orders as the superintendent may deem necessary to enable the superintendent to administer and carry out the provisions of this article and to prevent evasions thereof.

ARTICLE V

FOREIGN BANKING CORPORATIONS AND NATIONAL BANKS

Section 200. When foreign banking corporation may transact business in this state.
200-a. Actions maintained by a foreign banking corporation.
200-b. Actions maintained against foreign banking corporation; residents; foreign corporations, foreign banking

corporations as non-residents.
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201. Conditions to be complied with by foreign banking corporations applying for initial license.
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202-a. Restrictions on receiving deposits.
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202-g. Succession to agency by branch and to branch by agency.
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202-i. Safe deposit business of branches.
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203. Change of location, name or business.
204. Reports of foreign banking corporations; penalties.
204-a. Payment of claims by foreign banking corporations where adverse claim is asserted; effect of claims or advices originating in, and statutes, rules or regulations purporting to be in force in occupied territory; performance of contracts and repayment of deposits performable or repayable at foreign offices of foreign banking corporations.
206. Termination of existence.
207. Service of process on unlicensed corporation formed under laws other than the statutes of this state.

208. Nondiscriminatory treatment of insured state banks and national banks.
209. Restrictions on executive officers of foreign banking corporations and national banks.

§ 200. When foreign banking corporation may transact business in this state. No foreign banking corporation, other than a bank organized under the laws of the United States, shall transact in this state the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making loans, or of receiving deposits, or of exercising the fiduciary powers specified in section two hundred one-b of this chapter, or transacting any part of such business, or maintaining in this state its initial agency or branch for carrying on such business, or any part thereof, unless such corporation shall have:

1. Been authorized by its charter to carry on such business and shall have complied with the laws of the state or country under which it is incorporated;

2. Furnished to the superintendent such proof as to the nature and character of its business and as to its financial condition as he may require;

3. Filed in the office of the superintendent (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the superintendent and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its New York agency or agencies or branch or branches, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state and (b) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent or

other person to whom such process shall be forwarded by the superintendent;

4. Received a license duly issued to it by the superintendent as provided in article two of this chapter and, in the case of a foreign banking corporation desiring to exercise the fiduciary powers specified in section two hundred one-b of this chapter, or any part thereof, received a certificate of authorization duly issued to it by the superintendent as provided in such section two hundred one-b.

This section shall not be construed to prohibit foreign banking corporations which do not maintain an office in this state for the transaction of business from (1) making loans in this state secured by mortgages on real property, nor from contracting in this state with a banking institution engaged in the business of banking under the laws of this state to acquire from or through such banking institution a part interest or the entire interest in a loan or evidence of debt which such banking institution has heretofore or hereafter made, purchased or acquired, for its own account or otherwise, together with a like interest in any security and any security instrument proposed to be given or heretofore or hereafter given to secure or evidence such loan or evidence of debt; (2) enforcing in this state obligations heretofore or hereafter acquired by it in the transaction of business outside of this state, or in the transaction of any business authorized by this section; (3) acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting or conveying property in this state heretofore or hereafter assigned, transferred, mortgaged or conveyed to it as security for, or in whole or part satisfaction of a loan or loans made by it or obligations acquired by it in the transaction of business outside of this state, or in the transaction of any business authorized by this section.

If any foreign banking corporation has opened and occupied an agency or branch in this state pursuant to the provisions of this chapter, it may, unless otherwise advised by the superintendent, open and occupy an additional agency or branch, as the case may be, without having to apply for the approval of the superintendent, provided that it gives the

superintendent notice of at least thirty days (or such shorter period as the superintendent in individual cases may approve) before opening and occupying any such additional office.

§ 200-a. Actions maintained by a foreign banking corporation.

In maintaining an action or special proceeding in this state, a foreign banking corporation shall maintain such action or proceeding in like manner and subject to the same limitations as are applicable in the case of an action or special proceeding maintained by a domestic banking organization, except as otherwise prescribed by statute.

§ 200-b. Actions maintained against foreign banking corporation; residents; foreign corporations, foreign banking corporations as non-residents.

1. An action or special proceeding against a foreign banking corporation may be maintained by a resident of this state for any cause of action. For purposes of this subdivision one, the term "resident of this state" shall include any corporation formed under any law of this state.

2. Except as otherwise provided in this chapter, an action or special proceeding against a foreign banking corporation may be maintained by another foreign corporation or foreign banking corporation or by a non-resident in the following cases only:

(a) where the action is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract;

(b) where the subject matter of the litigation is situated within this state;

(c) where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state;

(d) where the action or special proceeding is based on a liability for acts done within this state by a foreign banking corporation;

(e) where the defendant is a foreign banking corporation doing business in this state.

3. The limitations contained in subdivision two do not apply to a corporation formed and existing under the laws of the United States and which maintains an office in this state.

§ 200-c. Maintenance of books, accounts and records. Every foreign banking corporation licensed pursuant to this chapter to maintain one or more branches, agencies or representative offices in this state shall maintain or make available at any such branch, agency or representative office appropriate books, accounts and records reflecting (i) all transactions effected by or on behalf of the branch, agency or representative office and (ii) all actions taken in this state by employees of the foreign banking corporation located in this state to effect transactions on behalf of any office of such foreign banking corporation located outside this state.

§ 201. Conditions to be complied with by foreign banking corporations applying for initial license. Every foreign banking corporation before being licensed by the superintendent to transact in this state the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making loans, or receiving deposits, and before being authorized by the superintendent to exercise the fiduciary powers specified in section two hundred one-b of this chapter, or any part of such business, or before maintaining in this state its initial agency or branch for carrying on such business or any part thereof, shall subscribe and acknowledge and submit to the superintendent at his office, an application certificate in duplicate, which shall specifically state:

1. The name of such foreign banking corporation.

2. The place where its business is to be transacted in this state; and if such business is to be conducted through an agency in this state, the name of the agent or agents through whom such business is to be transacted; and if such business is to be transacted in this state by a branch of said foreign banking corporation, the name of the person who shall be in charge of the business and affairs of such branch.

3. The amount of its capital actually paid in cash and the amount subscribed for and unpaid.

4. The actual value of the assets of such corporation, which must be at least one million dollars in excess of its liabilities; and a complete and detailed statement of its financial condition as of a date prior to the date of such application as the superintendent in his discretion may determine.

At the time such application certificate is submitted to the superintendent, such corporation shall also submit a duly exemplified or otherwise authenticated copy of its charter and a verified or otherwise authenticated copy of its by-laws, or an equivalent thereof satisfactory to the superintendent, and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to be collected by the superintendent.

§ 201-a. Rights and privileges of foreign banking corporation under license; effect of revocation. 1. When the superintendent shall have issued a license as provided in section twenty-six of this chapter to any such foreign banking corporation, it may engage in the business specified in sections two hundred and two hundred one of this article either as an agency or as a branch at the location specified in such license for a period not exceeding one year from the date of such license or, if such license so provides, until such license is surrendered or revoked. A license issued for a period not exceeding one year may, upon the approval of the superintendent, be renewed as provided in section twenty-six of this chapter. No such license shall be

transferable or assignable. Every such license shall be at all times conspicuously displayed in the place of business specified therein. In the event that such license shall have been revoked by the superintendent, as provided in article two of this chapter, it shall be surrendered to the superintendent within twenty-four hours after such corporation has received written notice of such revocation.

2. Whenever the superintendent shall have revoked any such license and shall have taken the action to make such revocation effective specified in article two of this chapter, all the rights and privileges of such foreign banking corporation to transact the business thus licensed shall forthwith cease and determine.

§ 201-b. Fiduciary powers of foreign banking corporations. Every foreign banking corporation licensed pursuant to article two of this chapter to maintain one or more branches or agencies in this state, and holding an authorization certificate issued pursuant to this section may, subject to such further limitations and restrictions as the superintendent may prescribe, exercise the powers described in sections one hundred, one hundred-a, one hundred-b and one hundred-c of this chapter to the same extent, and subject to the same requirements and restrictions and effect as apply in the case of trust companies in the exercise of such powers.

The superintendent shall, within sixty days of the receipt by him of a request for such authorization, issue to a foreign banking corporation licensed pursuant to article two of this chapter to maintain one or more branches or agencies in this state, a certificate of authorization to exercise the fiduciary powers referred to in this section at all or at any one or more of its authorized branches or agencies, if he shall be satisfied that such powers will be exercised in accordance with the requirements of this chapter. The superintendent may, after giving notice of the contemplated action and reasonable opportunity to be heard, revoke any such certificate of authorization if he shall find that a foreign banking corporation so authorized has failed to conform to any requirement of this chapter relating to the conduct of such

business. Such revocation may apply to one or more of the authorized branches or agencies of a foreign banking corporation.

§ 201-c. Notice of acquisition of control or merger. 1. A foreign banking corporation licensed pursuant to article two of this chapter to maintain a branch or agency in this state shall file with the superintendent a notice, in such form and containing such information as the superintendent may prescribe, no later than fourteen calendar days after such foreign banking corporation becomes aware of any acquisition of control of such corporation or merges with another foreign banking corporation.

2. Control, for purposes of this section, means any person or entity, or group of persons or entities acting in concert, directly or indirectly, owning, controlling or holding with power to vote, twenty-five percent or more of any class of voting stock of such foreign banking corporation, or having the ability in any manner to elect a majority of the directors of such foreign banking corporation, or otherwise exercising a controlling influence over the management and policies of such foreign banking corporation as defined by the superintendent by regulation.

§ 202. Rates of interest; installment obligations; personal loan departments; effect of usury. Branches and agencies of foreign banking corporations licensed to do business in this state may make loans and offer extensions of credit to the same extent and subject to the same conditions as banks and trust companies may make loans and extend credit pursuant to the provisions of subdivisions four-a and five of section one hundred three of this chapter and section one hundred eight of this chapter. Without limiting the foregoing, a foreign banking corporation licensed pursuant to article two of this chapter to maintain one or more branches or agencies in this state, may, in pursuance of its otherwise lawful powers under this chapter, take, receive, reserve or charge on any loan or discount made, or upon any note, bill of exchange or other evidence of debt, negotiable or otherwise, interest at such rate and

such other charges and fees as a bank or trust company shall be permitted to charge under the provisions of the laws of this state or the laws of the United States, with respect to the same class or classes of loans or transactions to which such rate or such charges and fees shall be applicable.

§ 202-a. Restrictions on receiving deposits. 1. A foreign banking corporation licensed pursuant to article two of this chapter to maintain one or more agencies in this state shall not engage in the business of receiving deposits in this state; provided (a) that such foreign banking corporation may maintain for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers; and (b) that the superintendent of financial services is authorized to adopt regulations that permit a foreign banking corporation, licensed pursuant to article two of this chapter to maintain one or more agencies in this state, to issue to a corporation, partnership, trust, unincorporated association, joint stock association or similar association obligations each in a principal amount of not less than one hundred thousand dollars; and (c) that such foreign banking corporation may accept deposits other than from citizens or residents of the United States as the superintendent shall define by regulation.

2. A foreign banking corporation organized under the laws of a foreign country may be licensed pursuant to article two of this chapter to maintain a branch or branches in this state and may engage in the business of receiving deposits in this state.

3. The superintendent of financial services shall have power to prescribe, by specific or general regulation, to the extent to which and the conditions upon which, the deposits and credit balances in agencies and branches in this state of foreign banking corporations may be established, maintained and paid out.

§ 202-b. Maintenance of assets in this state. * 1. Upon opening a branch or agency and thereafter, a foreign banking corporation licensed

pursuant to article two of this chapter shall keep on deposit, in accordance with such rules and regulations as the superintendent shall adopt shall from time to time, with such banks or trust companies or private bankers or national banks in the state of New York as such foreign banking corporation may designate and the superintendent may approve, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits, or obligations of the International Bank for Reconstruction and Development, or obligations issued by the Inter-American Development Bank, or obligations of the Asian Development Bank, or obligations issued by the African Development Bank, or obligations issued by the International Finance Corporation, or bonds, notes, debentures, or other obligations issued by or guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac) or by the Federal National Mortgage Corporation (Fannie Mae), or bonds, notes, debentures, or other obligations issued by or guaranteed by the Student Loan Marketing Association (SALLIE MAE) or all bonds, notes, debentures, or other obligations issued by or guaranteed by a federal home loan bank, or bonds, notes, debentures or other obligations of any unaffiliated issuer provided that, at the time of such investment, the obligation has received the highest rating of an independent rating service designated by the superintendent or, if the obligation is rated by more than one such service, the highest rating of at least two such services, or such other assets as the superintendent shall by rule or regulation permit, to an aggregate amount to be determined by the superintendent, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, and subject to such limitations as the superintendent shall prescribe; provided, however, that the superintendent may determine, in the superintendent's discretion, that any such bonds, notes, debentures or other obligations of a particular issuer are not acceptable for purposes of meeting the requirements of this subdivision. The superintendent may from time to time require that the assets deposited pursuant to this subdivision may be maintained by the foreign banking corporation at such amount, in such form and subject to such conditions

as he or she shall deem necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the business of such branch or branches or such agency or agencies. The superintendent may give credit to reserves required to be maintained with a federal reserve bank in or outside the state of New York pursuant to federal law, subject to such rules and regulations as the superintendent may from time to time promulgate. So long as it shall continue business in the ordinary course, such foreign banking corporation shall be permitted to collect interest on the securities so deposited and from time to time exchange, examine and compare such securities.

* NB Effective until notification of the superintendent of financial services

* 1. Upon opening a branch or agency and thereafter, a foreign banking corporation licensed pursuant to article two of this chapter shall keep on deposit, in accordance with such rules and regulations as the superintendent shall from time to time promulgate, with such banks or trust companies or private bankers or national banks in the state of New York as such foreign banking corporation may designate and the superintendent may approve, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits, or obligations of the International Bank for Reconstruction and Development, or obligations issued by the Inter-American Development Bank, or obligations of the Asian Development Bank, or obligations issued by the African Development Bank, or obligations issued by the International Finance Corporation, or bonds, notes, debentures, or other obligations issued by or guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac) or by the Federal National Mortgage Corporation (Fannie Mae), or bonds, notes, debentures, or other obligations issued by or guaranteed by the Student Loan Marketing Association (SALLIE MAE) or all bonds, notes, debentures, or other obligations issued by or guaranteed by a federal home loan bank, or bonds, notes, debentures or other obligations of any unaffiliated issuer that meet the standards of creditworthiness established by regulation by

the superintendent, or such other assets as the superintendent shall by rule or regulation permit, to an aggregate amount to be determined by the superintendent, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, and subject to such limitations as he or she shall prescribe; provided, however, that the superintendent may determine, in his or her discretion, that any such bonds, notes, debentures or other obligations of a particular issuer are not acceptable for purposes of meeting the requirements of this subdivision. The superintendent may from time to time require that the assets deposited pursuant to this subdivision may be maintained by the foreign banking corporation at such amount, in such form and subject to such conditions as he or she shall deem necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the business of such branch or branches or such agency or agencies. The superintendent may give credit to reserves required to be maintained with a federal reserve bank in or outside the state of New York pursuant to federal law, subject to such rules and regulations as the superintendent may from time to time promulgate. So long as it shall continue business in the ordinary course, such foreign banking corporation shall be permitted to collect interest on the securities so deposited and from time to time exchange, examine and compare such securities.

* NB Effective upon notification of the superintendent of financial services

2. Each foreign banking corporation shall hold in this state currency, bonds, notes, debentures, drafts, bills of exchange or other evidences of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the prior approval of the superintendent, in funds freely convertible into United States funds, or such other assets as the superintendent shall by rule or regulation permit, in an amount which shall bear such relationship as the superintendent shall by regulation prescribe to liabilities of such foreign banking corporation appearing in the books, accounts or records of its agency, agencies, branch or branches in this state as liabilities of such agency,

agencies, branch or branches, including acceptances and such other liabilities (including contingent liabilities) as the superintendent shall determine, but excluding amounts due and other liabilities to other offices, agencies or branches of, and affiliates of, such foreign banking corporation. As used in this subdivision, (i) "affiliate" shall mean any person or entity, or group of persons or entities acting in concert, that controls, is controlled by or is under common control with such foreign banking corporation and (ii) "control" means any person, or group of persons acting in concert, directly or indirectly, owning, controlling or holding with power to vote, more than fifty percent of the voting stock of a company, or having the ability in any manner to elect a majority of the directors of a company, or otherwise exercising a controlling influence over the management and policies of a company as defined by the superintendent by regulation. For purposes of this subdivision, the term "person" shall mean a corporation, unincorporated association, partnership, or any other entity or individual. For the purposes of this subdivision, the superintendent shall value marketable securities at principal amount or market value, whichever is lower, shall have the right to determine the value of any non-marketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness, including loan participation agreements or certificates, or of any other asset or obligation held by or owed to the foreign banking corporation or its agency, agencies, branch or branches within the state, and in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, shall have the power to exclude in whole or in part any particular asset. If, by reason of the existence or the potential occurrence of unusual and extraordinary circumstances, the superintendent deems it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest, and to maintain public confidence in the business of the agency, agencies, branch or branches of a foreign banking corporation, the superintendent may, subject to such terms and conditions as the superintendent may prescribe, require such foreign banking corporation to deposit the assets required to be held in this state pursuant to this subdivision two with such banks or trust companies or private bankers or national banks located in this state, as the superintendent may designate.

3. In the event that any of the deposits received within the state by a foreign banking corporation are insured by the Federal Deposit Insurance Corporation, the superintendent shall specify what reasonable percentage of deposit liabilities may be excluded in determining the aggregate amount of liabilities of such foreign banking corporation for deposits received within the state for purposes of subdivision two of this section by reason of the fact that all or a part of such deposit liabilities are insured by the Federal Deposit Insurance Corporation.

§ 202-c. Reserves against deposits. Each such foreign banking corporation which is authorized to maintain a branch or branches in this state shall maintain such reserves against the deposits of such branch or branches as may be required from time to time by the laws of this state to be maintained by banks and trust companies. Such reserves shall be maintained, subject to call, as provided by sections thirty-three and one hundred seven of this chapter; provided, however, that any such foreign banking corporation which maintains reserves with a federal reserve bank pursuant to federal law shall be exempt from the preceding provisions of this section so long as it shall comply with the requirements of such law with reference to reserves, and provided further that the superintendent of financial services may determine that it is necessary or appropriate to require such a foreign banking corporation to maintain additional reserves against the deposits of its branch or branches in this state, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such branches and banks organized under the laws of this state. As to any such additional reserves which are required to be maintained pursuant to this section, to the extent permitted by the superintendent, amounts carried on the books of any such branch or branches as credits to the account of another office or branch or wholly owned (except for a nominal number of directors' shares) subsidiary of such foreign banking corporation shall not be deemed to be deposits.

§ 202-d. Foreign banking corporation may not maintain both agencies and branches in this state. No foreign banking corporation licensed to maintain one or more agencies in this state shall be licensed to maintain a branch in this state except upon termination of the operation of such agency or agencies; and no foreign banking corporation licensed to maintain one or more branches in this state shall be licensed to maintain an agency in this state except upon termination of the operation of such branch or branches.

§ 202-f. Restrictions on loans, purchases of securities and total liabilities of any one person to New York branch or agency of foreign bank. Before opening a branch or agency in this state, and annually thereafter so long as a branch or agency is maintained in this state, a foreign banking corporation, licensed pursuant to article two of this chapter, shall certify to the superintendent the amount of its paid-in capital stock, its surplus fund and its undivided profits, each expressed in the currency of the country of its incorporation, the dollar equivalent of which amount, as determined by the superintendent, shall be deemed to be the amount of its capital stock, surplus fund and undivided profits. Loans, purchases and discounts of notes, bills of exchange, bonds, debentures and other obligations, and extensions of credit and acceptances by a branch or agency of a foreign banking corporation within this state shall be subject to the same limitations as to amount in relation to capital stock, surplus fund, and undivided profits as are applicable to banks and trust companies pursuant to article three of this chapter, provided, however, that with the prior approval of the superintendent of financial services, the capital notes and capital debentures of such foreign banking corporation may be treated as capital stock in computing such limitations.

§ 202-g. Succession to agency by branch and to branch by agency. Notwithstanding any other provision of this chapter, the superintendent may, subject to such regulations as he may adopt, authorize the conversion of a foreign banking corporation agency to a branch or the conversion of a foreign banking corporation branch to an agency.

When a foreign banking corporation shall be licensed to conduct in this state a branch in lieu of an agency theretofore conducted by it or to conduct an agency in this state in lieu of a branch theretofore conducted by it, the preceding form of organization shall, with the approval of the superintendent, be converted into the succeeding form of organization of such foreign banking corporation and all of the liabilities of such foreign banking corporation previously payable at the office where such preceding form of organization shall have been conducted shall thereafter be payable at the office of the successor form of organization.

In the event that the successor form of organization shall succeed to assets in which it would not have had legal power to invest in its successor form, or, in the event the successor form of organization shall succeed to liabilities which the successor form of organization would not have had power to incur, it shall liquidate such assets or liabilities within the next succeeding twelve calendar months unless the superintendent shall, in his discretion, extend such period of time in the interest of the orderly conduct of such branch or agency.

§ 202-h. Repayment of deposits standing in the names of minors, trustees, joint depositors or custodians; interpleader in certain actions. 1. Any minor may endorse a check payable to his order for the purpose of depositing the proceeds in a deposit in his name with a branch in this state of a foreign banking corporation and when any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon to the person or upon the order by check or otherwise of the person in whose name the deposit shall stand, and the receipt, acquittance or order of payment of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the foreign banking corporation.

4. (a) In all actions against any foreign banking corporation to

recover for moneys on deposit with a branch thereof in this state, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such foreign banking corporation, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of any other interpleader provision.

(b) The funds on deposit which are the subject of such an action may remain with such foreign banking corporation to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such foreign banking corporation in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such foreign banking corporation shall be struck out as a party to the action, and its liability for such deposit shall cease.

(c) The costs in all actions against a foreign banking corporation to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

5. Deposits by custodian for a minor under part six of article seven of the estates, powers and trusts law. When any deposit of cash or securities shall be made with a branch in this state of a foreign banking corporation by a person purporting to act as custodian for a minor under part six of article seven of the estates, powers and trusts law or under a similar law of another state, the deposit together with any interest or dividends credited thereon may be paid or delivered to or upon the order of such person, or his successor as custodian, or to a minor upon the minor's attaining either eighteen years or twenty-one years, as provided in accordance with part six of article seven of the estates, powers and trusts law, if no custodian is acting at the time of such payment or delivery, and any receipt or order of such person, successor or minor shall be valid and sufficient release and discharge

of the depositary for any payment or delivery so made. No depositary dealing with a person purporting to act as a custodian for a minor under said article shall be bound to inquire into any facts bearing upon the designation of such person as such custodian or the propriety of or authority for any act of such person under said article or otherwise or the age of the person designated as a minor. No depositary shall be liable for any act performed pursuant to the instruction or direction of any person purporting to act as custodian under said article unless the depositary has actual knowledge that such act, or the instruction or direction therefor, constitutes a breach of such person's obligations as such custodian, or unless the depositary performs such act with knowledge of such facts that acting pursuant to such instruction or direction amounts to bad faith.

§ 202-i. Safe deposit business of branches. Each such foreign banking corporation which is authorized to maintain a branch or branches in this state may (a) receive upon deposit for safe-keeping for hire upon terms and conditions to be prescribed by such foreign banking corporation, money, securities, papers of any kind and any other personal property, and (b) engage in the safe deposit business by renting vaults, safe deposit boxes or other receptacles upon premises of such branch or branches, upon such terms and conditions as may be prescribed by such foreign corporation.

§ 202-j. Power to act as trustee under self-employed retirement trust or individual retirement trust. Each such foreign banking corporation which is authorized to maintain a branch or branches in this state the deposits of which are insured by the federal deposit insurance corporation or any successor may, subject to any regulations prescribed by the superintendent of financial services, act through any such branch as trustee under a retirement plan established pursuant to the provisions of the act of congress entitled "Self-employed Individuals Tax Retirement Act of 1962" as such provisions may be amended from time to time, and under an individual retirement account plan established pursuant to the amendments to the provisions of the Internal Revenue

Code contained in the act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time, provided that the provisions of such retirement or individual retirement account plan require the funds of such trust to be invested exclusively in deposits of branches of foreign banking corporations located in this state the deposits of which are insured by the federal deposit insurance corporation or any successor and in deposits of banks, trust companies, savings banks, savings and loan associations, federal mutual savings or federal savings banks or federal savings and loan associations whose principal offices are located in this state. In the event that any such retirement or individual retirement account plan, which in the judgment of the foreign banking corporation constituted a qualified plan under the provisions of the applicable act of congress hereinabove mentioned and the regulations promulgated thereunder at the time the trust was established and accepted by the foreign banking corporation is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the foreign banking corporation may, nevertheless, continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof. No foreign banking corporation, in respect to deposits made under this section, shall be required to segregate such deposits from other deposits of such foreign banking corporation, provided, however, that the foreign banking corporation shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

§ 203. Change of location, name or business.

Any foreign corporation licensed pursuant to article two of this chapter to engage in business in this state, may make a written application to the superintendent for leave to do one or more of the following:

1. To change its place of business from the place designated in its license to another place in this state. An application for such change

shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

2. To change its corporate name if such change has been effected under the laws of the jurisdiction of its incorporation.

3. To enlarge, limit or otherwise change the business which it proposes to do in this state.

§ 204. Reports of foreign banking corporations; penalties. Every foreign banking corporation licensed by the superintendent to engage in business in this state, shall at such times and in such form as the superintendent shall prescribe, make written reports to the superintendent under the oath of one of its officers, managers or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the superintendent shall prescribe. If any such corporation shall fail to make any such report as directed by the superintendent, it shall be subject to the penalties prescribed by section one hundred twenty-five of this chapter, and any false statement contained in any such report or in any other sworn statement made to the superintendent by such corporation in pursuance of the provisions of this chapter shall constitute perjury. Nothing herein contained shall be deemed to modify the prohibitions of section one hundred thirty-one of this chapter.

§ 204-a. Payment of claims by foreign banking corporations where adverse claim is asserted; effect of claims or advices originating in, and statutes, rules or regulations purporting to be in force in occupied territory; performance of contracts and repayment of deposits performable or repayable at foreign offices of foreign banking corporations. 1. Notice to any foreign banking corporation doing business in this state under a license issued by the superintendent in accordance with the provisions of this chapter, of an adverse claim to a credit standing on its books to the account of any person, or to the balance in any deposit account, or of an adverse claim to securities or

other property held for the account of any person, shall not be effectual in this state to cause said foreign banking corporation to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said foreign banking corporation from a court of competent jurisdiction in the United States in a cause therein instituted by him wherein the person to whose account the credit or deposit stands, or for whose account the securities or other property are held, or his executor or administrator is made a party and served with summons, or shall execute to said foreign banking corporation, in form and with sureties acceptable to it a bond, indemnifying said foreign banking corporation from any and all liability, loss, damage, costs and expenses, for and on account of the payment of or delivery pursuant to such adverse claim or the dishonor of the order of the person to whose account the credit or deposit stands on the books of said foreign banking corporation or for whose account the securities or other property are held by said foreign banking corporation.

2. (a) A foreign banking corporation doing business in this state under a license issued by the superintendent in accordance with the provisions of this chapter, need not in this state recognize or give any effect to (1) any claim to a credit standing on its books to the account of, or the balance in any deposit account of, or any claim to securities, or other property held by it for the account of, any corporation, firm or association in occupied territory or (2) any advice, statute, rule or regulation purporting to cancel or to give notice of the cancellation of the authority of any person at the time appearing on the books of such foreign banking corporation as authorized to withdraw or otherwise dispose of cash, securities, or other property of such corporation, firm or association, unless such foreign banking corporation is required so to do by appropriate process procured against it in a court of competent jurisdiction in the United States in a cause therein instituted by or in the name of such corporation, firm or association, or unless the person making such claim or giving such advice or invoking such statute, rule or regulation, as the case may be, shall execute to such foreign banking corporation, in form and with sureties acceptable to it, a bond indemnifying it from any and all

liability, loss, damage, costs and expenses for and on account of recognizing or giving any effect to such claim, advice, statute, rule or regulation.

(b) For the purposes of this subdivision (1) the term "occupied territory" shall mean territory occupied by a dominant authority asserting governmental, military or police powers of any kind in such territory, but not recognized by the United States as the de jure government of such territory, and (2) the term "corporation, firm or association in occupied territory" shall mean a corporation, firm or association which has, or at any time has had, a place of business in territory which has at any time been occupied territory.

(c) The foregoing provisions of this subdivision shall be effective only in cases where (1) such claim or advice purports or appears to have been sent from or is reasonably believed to have been sent pursuant to orders originating in, such occupied territory during the period of occupation, or (2) such statute, rule or regulation appears to have emanated from such dominant authority and purports to be or to have been in force in such occupied territory during the period of occupation.

(d) The foregoing provisions of this subdivision shall apply to claims, advices, statutes, rules or regulations made, given or invoked either prior to, or on or subsequent to the effective date of this act.

(e) A foreign banking corporation doing business in this state under a license issued by the superintendent in accordance with the provisions of this chapter need not in this state recognize or give any effect to a claim of authority to order the payment or delivery of any funds or other property standing on its books to the credit of, or held by it for the account of, any person, corporation, unincorporated association or partnership, which claim conflicts with a claim of authority of which the foreign banking corporation had prior notice, unless the person or persons asserting such subsequent claim shall procure a restraining order, injunction or other appropriate process against said foreign banking corporation from a court of competent jurisdiction in the United States, or, in lieu thereof, at the option of said foreign banking corporation, shall execute to said foreign banking corporation, in form and with sureties acceptable to it, a bond, indemnifying it for any and all liability, loss, damage, costs and expenses for or on account of any payment or delivery of such property by it pursuant to such subsequent

claim of authority or for or on account of the dishonor of any check or other order of any person or persons asserting the claim of authority of which such foreign banking corporation already had notice at the time the subsequent conflicting claim of authority is asserted by the person or persons furnishing such bond.

3. (a) Notwithstanding section 1--301 of the uniform commercial code, any foreign banking corporation doing business in this state under a license issued by the superintendent in accordance with the provisions of this chapter shall be liable in this state for contracts to be performed at its office or offices in any foreign country, and for deposits to be repaid at such office or offices, to no greater extent than a bank, banking corporation or other organization or association for banking purposes organized and existing under the laws of such foreign country would be liable under its laws. The laws of such foreign country for the purpose of this subdivision shall be deemed to include all acts, decrees, regulations and orders promulgated or enforced by a dominant authority asserting governmental, military or police power of any kind at the place where any such office is located, whether or not such dominant authority be recognized as a de facto or de jure government.

(b) Notwithstanding section 1--301 of the uniform commercial code, if by action of any such dominant authority which is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in such foreign territory and carried as an asset of any office of such foreign banking corporation in such foreign territory is seized, destroyed or cancelled, then the liability, if any, in this state of such foreign banking corporation for any deposit theretofore received and thereafter to be repaid by it, and for any contract theretofore made and thereafter to be performed by it, at any office in such foreign territory shall be reduced pro tanto by the proportion that the value (as shown by the books or other records of such foreign banking corporation, at the time of such seizure, destruction or cancellation) of such assets bears to the aggregate of all the deposit and contract liabilities of the office or offices of such foreign banking corporation in such foreign territory, as shown at such time by the books or other records of such

foreign banking corporations. Nothing contained in this paragraph shall diminish or otherwise affect the liability of any such foreign banking corporation to any corporation, firm or individual which at the time of such seizure, destruction or cancellation was incorporated or resident in any state of the United States.

(c) Notwithstanding the provisions of any law to the contrary, a foreign banking corporation operating a branch or branches or an agency or agencies in this state shall not be required to repay, at any such branch, branches, agency or agencies in this state, any deposit made at a foreign office of any such foreign banking corporation if such office cannot repay the deposit due to (i) an act of war, insurrection, or civil strife; or (ii) an action by a foreign government or instrumentality, whether de jure or de facto, in the country in which the office is located preventing such repayment, unless the foreign banking corporation operating in this state has expressly agreed in writing to repay the deposit under such circumstances. The superintendent of financial services may promulgate regulations necessary to effectuate the provisions of this paragraph, including regulations providing for adequate disclosure to retail depositors in the United States of the restrictions on repayment contained in this subdivision. The provisions of this paragraph shall not alter or diminish the liability of a custodian of assets of a fund under section one hundred seventy-eight-a of the retirement and social security law.

§ 206. Termination of existence. When a foreign banking corporation licensed pursuant to article two of this chapter is dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation, a certificate of the superintendent of financial services, or official performing the equivalent function as to records of banking corporations, of the jurisdiction of incorporation of such foreign banking corporation attesting to the occurrence of any such event or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign banking corporation, the termination of its existence or the cancellation of its authority shall be delivered to the superintendent. The filing of the certificate, order or decree shall have the same effect as the

revocation of its license under section forty of this chapter. The superintendent shall continue as agent of the foreign banking corporation upon whom process against it may be served in any action or special proceeding based upon any liability or obligation incurred by the foreign banking corporation within this state prior to the filing of such certificate, order or decree and he shall promptly cause a copy of such process to be mailed by registered mail, return receipt requested, to such foreign corporation at the post office address on file in his office specified for such purpose. The post office address may be changed in the manner provided in section two hundred of this article.

§ 207. Service of process on unlicensed corporation formed under laws other than the statutes of this state.

1. Every corporation formed under laws other than the statutes of this state which is required by this chapter to obtain a license from the superintendent, and which itself or through an agent does any business in this state for which such license is required either without obtaining such license or after the revocation thereof, submits itself to the jurisdiction of the courts of this state and is deemed to have designated the superintendent as its agent upon whom process against it may be served, in any action or special proceeding arising out of or in connection with the doing of such business. Such process may issue in any court in this state having jurisdiction of the subject matter.

2. Service of such process upon the superintendent shall be made by personally delivering to and leaving with him or his deputy, or with any person authorized by the superintendent to receive such service, at the office of the superintendent, a copy of such process together with the statutory fee, which fee shall be a taxable disbursement. Such service shall be sufficient if notice thereof and a copy of the process are:

(a) Delivered personally without this state to such foreign banking corporation by a person and in the manner authorized to serve process by law in the jurisdiction in which service is made, or

(b) Sent by or on behalf of the plaintiff to such foreign banking corporation by registered mail with return receipt requested, at the

post office address specified for the purpose of mailing process, on file in the department of financial services, or with any official or body performing the equivalent function, in the jurisdiction of its incorporation, or if no such address is there specified, to its registered or other office there specified, or if no such office is there specified, to the last address of such foreign banking corporation known to the plaintiff.

3. Proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after such service, with the clerk of the court in which the action or special proceeding is pending. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign banking corporation or other official proof of delivery or, if acceptance was refused by it, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process together with notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign banking corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign banking corporation refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

4. Service made as provided in this section shall have the same force as personal service made within this state.

5. Nothing in this section shall affect the right to serve process in any other manner permitted by law.

6. The department of financial services shall keep a record of each process served upon the superintendent under this section, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt

of the service by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the superintendent under this section shall be destroyed by him after a period of ten years from such service.

§ 208. Nondiscriminatory treatment of insured state banks and national banks. Notwithstanding any other laws of this state, a state bank, which is incorporated in another state and whose deposits are insured by Federal Deposit Insurance Corporation, shall have the same protection, privileges and immunities, including the right to sue, collect debts, realize on collateral security, enforce liens, claims and obligations, and protect its property in this state, as a national bank whose principal office is located in the same state as such state bank, and such state bank and its shares, securities and evidences of indebtedness shall enjoy the same privileges, protections and immunities as those of such a national bank and shall not be subject to any disability, incapacity, restriction, regulation, penalty, fee, fine or taxation which is not imposed by this state in the case of such a national bank, provided however that this section shall not apply with respect to any state bank and its shares, securities and evidences of indebtedness unless such state bank's state of incorporation has a statute with provisions substantially similar to this section which is applicable to a state bank incorporated in this state. As used in this section the term "state bank" shall mean any commercial bank or trust company.

§ 209. Restrictions on executive officers of foreign banking corporations and national banks. 1. No executive officer of a foreign banking corporation maintaining a branch in this state may be an executive officer, director or trustee of a bank or trust company, savings bank, savings and loan association, national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, bank holding company or another foreign banking corporation maintaining a branch in this state, unless permission therefor has been granted by the superintendent pursuant to the provisions of subdivision three of this section, except

that an executive officer of a foreign banking corporation maintaining a branch in this state which is a subsidiary of a bank holding company may be (i) an executive officer and (ii) a director of the bank holding company of which such foreign banking corporation is a subsidiary, and of one or more of the banking institutions which are subsidiaries of such bank holding company.

2. No executive officer of a national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, may be an executive officer, director or trustee of a bank or trust company, savings bank, savings and loan association, bank holding company or foreign banking corporation maintaining a branch in this state, unless permission therefor has been granted by the superintendent pursuant to the provisions of subdivision three of this section, except that (1) an executive officer of a national bank located in this state, which is a subsidiary of a bank holding company may be (i) an executive officer and (ii) a director of the bank holding company and of one or more banking institutions which are subsidiaries of such bank holding company.

3. The superintendent shall have the power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer, and by regulation, to grant permission to an executive officer of a foreign banking corporation maintaining a branch in this state and to an executive officer of a national bank located in this state, to be at the same time an executive officer, trustee or director or both an executive officer and a trustee or director of a bank or trust company, savings bank, savings and loan association, national bank, federal savings bank or federal savings association, the principal office of which is located in this state, bank holding company, and foreign banking corporation maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent shall have the power to revoke such permission whenever the superintendent finds, after reasonable notice and an opportunity to be heard, that the public interest requires such

revocation.

4. For the purposes of this subdivision, the terms "subsidiary", "banking institution" and "bank holding company" shall each be given the same meaning as is contained in their respective definition in section one hundred forty-one of this chapter, except that the definition of the term "banking institution" is modified to include a national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, and a foreign banking corporation maintaining a branch in this state.

5. All other restrictions and limitations imposed by this chapter on executive officers and directors of foreign banking corporations maintaining a branch in this state and on national banks, federal savings banks and federal savings associations, the principal office of which institution is located in this state, shall continue in effect.

ARTICLE V-A

NEW YORK BUSINESS DEVELOPMENT CORPORATION

Section 210. Establishment.
211. Economic regions.
212. Purposes, powers and operation.
213. Board of directors.
214. Committees.
215. Membership.
216. Capital stock.
217. Surplus, obligations and depositories.
218. Supervision and reports.
219. Unissued securities and reorganization.
220. Participation.

§ 210. Establishment. 1. There is hereby created a corporation which shall be known as the "New York Business Development Corporation". Process in any action or proceeding against such corporation may be served upon the secretary of state, as agent of such corporation for

such purpose. If such corporation fails to commence business by April first, nineteen hundred fifty-eight, its existence shall terminate and the provisions of this article shall become null and void.

2. The business corporation law applies to the New York Business Development Corporation, except that in case of a conflict between the business corporation law and this article the provisions of this article shall govern. If there is in this article a provision relating to a matter embraced in the business corporation law and not in conflict therewith, both provisions shall apply. The New York Business Development Corporation shall be treated as a "corporation", or "domestic corporation", as such terms are used in the business corporation law, except that the purposes for which such corporation is formed under this article shall not thereby be extended.

3. For the purpose of this section and elsewhere in this article, the effective date of the business corporation law as to the New York Business Development Corporation shall be September first, nineteen hundred sixty-four.

§ 211. Economic regions. For the purposes of this article, the state is hereby divided into twelve economic regions, as follows:

1. Binghamton region. The counties of Broome, Chenango, Delaware and Otsego.

2. Capital district-Champlain region. The counties of Clinton, Essex, Rensselaer, Albany, Saratoga, Schoharie, Schenectady, Warren and Washington.

3. Elmira region. The counties of Chemung, Schuyler, Steuben, Tioga and Tompkins.

4. Mid-Hudson region. The counties of Dutchess, Columbia, Greene, Orange, Putnam, Sullivan and Ulster.

5. Mohawk Valley region. The counties of Fulton, Hamilton, Herkimer, Montgomery and Oneida.

6. Nassau-Suffolk region. The counties of Nassau and Suffolk.

7. New York city region. The counties of Bronx, Kings, New York, Queens and Richmond.

8. Niagara-southwestern region. The counties of Allegany, Cattaraugus, Chautauqua, Erie and Niagara.

9. Northern region. The counties of Franklin, Jefferson, Lewis and St. Lawrence.

10. Rochester region. The counties of Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates.

11. Syracuse region. The counties of Cayuga, Cortland, Madison, Onondaga and Oswego.

12. Westchester-Rockland region. The counties of Rockland and Westchester.

§ 212. Purposes, powers and operation. 1. (a) The purposes of such corporation shall be to assist, promote, encourage and, through the cooperative efforts of the institutions and corporations which shall, from time to time, become members thereof, develop and advance the business prosperity and economic welfare of the state; to encourage and assist in the location of new business and industry in the state and to rehabilitate and retain existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of the state, provided maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of the state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and

advancement of industrial, commercial, agricultural and recreational developments in the state; to furnish money and credit to approved and deserving applicants, for the promotion, development and conduct of all kinds of business activity in the state, thereby establishing a source of credit not otherwise readily available; and to provide financial assistance in the form of loans to small businesses unable to obtain financing from other private sources, including, but not limited to, assistance to women and minority-owned business enterprises and small businesses located in economically distressed areas. For the purposes of this article, "economically distressed areas" shall mean areas determined by the commissioner of the department of economic development on the basis of criteria indicative of economic distress, including poverty rates, numbers of persons receiving public assistance, unemployment rates, rate of employment decline, population loss, rate of per capita income change, decline in economic activity and private investment, and such other indicators as the commissioner deems appropriate. Economically distressed areas may include cities, municipalities, block numbering areas, and census tracts.

(b) The corporation shall undertake the following programs in furtherance of the above objectives: (i) establish regional offices at locations throughout New York, with sufficient staffing to advise, develop and package financial assistance for small and medium sized businesses; (ii) develop a comprehensive outreach program to increase the visibility and awareness of the corporation's programs, including allocating budget and staff to establish and maintain an aggressive and extensive marketing program of the corporation's program of assistance to small and medium sized businesses, providing for specific outreach to minority and women-owned enterprises, and entering into cooperative relationships with local chambers of commerce, local development agencies, local development corporations and other community based financial intermediaries as set forth in subdivision three of this section; (iii) establish and operate, or affiliate with a small business investment company and a specialized small business investment company; (iv) establish a pilot export financing program, using personnel from the private sector, to evaluate whether the corporation can play a significant role in the growth of the export industry in the state and (v) establish a program in cooperation with the empire state development

corporation that shall focus on small businesses located in highly distressed areas and minority and women-owned business enterprises (MWBEs) as such designations are defined by the New York state urban development corporation act, through which the corporation shall be authorized to: (A) act as third-party agent for the capital access program established by section sixteen-k of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight, constituting the urban development corporation act; (B) process, fund and approve qualifying program loans made by the corporation or a participating financial institution pursuant to section sixteen-k of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight, constituting the urban development corporation act; (C) maintain and service a portfolio of qualifying loans made pursuant to the capital access program; and (D) engage in outreach and marketing to financial institutions to increase awareness of the program established under this subparagraph. The corporation shall undertake the programs enumerated herein at such times as its board of directors determines that the corporation's capital base and available funds are adequate to support the operation of such program. The programs enumerated herein may be modified by the corporation as may be necessary to meet the changing needs of the state's economy, as determined by the board of directors.

2. In furtherance of the purposes set forth in subdivision one of this section, and in addition to the powers conferred on stock corporations by general laws, such corporation shall, subject to the restrictions and limitations contained in this article, have the following powers:

(a) To borrow money and otherwise incur indebtedness for any of its purposes; to issue its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, therefor; and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof.

(b) To assist, promote, encourage and through the cooperative efforts of the institutions and corporations which shall, from time to time, become members thereof, develop and advance the business prosperity and economic welfare of the state; to encourage and assist in the location

of new business and industry in the state and to rehabilitate existing business and industry; to evaluate, assess and determine the value of a patent right and to take, sell or transfer an agreement or note pursuant to section five hundred fifty of the general business law, to lend money to, and to guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation or association, and to establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith; provided, however, that it shall not be the intention hereof to take from banking organizations any such loans or commitments as may be desired by such organizations generally in the ordinary course of their business.

(c) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as its board of directors may deem advisable, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by such corporation from time to time in the satisfaction of debts or enforcement of obligations.

(d) To acquire the good will, business, rights, real and personal property and other assets, or any part thereof, of such persons, firms, corporations, joint stock companies, associations or trusts as may be in furtherance of the corporate purposes provided herein, and to assume, undertake, guarantee or pay the obligations, debts and liabilities of any such person, firm, corporation, joint stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments, and, in furtherance of the corporate purposes provided herein, to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, lease, or otherwise dispose of industrial plants or business establishments.

(e) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds,

debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association or trust, and while the owner or holder thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(f) To cooperate with and avail itself of the facilities of the state department of commerce and any other government agencies; and to cooperate with and assist, and otherwise encourage, local organizations in the various communities in the state in the promotion, assistance and development of the business prosperity and economic welfare of such communities and of the state.

(g) (1) To acquire a patent right or any part thereof, from such persons, firms, corporations, joint stock companies, associations or trusts as may be in furtherance of the corporate purposes provided herein; (2) to assume, undertake, guarantee or pay the obligations, debts and liabilities of any such person, firm, corporation, joint stock company, association or trust; (3) to set forth specific criteria and standards by which the corporation shall evaluate the patent and the value of patent rights evolving from that patent; and (4) to allow ownership of the patent to remain with the borrower and to accept a percentage of the patent rights as collateral on a loan for capital formation of a business.

(h) With respect to funds administered by the corporation, to obtain loan guarantees from any state or federal program to guarantee loans made to small businesses by the corporation with such funds.

3. The corporation may contract or otherwise affiliate with local development corporations and other local development organizations certified for this purpose by the commissioner of the department of economic development throughout the state, including, but not limited to, not-for-profit corporations established pursuant to article nine of the economic development law, to market the programs of the corporation to small and medium sized businesses, to provide technical, financial packaging and loan application assistance to business owners seeking financial assistance from the corporation, including but not limited to minority owned business enterprises and small and medium sized businesses located in economically distressed areas.

§ 213. Board of directors. 1. All the corporate powers of such corporation shall be exercised by a board of directors consisting of a maximum of thirty persons, all of whom shall be of full age, residents of the state and at least one-half of whom shall be citizens of the United States.

2. The president of such corporation, who shall be appointed by the board, shall serve as a director.

3. At each annual meeting of such corporation, the members of such corporation shall elect up to ten directors for a term of one year, who shall, to the extent possible, represent different economic regions as defined in section two hundred eleven of this article. The exact number shall be established in the by-laws by the board of directors. In such elections, members of such corporation shall have one vote each.

4. At such annual meetings the stockholders of such corporation shall elect up to seven directors for a term of one year each. The exact number shall be established in the by-laws by the board of directors.

5. One director shall be appointed by any of the entities that are members or stockholders of such corporation and whose membership or stockholder interest meets a minimum commitment as established in the by-laws by the board of directors.

6. The directors elected by the members and the stockholders shall elect three additional directors: one representing minority interests, one representing women's interests, and one representing regional or local development corporations' interests.

7. The state commissioner of the department of economic development shall be a director exofficio.

7-a. Two directors shall be appointed by the governor, who shall serve at the pleasure of the governor; one director shall be appointed by the

temporary president of the senate, who shall serve at the pleasure of the temporary president; one director shall be appointed by the senate minority leader, who shall serve at the pleasure of the minority leader; and one appointed by the assembly minority leader, who shall serve at the pleasure of the minority leader; and one director shall be appointed by the speaker of the assembly, who shall serve at the pleasure of the speaker.

8. If any director shall lose his citizenship or shall cease to be a resident of the state, he shall immediately vacate his position as a director and such position shall thereupon be deemed vacant.

9. If any vacancy occurs in the elected membership of the board of directors through death, resignation or otherwise, the remaining directors shall elect a person to fill such vacancy for the unexpired term.

10. Upon the expiration of their terms, the elected directors shall continue as such until their successors have been elected and have qualified.

11. The board of directors shall elect one of its members as chairman and one of its members as vice-chairman of such board, shall adopt by-laws for such corporation, and may appoint such officers and employees as it deems advisable.

§ 214. Committees. 1. There shall be a loan committee of such corporation for each of the twelve economic regions as defined in section two hundred eleven of this chapter or such other regions as the board of directors shall designate for this purpose. Each such committee shall include such persons as the board of directors shall designate.

2. The board of directors of such corporation may establish an office for any such loan committee, within such committee's economic region.

3. Every application to such corporation for a loan or financial assistance shall be made through the loan committee for the economic region wherein the applicant resides or maintains a regular place of business, or directly to one of the regional offices of the corporation. Any such applications made to a regional office shall be promptly referred to the loan committee for the economic region wherein the applicant resides or maintains a regular place of business. All such applications shall thereupon be reviewed by such regional loan committee and promptly transmitted by it to the central loan committee established by the board of directors for consideration, along with the recommendations of such regional loan committee with respect thereto.

4. The board of directors shall have the responsibility to appoint all necessary board and officer committees to provide for prudent management and oversight of such corportion.

§ 215. Membership. 1. The members of such corporation shall include such banking organizations, insurance and surety companies as may make application for membership in such corporation, and membership shall become effective upon the acceptance of such applications by the board of directors. Each member shall lend funds to such corporation as and when called upon by it to do so, but the total amount on loan by any member at any one time shall not exceed the following limit to be determined as of the time it became a member, and such amount shall thereafter be readjusted annually in the event of any change in the base of the loan limit of such member; national banking associations, state-chartered commercial banks and trust companies, two per cent of capital stock and surplus; New York savings and loan associations, two per cent of the surplus account determined as provided in article ten, section three hundred eighty-five; savings banks, two percent of net worth as defined in article six, section two hundred forty-four; stock insurance companies, two per cent of capital and surplus; surety and casualty companies, two per cent of capital and surplus; mutual insurance companies, two per cent of surplus to policy holders; and comparable limits for other banking, loaning and insurance organizations, as established by the board of directors; provided,

however, that the total amount on loan by any member at anyone time shall not exceed ten million dollars, provided further, however, that any member having a loan limit in excess of ten million dollars may elect that its total amount on loan at any one time to such corporation shall equal said loan limit but in any event shall not exceed twenty million dollars. In the event that two or more members shall merge or consolidate, the organization as so merged or consolidated shall elect that its total amount on loan to such corporation shall be equal to the combined loan limits of such members determined immediately before the merger or consolidation but in no event to exceed twenty-five million dollars at any one time outstanding. All loan limits shall be established at the thousand dollar nearest to the amount computed on an actual basis. All calls of funds which members are committed to lend to such corporation shall be prorated by such corporation among the members in the same proportion that the maximum loan limit of each bears to the aggregate loan limits of all members of such corporation. Upon six months' prior written notice to the board of directors, a member of such corporation may withdraw from membership, effective at the end of such six month period and, after the effective date of such withdrawal, such member shall be free of obligations hereunder except those accrued or committed by such corporation prior to such effective date of withdrawal. Notwithstanding the provisions of any other law, general or special, the notes or other interest-bearing obligations of such corporation, issued in accordance with and by virtue of this article and the by-laws of such corporation, shall be legal investments for the banking, insurance and surety organizations, and other non-public entities who become members of such corporation, up to but in no event exceeding the loan limits established herein.

2. Other entities may make application for membership in such corporation according to such terms and criteria as established by the board of directors; except that such other entities may not include public benefit corporations established under the laws of the state of New York.

§ 216. Capital stock. The capital stock of such corporation shall be

five hundred thousand shares of common and preferred stock, in such amounts as shall be established in the by-laws by the board of directors, with the preferred stock having such relative rights, preferences and limitations as shall be established in the by-laws by the board of directors. At least a majority of the capital stock of such corporation shall at all times be held by residents of the state or by persons, firms or corporations engaged in doing business therein.

§ 217. Surplus, obligations and depositories. 1. Such corporation shall set apart as an earned surplus all of its net earnings in each and every year until such earned surplus shall equal the total of the paid-in capital and paid-in surplus then outstanding. Said earned surplus shall be held in cash, invested in United States government bonds, or as provided in such corporation's by-laws, and shall be kept and used to meet losses and contingencies of such corporation and, whenever the amount of earned surplus shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation.

2. At no time shall the total obligations of such corporation exceed ten times the amount of its paid-in capital and surplus, not including therein the earned surplus, or two hundred fifty million dollars, whichever is greater.

3. Such corporation shall not deposit any of its funds in any banking organization unless such banking organization has been designated as a depository by a vote of the majority of all of the directors of such corporation, exclusive of any director who is an officer or director of the depository so designated. Such corporation shall not receive money on deposit. Such corporation shall not make any loans directly or indirectly to any of its officers or to any firms in which any of its officers is a member or officer.

§ 218. Supervision and reports. Such corporation shall be subject to the supervision, examination and control of the superintendent of

financial services in the same manner as banking organizations are so supervised, examined and controlled by him pursuant to this chapter, and shall be examined by him annually, but such corporation shall not be deemed to be a banking organization nor be required to pay a fee for such an examination. Such corporation shall make an annual report of its condition to the governor, legislature and superintendent of financial services, on or before January first of each year.

Commencing January first, nineteen hundred eighty-six, such annual report shall contain but not be limited to the following:

a. information on the cost and sources of funds and capital and the total allowable maximum amount available from members, the maximum amount committed by each individual member, and the corporation's outstanding liabilities to members;

b. classification of firms in the corporation's portfolio by standard industrial code, including a breakdown of (i) size of firms by sales and number of employees, (ii) number and percentage of loans to manufacturing, service and wholesale businesses, and (iii) number and percentage of loans to traditional industries and to high technology firms within the manufacturing sector;

c. information on the types of financing provided by the corporation, including guaranteed loans, the size and term of loans, and a breakdown of investments by senior debt, subordinated debt and equity financings;

d. information on interest rates of loans, including percentage of fixed rate and variable rate loans;

e. information on the use of capital provided by the corporation, including number of working capital loans, loans to assist leveraged buyouts by employees, management or others, and secured mortgages for plant expansion or new production facilities;

f. information on how the corporation is fulfilling its mission to assist women and minority owned businesses;

g. information on resources and actions taken to advance the corporation's marketing program;

h. information on the corporation's regional offices, including a description of the volume of business and the nature of loan activity at each office;

i. information on the activities of the corporation's MESBIC; and

j. information on the corporation's pilot export financing program, including the number of firms serviced and the types of assistance provided.

§ 219. Unissued securities and reorganization. 1. The holders of capital stock of such corporation shall not, as such, have any preemptive or preferential right to purchase or subscribe for any part of the unissued or new issue of capital stock of such corporation, whether now or hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of such corporation, now or hereafter authorized or issued.

2. Whenever a compromise or arrangement or any plan of reorganization of such corporation is proposed between such corporation and its creditors, members or stockholders, the supreme court, by virtue of its general equity powers may, on application of such corporation or of any creditor, member or stockholder thereof, or on the application of any receiver or receivers appointed for such corporation, order a meeting of such creditors, members or stockholders, as the case may be, as may be affected by the proposed compromise or arrangement or plan of reorganization, which shall be called in such manner as the said court directs. If, at such meeting, such compromise or arrangement or plan of reorganization is agreed to by or on behalf of the creditors, if affected thereby, holding two-thirds in amount of the claims against such corporation, and by or on behalf of the stockholders, if affected thereby, holding the majority of capital stock, and by or on behalf of

the members, if affected thereby, holding two-thirds in amount of the outstanding notes or other interest-bearing obligations of such corporation as provided for in section two hundred fifteen of this chapter, and if such agreement shall be further evidenced by the written acceptance of said creditors, stockholders and members, duly filed in the said court, such compromise or arrangement or plan of reorganization shall, if approved by the said court as just and equitable, be binding on all creditors, stockholders or members, as the case may be, who are affected thereby, and also on such corporation. All persons who become creditors, stockholders or members of such corporation shall be deemed to have become creditors, stockholders or members subject in all respects to this section, and the same shall be absolutely binding upon them. For the purposes of this subdivision only, members shall not be deemed to be creditors and shall act under this subdivision as a separate class.

§ 220. Participation. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, certificates of incorporation, or trust indentures:

1. All domestic corporations organized for the purpose of carrying on business within this state, including, without implied limitation, any railroad or transportation corporation, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation established by this article and, while owners of said stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of this state;

2. All banking organizations are hereby authorized to become members of the corporation established by this article and to make loans to such corporation as provided herein;

3. All banking organizations are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities or other evidences of indebtedness issued by such corporation or the shares of its capital stock, and while owners of said stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of this state. The amount of capital stock of such corporation which any banking organization is authorized to acquire pursuant to the authority granted herein shall be in addition to the amount of capital stock in corporations which such banking organization may otherwise be authorized to acquire.

* § 220. Participation. 1. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, certificates of incorporation, or trust indentures:

(a) All domestic corporations organized for the purpose of carrying on business within this state, including, without implied limitation, any railroad or transportation corporation, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation established by this article and, while owners of said stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of this state;

(b) All banking organizations are hereby authorized to become members of the corporation established by this article and to make loans to such corporation as provided herein;

(c) All banking organizations are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities or other evidences of indebtedness issued by such corporation or the shares of its capital stock, and while owners of said stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of this state. The amount of capital stock of such corporation which any banking organization is authorized to acquire pursuant to the authority granted herein shall be

in addition to the amount of capital stock in corporations which such banking organization may otherwise be authorized to acquire.

2. Notwithstanding the provisions of any general, special or local law, the notes and other interest-bearing obligations of the corporation shall be legal investments for any fund defined in section one hundred seventy-six of the retirement and social security law; provided however, that any such investment shall meet the criteria contained in subdivision seven of section one hundred seventy-seven of the retirement and social security law, and shall be made only pursuant to a loan agreement between such fund and the corporation. Provided further, however, that such agreement shall not permit loans exceeding the lesser of: (i) two percent of the assets of such fund; or (ii) one hundred million dollars principal amount.

* NB Expired December 31, 1988

ARTICLE V-B

LICENSE FOR A FOREIGN BANKING CORPORATION TO MAINTAIN A REPRESENTATIVE

Section 221-a. Doing business without license prohibited.
221-b. Definitions.
221-c. Application for license; fees.
221-d. Conditions precedent to issuing license; procedure where application denied.
221-e. License provisions.
221-f. Grounds for suspension or revocation of license; procedure.
221-g. Superintendent authorized to examine; expenses.
221-h. Licensee's books and records; reports.
221-i. Notice of acquisition of control or merger.
221-j. Authority of superintendent.
221-k. Separability of provisions.

§ 221-a. Doing business without license prohibited. 1. No person, co-partnership, association, corporation or other entity shall establish, maintain or use one or more offices in this state as the

representative of one or more foreign banking corporations unless the foreign banking corporation to be represented has first obtained a license from the superintendent of financial services. Entities lawfully registered pursuant to this article on or before September first, nineteen hundred ninety-two shall be deemed licensed pursuant to this section until September first, nineteen hundred ninety-four, provided however that the superintendent may require the submission of any additional documents or materials relating to the business activities of the registrant as he or she may deem necessary or appropriate.

2. Upon receipt of a license, the foreign banking corporation may establish one or more representative offices in this state which shall be subject to examination whenever in the superintendent's judgment such examination is necessary or advisable.

3. Such office shall be limited to conducting the following activities: solicitation of loans and in connection therewith, assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans including making recommendations with respect to action thereon, solicitation of investors to purchase loans from the bank, the search for such investors to contract with the bank for the servicing of such loans; solicitation of new business and conduct of research. Any other activity which the foreign banking corporation seeks to conduct at such office, shall be subject to the prior written approval of the superintendent by general regulation or upon application in such form as the superintendent may prescribe.

§ 221-b. Definitions. 1. Banking institution. The term "banking institution", when used in this article, shall mean any entity authorized by its charter to accept deposits and to make loans.

2. Foreign banking corporation. The term "foreign banking corporation", when used in this article, shall mean any banking institution organized under the laws of any jurisdiction other than the United States, any state of the United States or Puerto Rico.

3. Representative. The term "representative" shall mean any person or entity engaging in any activity in this state for or on behalf of a foreign banking corporation, provided that such activity is not otherwise permitted by law.

4. The superintendent shall be authorized to exempt from the above definitions such additional persons, entities, activities or classes thereof which shall be deemed appropriate in order to effectuate the purposes of this article.

§ 221-c. Application for license; fees. The application for such license shall be in writing under oath and shall contain the information required by and be in the form prescribed by the superintendent. As part of the application, the foreign banking corporation shall appoint the superintendent or his or her successor as agent for service of process in connection with any action or proceeding against the foreign banking corporation relating to any cause of action which may arise out of a transaction with its representative office, with the same force and effect as if it were a domestic corporation and had been lawfully served with process in this state. At the time of making such application, the applicant shall pay to the superintendent an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

§ 221-d. Conditions precedent to issuing license; procedure where application denied. Upon the filing of an application for a license, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the foreign banking corporation and its representative are such as to command the confidence of the community and to warrant belief that the representative will operate honestly, fairly, and efficiently within the purpose and intent of this article, a license shall thereupon be issued in duplicate to conduct the activity described in section 221-a of this article in accordance with the provisions of this article. If the superintendent shall not so find, the license shall not be issued, and the applicant

shall be notified of the denial. The superintendent shall transmit one copy of such license to the applicant and file another in the office of the department of financial services. Such license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided. The superintendent shall approve or deny every application for a license hereunder within ninety days from the filing thereof provided, however, that failure to act within the prescribed period shall not be deemed approval of any such application.

§ 221-e. License provisions. Each license issued under this article shall state the address or addresses at which a representative is to be located and shall state fully the name of the licensee. Such license shall not be transferable or assignable. In the event the location of the representative shall be changed, the licensee shall forthwith notify the superintendent who shall thereupon without charge attach to the license an amendment certificate setting forth such changed location.

§ 221-f. Grounds for suspension or revocation of license; procedure. 1. The superintendent may revoke any license issued hereunder if it shall be found that:

(a) The licensee or its representative has violated any provision of this article, or of any rule or regulation made by the superintendent under and within the authority of this article or of any other law, rule or regulation of this state.

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

2. The superintendent may, on good cause shown, suspend any license for a period not exceeding thirty days, pending investigation.

3. Except as provided in subdivision two of this section, no license shall be revoked or suspended except after notice and a hearing thereon.

4. Any licensee may surrender any license by delivering to the

superintendent written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

5. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked or suspended in accordance with the provisions of this article, but the superintendent shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the superintendent in refusing originally to issue such license under this article.

6. Whenever the superintendent shall revoke or suspend a license issued pursuant to this article, a written order shall be immediately executed in duplicate to that effect. The superintendent shall file one copy of such order in the office of the department of financial services and shall forthwith serve the other copy upon the licensee. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such application for review as authorized by this section must be made within thirty days from the date of such order of suspension or revocation.

§ 221-g. Superintendent authorized to examine; expenses. For the purpose of discovering violations of this article or securing information lawfully required by him hereunder, the superintendent may at any time, and as often as may be determined, either personally or by a person duly designated by him, investigate the activities of representatives of licensees and examine the books, accounts, records, and files used in relation to those activities. For that purpose the superintendent and a duly designated representative (i) shall have free access to the offices, books, accounts, papers, records, files, safes and vaults of licensees and their representatives, and (ii) shall have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to the activities of a representative. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee so

examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the superintendent.

§ 221-h. Licensee's books and records; reports. A foreign banking corporation licensed pursuant to this article shall keep or cause each of its representatives to keep and use such books, accounts and records as will enable the superintendent to determine whether the representative is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent. Such books, accounts and records shall be preserved for at least three years; provided however, that preservation by photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section.

The superintendent may require such regular or special reports as may be deemed necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

§ 221-i. Notice of acquisition of control or merger. 1. A foreign banking corporation licensed pursuant to this article to maintain a representative office in this state shall file with the superintendent a notice, in such form and containing such information as the superintendent may prescribe, no later than fourteen calendar days after such foreign banking corporation becomes aware of any acquisition of control of such corporation or merges with another foreign banking corporation.

2. Control, for purposes of this section, means any person or entity, or group of persons or entities acting in concert, directly or indirectly, owning, controlling, or holding with power to vote, twenty-five percent or more of any class of voting stock of such foreign banking corporation, or having the ability in any manner to elect a majority of the directors of such foreign banking corporation, or otherwise exercising a controlling influence over the management and policies of such foreign banking corporation as defined by the superintendent by regulation.

§ 221-j. Authority of superintendent. The superintendent is hereby authorized and empowered to promulgate, in addition hereto and not inconsistent herewith, such general rules and regulations, definitions, and such specific rulings, demands and findings as may be deemed necessary for the proper conduct of the business authorized and licensed hereunder and for the enforcement of this article.

§ 221-k. Separability of provisions. If any provision of this article, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of the article, and the application of such provision to persons, entities or circumstances other than those as to which it is held invalid, shall not be affected thereby.

ARTICLE 5-C
INTERSTATE BRANCHING

Section 222. Definitions.
223. Establishment of branches or trust offices by means of an acquisition transaction.
223-a. Establishment of branches by out-of-state banks by de novo branching.
224. Application for the establishment of branches or trust offices not resulting from an acquisition transaction; retention of branches or trust offices resulting from

merger or acquisition.
224-a. Change of location of branches or trust offices by out-of-state state banks or out-of-state state-chartered trust companies.
225. Interstate acquisition transactions.
225-a. Power of superintendent to examine branches or trust offices of out-of-state state banks or out-of-state state-chartered trust companies.
225-b. Applicability of certain sections to out-of-state banks.
226. Powers of out-of-state state banks.
227. Powers permitted to out-of-state branches of New York banks.
227-b. Rules and regulations.
227-c. Separability of provisions.

§ 222. Definitions. In this article, the following definitions shall apply:

1. The term "out-of-state bank" means an out-of-state state bank, an out-of-state national bank, or an out-of-state federal savings association.

2. The term "out-of-state state bank" means a state bank, as such term is defined in section 3(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(2)), or an out-of-state state-chartered trust company, but such term shall not include a banking organization.

3. The term "out-of-state national bank" means a national banking association the main office of which is located outside this state.

4. The term "out-of-state federal savings association" means any federal savings association or federal savings bank which is chartered under Section 5 of the Home Owners Loan Act (12 U.S.C. 1464) the home office of which is located outside this state.

5. The term "out-of-state trust company" means either a nationally

chartered trust company or an out-of-state state-chartered trust company that has the power to exercise fiduciary powers, but is not insured by the Federal Deposit Insurance Corporation.

6. The term "New York bank" means a bank, trust company savings bank, or savings and loan association as such terms are defined in subdivisions one, two, four and eight of section two of this chapter.

7. The term "state" means any state of the United States (other than this state), the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Mariana Islands.

8. The term "home state" means with respect to an out-of-state state bank or out-of-state state-chartered trust company, the state under the laws of which such out-of-state state bank or out-of-state state-chartered trust company is incorporated or otherwise organized, and with respect to an out-of-state national bank or trust company, the state in which such out-of-state national bank's or trust company's main office is located.

9. The term "acquisition transaction" means any merger, consolidation or purchase of assets and assumption of liabilities of all or part of a banking institution.

10. The term "like-type banking organization" means, with respect to an out-of-state bank, a banking organization with the type of charter that most nearly corresponds to the charter of such out-of-state bank, as determined by the superintendent.

11. The term "appropriate state supervisor" means the home state supervisor with supervisory and regulatory jurisdiction over an out-of-state state bank or out-of-state state-chartered trust company in its home state.

12. The term "banking institution" means any bank, trust company,

savings bank, savings and loan association, or branch of a foreign banking corporation the deposits of which are insured by the federal deposit insurance corporation, which is incorporated, chartered, organized or licensed under the laws of this state or any other state of the United States, or under the laws of the United States.

13. The term "branch" means any office of a banking institution at which deposits are received, checks paid or money lent. Except for purposes of subdivision three of section two hundred twenty-four of this article, the term shall not include an automated teller machine or other electronic facility. For purposes of this article, the term "branch" shall also refer to the principal or main office of a banking institution.

14. The term "trust office" means an office of a banking institution other than a branch at which such institution may conduct one or more fiduciary activities permitted for a trust company.

§ 223. Establishment of branches or trust offices by means of an acquisition transaction. An out-of-state bank may maintain one or more branches or one or more trust offices located in this state that have been acquired by means of an acquisition transaction.

§ 223-a. Establishment of branches by out-of-state banks by de novo branching. In addition to the authority of an out-of-state bank to maintain a branch or branches by means of an acquisition transaction, an out-of-state bank may establish one or more de novo branches in this state; provided, however, that an out-of-state state bank shall obtain the superintendent's prior approval in accordance with the requirements in section two hundred twenty-four of this chapter.

§ 224. Application for the establishment of branches or trust offices not resulting from an acquisition transaction; retention of branches or trust offices resulting from merger or acquisition. 1. An application

for approval to the superintendent containing such information as he or she deems necessary shall be submitted by an out-of-state state bank prior to the establishment of each branch. At the time of making such application, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent for each branch for which approval is sought. If the superintendent finds that the opening of the branch is not consistent with the declaration of policy set forth in section ten of this chapter, he or she shall notify the applicant that the application has been denied. An out-of-state state bank or out-of-state state-chartered trust company seeking to establish one or more trust offices in this state shall comply with the notice procedures set forth in subdivision four of section one hundred thirty-one of this chapter.

2. Subject to the provisions of this article, if the merger or acquisition agreement so provides, an out-of-state state bank may maintain as a branch or branches or trust office or trust offices the place or places of business of any banking institution which it has received into itself as a result of an acquisition transaction authorized by this article.

3. No out-of-state state bank shall open, occupy or maintain a branch in this state at a location not permitted to a like-type banking organization.

§ 224-a. Change of location of branches or trust offices by out-of-state state banks or out-of-state state-chartered trust companies. An application for approval containing such information as the superintendent deems necessary shall be submitted by an out-of-state state bank or an out-of-state state-chartered trust company prior to the relocation of a branch or trust office in this state. At the time of making such application, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent for each branch or trust office for which approval is sought. If the superintendent shall be satisfied that such relocation may be permitted under the terms of this chapter and that there is no reasonable

objection to such change, he or she shall approve such application.

§ 225. Interstate acquisition transactions. 1. An out-of-state bank may engage in an acquisition transaction with a New York bank or with a banking institution located in New York and may maintain as a branch or branches or trust office or trust offices, the branches or trust offices, respectively, of any such New York bank or banking institution which it has received into itself as a result of such transaction, subject to the requirements of this article.

2. Except when section twenty-nine of this chapter applies, section six hundred one or six hundred one-a of this chapter, as the case may be, and section six hundred one-b of this chapter shall apply to any acquisition transaction in which the receiving corporation is a New York bank. In the case of an acquisition transaction authorized by this article in which an out-of-state bank or out-of-state trust company is the receiving corporation, the out-of-state bank or out-of-state trust company shall file with the superintendent a copy of any application filed with the appropriate state supervisor and appropriate federal banking agency.

3. At the time when a merger or consolidation authorized by this article or by section six hundred of this chapter becomes effective:

(a) the resulting or consolidated corporation shall be considered the same business and corporate entity as each of the constituent corporations;

(b) all the property, rights, powers and franchises of each of the constituent corporations shall vest in the resulting or consolidated corporation and the resulting or consolidated corporation shall be subject to and shall be deemed to have assumed all of the debts, liabilities, obligations and duties of each constituent corporation and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the resulting or consolidated corporation;

(c) any reference to a constituent corporation in any contract, will or document, whether executed or taking effect before or after the merger or consolidation, shall be considered a reference to the resulting or consolidated corporation if not inconsistent with the other provisions of the contract, will or document;

(d) a pending action or other judicial proceeding to which any constituent corporation is a party, shall not be deemed to have abated or to have discontinued by reason of the merger or consolidation, but may be prosecuted to final judgment, order or decree in the same manner as if the merger or consolidation had not been made, or the resulting or consolidated corporation may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such constituent corporation if the merger or consolidation had not occurred; and

(e) nothing in this subdivision shall be deemed to authorize a banking institution to exercise any power or engage in any activity not otherwise permitted under its charter.

4. In the case of a merger or consolidation authorized by this article in which an out-of-state bank or out-of-state trust company is the resulting or consolidated corporation, the franchise of any constituent New York bank shall automatically terminate when the merger or consolidation is consummated.

§ 225-a. Power of superintendent to examine branches or trust offices of out-of-state state banks or out-of-state state-chartered trust companies. The superintendent shall have the power at any time in his or her discretion to examine every branch or trust office located in this state of an out-of-state state bank or out-of-state state-chartered trust company for the same purposes and to the same extent as is provided in the case of banking organizations pursuant to the provisions of this chapter.

§ 225-b. Applicability of certain sections to out-of-state banks. 1. Except as otherwise provided in this section, nothing in article five or

article five-B of this chapter shall apply to an out-of-state bank or out-of-state trust company authorized to open, occupy and maintain a branch pursuant to the provisions of this article or a trust office pursuant to this article or to subdivision four of section one hundred thirty-one of this chapter. Any reference in this chapter (other than in article five or article five-B) to a foreign bank, foreign corporation or foreign banking corporation shall be deemed to be a reference to an out-of-state bank or out-of-state trust company authorized to open, occupy and maintain a branch pursuant to the provisions of this article or a trust office pursuant to this article or to subdivision four of section one hundred thirty-one of this chapter. Notwithstanding the foregoing, the provisions of section two hundred two-h (Repayment of deposits standing in the names of minors, trustees, joint depositors or custodians; interpleader in certain actions), of this chapter shall apply with equal force and effect to out-of-state banks or out-of-state trust companies authorized to open, occupy or maintain branches pursuant to the provisions of this article.

2. The provisions of section three hundred ninety-nine-a, subdivision three of section one hundred thirty, subdivision two of section one hundred forty-three, subdivision five of section two hundred forty-seven and subdivision five of section three hundred ninety-nine of this chapter with respect to restrictions on executive officers or directors of foreign banking corporations and the provisions of sections twenty, twenty-six, thirty, thirty-one and six hundred thirty-four, subdivisions eleven and twelve of section six hundred five, subdivision four of section six hundred six and paragraph (a) of subdivision one of section fourteen of this chapter, shall not apply to out-of-state banks authorized to open, occupy or maintain branches pursuant to the provisions of this article.

§ 226. Powers of out-of-state state banks. An out-of-state state bank that opens, occupies or maintains a branch in this state as authorized by this article shall have in this state the same powers under the laws of this state as a like-type banking organization.

§ 227. Powers permitted to out-of-state branches of New York banks. A New York bank that opens, occupies and maintains one or more branch offices in any state may exercise such powers at such branch or branches as would be permitted at such place or places to an out-of-state state bank maintaining a branch or branches at such place or places with the type of charter that most nearly corresponds to the charter of such New York bank; provided, however, that prior to exercising in any state any power not permitted to be exercised by such New York bank in this state, it shall apply to the superintendent to exercise such power and approval therefor shall be given unless the superintendent determines that the exercise of such power is contrary to the declaration of policy contained in section ten of this chapter.

§ 227-b. Rules and regulations. The superintendent shall have the authority to promulgate such rules and regulations consistent with the purposes of this article, including but not limited to such rules and regulations as may define the terms used in this article and as may be necessary or appropriate to interpret, implement or enforce the provisions thereof.

§ 227-c. Separability of provisions. If any provision of this article, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this article, and the application of such provisions thereof to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

ARTICLE 5-D

SMALL BUSINESS INVESTMENT COMPANIES

Section 228-a. Establishment.
228-b. Definitions.
228-c. Purposes, powers and operation.
228-d. New York small business investment company; board of directors.

228-e. New York specialized small business investment company; board of directors.
228-f. Reports.

§ 228-a. Establishment. 1. A small business investment company to be known as the "New York small business investment company," shall be organized under the business corporation law and operated so as to qualify for licensing under Section 301(c) and applicable regulations. A specialized small business investment company to be known as the "New York specialized small business investment company," shall be organized under the business corporation law and operated so as to qualify for licensing under Section 301(d) and applicable regulations. The corporate structure, organization, and activities of the NYSBIC and the NYSSBIC shall be in conformity with the requirements of Title III and 13 C.F.R. Pt. 107.

2. The business corporation law shall apply to the NYSBIC and the NYSSBIC, except that in case of a conflict between the business corporation law and this article, the provisions of this article shall govern. If there is in this article a provision relating to a matter embraced in the business corporation law and not in conflict therewith, both provisions shall apply.

3. The governor, in consultation with the president pro tem of the senate and the speaker of the assembly, on behalf of the people of the state of New York, the New York business development corporation, and the voting shareholders, on or before April thirtieth, nineteen hundred ninety-four, shall enter into a memorandum of understanding on an agreed upon plan for establishing the NYSBIC and the NYSSBIC, including the legal, organizational and financial structure of the NYSBIC and the NYSSBIC.

§ 228-b. Definitions. As used in this article, the following terms and abbreviations shall have the meanings indicated:

1. "NYSBIC" means the New York small business investment company which shall be organized and operated in conformity with Section 301(c) and applicable regulations.

2. "NYSSBIC" means the New York specialized small business investment company which shall be organized and operated in conformity with Section 301(d) and applicable regulations.

3. "Highly distressed area" means: (a) a census tract or tracts or block numbering area or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

(i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of the households receiving public assistance; and

(ii) an unemployment rate of at least one and twenty-five one hundredths times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident, as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average.

4. "Investment companies" means the NYSBIC and the NYSSBIC collectively.

5. "Section 301(c)" means Section 301(c) of Title III, 15 U.S.C. 681(c).

6. "Section 301(d)" means Section 301(d) of Title III, 15 U.S.C. 681(d).

7. "Title III" means Title III of the Small Business Investment Act of 1958, United States Pub. L. 85-699 (as amended).

8. "Voting shareholders" means those shareholders of the NYSBIC or the NYSSBIC that contribute to the capitalization and ongoing funding of the investment companies.

§ 228-c. Purposes, powers and operation. 1. (a) The purposes of the NYSBIC shall be to serve the needs of the small business community in the state of New York. The NYSBIC shall direct its efforts towards providing small business with start-up, venture, operating or working capital, particularly where general economic and historical conditions, such as recent employment displacement caused by international, national, state, regional, and local economic developments, have prevented traditional capital sources from extending credit to such small businesses.

(b) The purposes of the NYSSBIC shall be to provide financing to facilitate small business ownership by minorities and persons who reside in highly distressed areas as defined in section two hundred twenty-eight-b of this article, neighborhood based alliance communities, and persons eligible for the earned income tax credit under an act to amend the internal revenue code of 1954, Pub. L. 94-12, 89 Stat. 30 (1975), as amended, and the regulations promulgated thereunder, whose participation in the free enterprise system is hampered by an inability to compete effectively for capital in the marketplace due to prevailing or past restrictive practices provided, however, in approving applications for assistance, priority shall be given to minorities residing in neighborhood based alliance communities, designated empire zones or highly distressed areas. The NYSSBIC shall direct its efforts toward providing these businesses with start-up, venture, operating or working capital. The NYSSBIC will adopt an investment policy consistent with the policy set forth in Section 301(d).

(c) The NYSBIC and the NYSSBIC shall function as licensees and perform the respective functions set forth in Title III and applicable regulations.

2. In furtherance of the purposes set forth in subdivision one of this section, and in addition to the powers conferred on stock corporations

by the business corporation law, the NYSBIC and the NYSSBIC shall, subject to the restrictions and limitations contained in this article and without limiting any power otherwise conferred herein, have the following powers:

(a) To lend money and conduct other financing transactions at such rate or rates as may be available to banking organizations licensed under this chapter; and

(b) To enter such business and financing transactions and arrangements at such rates and under such terms and conditions as may be permitted to licensees under Sections 301(c), 301(d) and applicable regulations.

§ 228-d. New York small business investment company; board of directors. 1. The corporate powers of the New York small business investment companies shall be exercised by a board of directors, which shall consist of thirty persons, all of whom shall be of full age, citizens of the United States, and residents of this state. Of the thirty members of the board of directors, twenty shall be selected by the voting shareholders and ten shall be selected by the governor, two upon the recommendation of the president pro tem of the New York state senate, one upon recommendation of the senate minority leader, two upon the recommendation of the speaker of the New York state assembly and one upon recommendation of the assembly minority leader.

2. The president of the investment company shall be elected by a majority of the board of directors.

3. Nothing contained in this section shall prevent a director of the New York small business investment company from serving as a director of the New York specialized small business investment company nor prevent the president of the NYSBIC from serving as the president of the NYSSBIC.

§ 228-e. New York specialized small business investment company; board of directors. 1. The corporate powers of the New York specialized small business investment companies shall be exercised by a board of

directors, which shall consist of thirty persons, all of whom shall be of full age, citizens of the United States, and residents of this state. Of the thirty members of the board of directors, twenty shall be selected by the voting shareholders and ten shall be selected by the governor, two upon the recommendation of the president pro tem of the New York state senate, one upon recommendation of the senate minority leader, two upon the recommendation of the speaker of the New York state assembly and one upon recommendation of the assembly minority leader.

2. The president of the investment company shall be elected by a majority of the board of directors.

3. Nothing contained in this section shall prevent a director of the New York specialized small business investment company from serving as a director of the New York small business investment company nor prevent the president of the NYSSBIC from serving as the president of the NYSBIC.

§ 228-f. Reports. 1. The investment companies shall make an annual report of their conditions to the governor, the legislature and the superintendent of financial services, on or before January first of each year.

2. Commencing January first, nineteen hundred ninety-five, such annual report shall contain but not be limited to the following:

(a) information on the cost and source of funds and capital and the total allowable amount available from the voting shareholders, and the maximum amount committed by each individual voting shareholder;

(b) classification of the businesses in the investment companies' portfolio by standard industrial code;

(c) information on the types of financing provided by the investment companies, including start-up, venture, operating or working capital loans, the size and term of loans, and a breakdown of investments by senior debt, subordinated debt and equity financing;

(d) information on interest rates of loans, including the percentage of fixed and variable rate loans;

(e) information on how the NYSBIC is fulfilling its mission to provide small businesses with credit assistance, particularly where general economic and historical conditions have prevented traditional capital sources from extending credit to such small business;

(f) information on how the NYSSBIC is fulfilling its mission to provide credit assistance to facilitate small business ownership by minorities, persons who reside in highly distressed area and neighborhood based alliance communities and persons eligible for the earned income credit as provided by paragraph (b) of subdivision one of section two hundred twenty-eight-c of this article;

(g) information on resources and actions taken to advance the investment companies' marketing programs, including their coordination and efforts to solicit the assistance of local bankers and local economic development corporations, the state department of economic development, the job development authority, the urban development corporation, the science and technology foundation, the state university of New York small business development centers, the centers for advanced technology and other New York state agencies and organizations the investment companies deem appropriate.

ARTICLE VI

SAVINGS BANKS

Section 229. Application.

230. Incorporation; organization certificate.

232. Organization certificate to be submitted to superintendent; proof of publication and service of notice of intention.

233. When corporate existence begins; conditions precedent to commencing business.

234. General powers.

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260-b. Conversion of a savings bank into a savings and loan association.

§ 229. Application.

1. This article applies to every savings bank and shall not apply to any other banking organization except to such extent, if any, as may be specified in any article of this chapter governing such banking organization; provided, however, that in the case of stock-form savings banks, this article applies to every such organization except that the superintendent of financial services, consistent with the declaration of policy described in section fourteen-e of this chapter, shall be empowered to deem inapplicable to stock-form savings banks, sections two hundred thirty, two hundred thirty-one, two hundred thirty-two, two hundred thirty-three, subdivisions one and two of section two hundred thirty-four, two hundred forty-three, two hundred forty-four, two hundred forty-five, two hundred forty-six, two hundred forty-six-a, two hundred forty-seven, two hundred forty-eight, two hundred forty-nine, two hundred fifty, two hundred fifty-one and two hundred fifty-two of this chapter.

2. The general corporation law, the stock corporation law and the business corporation law shall not apply to any savings bank. If there should be in any other corporate law a provision which conflicts with any provision of this chapter, the provision of this chapter shall prevail and the conflicting provision of such other corporate law shall not apply in such case.

§ 230. Incorporation; organization certificate. When authorized by the superintendent as provided in article two of this chapter, not less than nine nor more than twenty persons may incorporate a savings bank. They

shall subscribe and acknowledge an organization certificate in duplicate, which shall specifically state:

1. The name by which the corporation is to be known.

2. The place where its principal office is to be located.

3. Its duration if other than perpetual.

4. The name, occupation, citizenship, residence and post-office address of each incorporator.

5. The amount which each incorporator will contribute in cash to the surplus fund.

6. The names of the incorporators who are to constitute its first board of trustees. Such persons as individuals and as a group must be free of the disqualifications specified in section two hundred forty-six of this article.

§ 232. Organization certificate to be submitted to superintendent; proof of publication and service of notice of intention. After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to organize and within ten days after the date of the last publication thereof, the organization certificate, executed in duplicate, shall be submitted for examination to the superintendent with affidavits showing due publication and service of the notice of intention to organize.

§ 233. When corporate existence begins; conditions precedent to commencing business. When the superintendent shall have approved the organization certificate, as provided in article two of this chapter, the corporate existence of the savings bank shall begin, and it may exercise all the powers necessary to the completion of its organization. Such savings bank shall transact no other business until:

1. The incorporators shall have deposited to the credit of such savings bank in cash as an initial surplus fund at least ten thousand dollars, and, if the superintendent shall so require, shall have entered into an agreement or undertaking with the superintendent as trustee for the depositors of the savings bank, to make such further contributions in cash to the surplus fund as, in the opinion of the superintendent, may be necessary to maintain the savings bank in safe condition to continue business, and shall have filed with the superintendent a surety bond of a corporation authorized to transact the business of insurance in this state, securing such agreement or undertaking in the amount required by the superintendent.

2. It shall have informed the superintendent of the name, residence and post-office address of each officer of the corporation.

3. The superintendent shall have duly issued to it the authorization certificate specified in article two of this chapter.

§ 234. General powers. Every savings bank shall have, subject to the restrictions and limitations contained in this chapter, the following powers:

1. To receive and repay deposits, including demand deposits; invest its funds; pay interest on deposits; and exercise all such incidental powers as shall be necessary to conduct the business of a savings bank, including, subject to regulation by the superintendent of financial services, the power to charge for maintaining a demand deposit account or for honoring checks drawn on or accepting deposits made to such an account.

1-a. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, to contract to receive time deposits, including deposits upon which the savings bank contracts to pay interest at a fixed rate.

2. To issue transferable certificates showing the amounts contributed to the surplus fund by any incorporator or trustee. Each such certificate shall contain a statement that the amount represented by it does not constitute a liability of such savings bank, except as provided in this article.

3. To acquire, hold, lease and convey real property.

4. To improve real property acquired by it when such improvements are necessary to protect the interest of the savings bank therein and to facilitate the sale thereof.

5. To borrow money for the purpose of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans.

5-a. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, to borrow money for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans.

5-b. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper and notwithstanding any other provisions of law, to issue notes, bonds, debentures, or other obligations or other securities subordinated to deposits in such savings bank; provided that, unless the superintendent has given prior approval otherwise, the aggregate principal amount thereof at the time of issuance shall not exceed twenty-five per cent of the net worth of such savings bank, exclusive of all such notes, bonds, debentures, or other obligations or other securities. The proceeds or other consideration derived by a savings bank from the issuance pursuant to this subdivision of any such notes, bonds, debentures, or other obligations or other securities shall be deemed for purposes of this chapter to constitute a part of the net worth of such savings bank.

5-c. To accept moneys deposited by the comptroller or the commissioner of taxation and finance as linked deposits pursuant to article fifteen of the state finance law and to enter into agreements, pledge assets or

furnish other security, including, but not limited to, an irrevocable letter of credit issued by a federal home loan bank, satisfactory in form and amount to such authorized depositor, for the repayment of such moneys.

5-d. To accept moneys deposited by the comptroller or the commissioner of taxation and finance in a branch located in a banking development district established pursuant to section ninety-six-d of this chapter and to enter into agreements, pledge assets or furnish other security, including, but not limited to an irrevocable letter of credit issued by a federal home loan bank, satisfactory in form and amount to such authorized depositor, for the repayment of such moneys.

5-e. To accept moneys deposited by the New York state environmental facilities corporation as linked deposits pursuant to article sixteen of the state finance law and to enter into agreements, pledge assets or furnish other security, satisfactory in form and amount to the New York state environmental facilities corporation, for the repayment of such moneys.

6. To collect promissory notes or bills of exchange.

7. To receive as depositary, or as bailee for safekeeping, obligations of the United States government.

8. To receive money for transmission and to transmit the same.

9. To engage in the safe deposit business by renting safe deposit boxes in which to keep personal property and papers of any kind.

10. To act as agent in the sale of travelers' checks.

11. To assume and discharge such obligations to Federal Deposit Insurance Corporation as may be necessary or required for the purpose of maintaining deposit insurance in such corporation.

12. To become a member of a federal reserve bank and to have and

exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the federal reserve act. Such savings bank and its trustees and officers shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to savings banks.

13. To become a member of a federal home loan bank and to have and to exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the federal home loan bank act. Such savings bank and its trustees and officers shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all provisions of this chapter relating to savings banks.

15. To perform services for the Federal National Mortgage Association created under the housing act of nineteen hundred fifty-four, as amended from time to time, and to sell or assign mortgages to such association and in connection therewith to make capital contributions thereto, purchase stock thereof, and do any and all other acts which under the laws and regulations applicable to such sales may be required to enable such sales to be effected.

16. To service mortgages for others, and to render investment advice incidental to the purchase of and investment in mortgages by others, provided, however, that the superintendent of financial services shall have power to prescribe, by specific or general regulation, the extent to which and the conditions upon which such mortgages may be serviced and such investment advice may be rendered.

17. To sue and to be sued in all courts and to participate in actions and proceedings, whether judicial, arbitrative or otherwise, in like cases as natural persons.

18. To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

19. To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

20. To elect or appoint officers, employees, and other agents of the savings bank, define their duties, fix their compensation, and to indemnify corporate personnel.

21. To execute and deliver such guaranties as may be incidental or usual in the transfer of investment securities.

22. To have perpetual existence.

23. To have and exercise all other powers necessary or appropriate in conducting the business of the savings bank.

24. Subject to such regulations as the superintendent of financial services finds to be necessary and proper, and notwithstanding any other provision of law, to accept federal tax and loan accounts, the balances of which are payable on demand without previous notice of intended withdrawal and to pledge collateral to secure such accounts.

25. Subject to any limitations or other specific provisions contained in this chapter or any other statute of this state or its organization certificate, and as shall be appropriate in conducting the business of the corporation, and only for such activities which are authorized by this chapter for savings banks: to be a promoter, partner, member, associate or manager of other business enterprises or ventures, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations of any type or kind.

26. To engage in a "savings promotion" in accordance with section nine-v of this chapter and subject to any regulations promulgated by the superintendent. The superintendent shall consult with the state gaming commission before proposing any such regulations or any amendments

thereto. Such regulations shall ensure that:

a. no participant in a savings promotion is charged any fee that would constitute, directly or indirectly, consideration for participation in such savings promotion; and

b. no participant in a savings promotion foregoes, directly or indirectly, any interest that would constitute consideration for participation in such savings promotion.

§ 234-a. Settlement, modification or readjustment of investment. A savings bank may consent to any settlement, modification or readjustment of any investment in securities legally made by such savings bank, and may accept and hold stocks, bonds, notes, securities or other property, real or personal, offered in full or partial settlement, modification or readjustment of any such investment. The superintendent may, in his discretion, require any savings bank to dispose of any investment acquired by it pursuant to this section.

§ 234-b. Trust powers. 1. The superintendent of financial services is authorized and empowered to grant permission to a savings bank to exercise any or all of the powers specified in sections one hundred, one hundred-a, one hundred-b and one hundred-c of this chapter. In passing upon applications for permission to exercise any such powers, the superintendent of financial services may take into consideration the amount of surplus of the applying savings bank, whether or not such surplus is sufficient under the circumstances of the case, the needs of the community to be served and any other facts and circumstances that seem to it proper, and may grant or refuse it permission accordingly.

2. Whenever the laws of this state require a trust company acting in a fiduciary capacity to deposit securities with the state authorities for the protection of private or court trusts, a savings bank, so acting, is empowered to make similar deposits of securities.

4. The superintendent of financial services is authorized to promulgate such regulations as he or she may deem necessary or proper to implement the provisions of this section and the proper exercise of the powers granted by this section.

§ 235. Investment of funds. A savings bank may invest in the following property and securities and no others:

1. Obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, or those for which annual contributions to be paid pursuant to contract by the United States government or any of its instrumentalities in accordance with an act of congress entitled the "Housing Act of 1949", are pledged as security for the payment of the interest and principal.

2. Obligations of this state, issued pursuant to the authority of any law of the state, or those for which the faith of this state is pledged to provide for the payment of the interest and principal.

3. Obligations of any state of the United States, or those for which the faith of any state of the United States is pledged to provide for the payment of the interest and principal, upon which there is no default and upon which there has been no default for more than ninety days; provided, that within ten years immediately preceding the investment such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt duly authorized by the legislature of such state to be contracted by such state after the first day of January, eighteen hundred seventy-eight, except debts representing a refunding or adjustment of any indebtedness originally contracted or in existence at that date or prior thereto.

4. Obligations of or those for which the faith of any city, county, town, village, school district, poor district, water district, sewer district or fire district in this state is pledged to provide for the payment of principal and interest, provided that they were issued

pursuant to law and the faith and credit of the issuing municipal corporation or district is pledged for their payment, bonds and debentures or other obligations of any public authority or commission or similar body created or approved by the state of New York having assets of not less than fifty million dollars; and bonds and debentures of any other public authority, commission or similar body which is legally obligated to establish rates which while any debt is outstanding will provide sufficient revenues for the cost of operation, maintenance and debt service, such debt service to include interest on all outstanding obligations and serial maturities and sinking funds, provided such other authority, commission or similar body shall issue financial statements at least annually which shall be available to the public, shall have had receipts from operations during each of the five fiscal years immediately preceding date of investment sufficient after meeting operation and maintenance expenses to cover debt service, and provided further that the revenues available for debt service received during the fiscal year immediately preceding investment or the average amount available for debt service for the three fiscal years preceding investment shall have been adequate to meet the maximum annual debt service of the bonds outstanding, and said obligations have not been in default as to principal or interest; and bonds, debentures or other obligations of any public authority or commission or similar body created by the state of New York, the average of receipts from the operations of which, during the three years immediately preceding the date of investment, after meeting operation and maintenance expenses, were not less than one hundred twenty-five per cent of the maximum annual debt service on the bonds outstanding and which obligations have not been in default as to principal or interest.

5. (a) Obligations, excluding however, non-negotiable warrants, of any city or of any school district coterminous with or which includes such city, or of any county situated in one of the states of the United States which adjoins the state of New York, provided said city or county has a population, as shown by the last federal census next preceding such investment, of not less than ten thousand inhabitants, and has not, within twenty-five years preceding said investment, defaulted for more than one hundred and twenty days in the payment of any part either of

principal or interest of any bond, note, or other evidence of indebtedness. The term "city" in this paragraph shall include any city, town, borough, village, township or other incorporated municipality. An investment made before August first, nineteen hundred twenty-eight, shall not under the population provision of this paragraph, as to the then owner thereof, cease to be an authorized investment for the moneys of savings banks.

(b) Obligations, excluding however, non-negotiable warrants, of any city or of any school district or county coterminous with or which includes such city, situated in any other of the states of the United States the obligations of which state are an authorized investment for the moneys of savings banks, provided said city has a population, as shown by the last federal census next preceding said investment, of not less than thirty thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of said investment, and has not, within twenty-five years preceding said investment, defaulted for more than one hundred and twenty days in the payment of any part either of principal or interest of any bond, note, or other evidence of indebtedness. Provided further, that obligations issued by a city having a population of less than forty-five thousand inhabitants as shown by said census or by a school district or county shall not be an authorized investment for the moneys of savings banks unless the city, school district or county has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount.

(c) If at any time the indebtedness of any city described in paragraphs (a) or (b) of this subdivision or in paragraph (c) of subdivision twenty-five of this section, together with the indebtedness of any district, municipal corporation or subdivision, except a county, which is wholly within the boundaries of such city, and together with a proportionate part of the indebtedness of any district, municipal corporation or subdivision, except a county, which is partly within the boundaries of such city, and together with so much of the indebtedness of any county wholly within the boundaries of such city and a proportionate part of so much of the indebtedness of any county partly within the boundaries of such city, as shall be in excess of five per centum of the valuation for the purposes of taxation of the real

property in any such county, shall exceed twelve per centum of the valuation of real property in said city for the purposes of taxation, the obligations of such city or of any school district or of any county coterminous with or which includes such city, shall, thereafter, and until such indebtedness shall be reduced to twelve per centum of the valuation of real property in said city for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks. If there is no county wholly or in part within such city or if the county wholly or in part within such city has neither any indebtedness nor power to incur indebtedness, the obligations of such city or of any school district coterminous with or which includes such city, shall not cease to be an authorized investment unless such indebtedness shall exceed the percentage above provided plus an additional three per centum. If at any time the indebtedness of any county described in paragraphs (a) or (b) shall exceed five per centum of the valuation of real property for the purposes of taxation, the obligations of such county shall thereafter, and until such indebtedness shall be reduced to five per centum of the valuation of real property for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks. A proportionate part of any indebtedness for the purpose of this paragraph shall be, unless otherwise apportioned by law, that proportion which the valuation of taxable real property of a county, district, municipal corporation or subdivision within the boundaries of a city bears to the total valuation of all taxable real property of said county, district, municipal corporation or subdivision. Contract liability shall be excluded unless represented by stocks, bonds, notes, certificates of indebtedness or other like instruments and water debt shall be excluded and sinking funds applicable to debts not excluded shall be deducted, in determining the amount of any indebtedness hereunder.

(d) The provisions of paragraph (c) shall not apply to the obligations of any city which has taxable real property with a valuation for the purposes of taxation in excess of two hundred million dollars and which has a population as shown by the last decennial federal census of not less than one hundred fifty thousand inhabitants and shall not apply to the obligations of any school district or county coterminous with or which includes such city, provided that the city, school district, or

county, as the case may be, has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount.

(e) The valuation of property for purposes of taxation under this subdivision and under subdivision twenty-five of this section shall be an official valuation duly made and recorded and in cases where the assessed valuation is based on a percentage of such official valuation, the percentage used shall have been authorized under statutory or charter power prior to the determination of such assessed valuation.

(f) No obligations issued after the year nineteen hundred thirty-eight by any city, county, school district or other municipality of any state other than New York shall be an authorized investment for savings banks unless such city, county, school district or other municipality shall have power to levy taxes on the taxable real property therein for the payment of such obligation without limitation of rate or amount.

(g) Obligations issued by a city, village, town, county, department, agency, district, authority, commission or other public body in this state or any other state of the United States payable out of the revenues of a public utility system providing water, electricity, gas or sewerage service, provided that if the public utility system is located outside the state, it must serve an area having a population of not less than one hundred thousand. Said city, village, town, county, department, agency, district, authority, commission or other public body shall be legally obligated by statute, charter, indenture or covenant to fix, maintain and collect charges or taxes, or both, to provide net revenues after operation and maintenance of the facilities used to provide such service sufficient to meet maturing interest, principal and sinking fund payments on such obligations or shall be empowered to require the fixing, maintaining, and collecting of such charges or taxes, or both, by duly authorized public officers or bodies, and shall be restrained by statute, charter, indenture or covenant from disposing of all or any substantial portion of such facilities unless provision is made for a continuance of the interest, principal and sinking fund payments due on such obligations, or for the retirement of such obligations, provided said city, village, town, county, department, agency, district, authority, commission or other public body shall have had net earnings during each of the five years immediately preceding investment

sufficient to cover all debt service and further provided that the net earnings available for debt service for the year immediately preceding investment shall have been sufficient to meet the maximum annual debt service of the obligations outstanding, and said obligations shall not have been in default as to principal or interest.

5-a. Bonds and mortgages and notes and mortgages on unimproved real property in this state or outside this state, subject to such limitations as the superintendent of financial services may prescribe.

6. Bonds and mortgages and notes and mortgages on improved real property, including leasehold estates, in this state, and, subject to such limitations and conditions as the superintendent of financial services may prescribe by general regulation, in any other location outside this state. The provisions of this subdivision shall not constitute the authority to make a loan to a natural person upon the security of a mortgage which is not a first lien.

(c) For the purposes of this subdivision real property upon which there is a building in process of construction, which when completed will constitute a permanent improvement with a value of more than twenty-five per centum of the value of such real property shall be considered improved real property, as shall real property with improvements thereon that are capable of producing income sufficient to pay all costs of operation and maintenance of such real property, all taxes thereon and to effect full repayment of principal and interest in accordance with the terms of the mortgage loan to be made pursuant to this subdivision.

(e) Except as hereinafter provided no investment in any bond and mortgage or any note and mortgage shall be made by any savings bank except upon the written and signed certificate of an appraiser appointed pursuant to policies established by the board of trustees stating that in such appraiser's judgment it affords adequate security for such investment. Such certificate shall be filed and preserved among the records of the savings bank.

(f) For the purpose of protecting its interests a savings bank may release any obligation to pay, or guarantee of the payment of, principal or interest, or otherwise waive or modify any of the terms and

conditions of any bond and mortgage, and of any note and mortgage, and may extend or reextend any bond and mortgage and any note and mortgage, and may also accept a sum less than the principal amount thereof in full payment and satisfaction of the same.

A savings bank may also waive its right to enforce payment of any 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.

(g) Every mortgage and every assignment of a mortgage taken or held by a savings bank shall immediately be recorded or registered in the office of the proper recording officer of the county in which the real property described in the mortgage is located. This paragraph shall not apply to a participating interest in any mortgage which shall have been acquired by a savings bank under the provisions of subdivision fourteen of section two hundred thirty-four, paragraph (h) of this subdivision, and subdivision eighteen of section two hundred thirty-five.

(h) A savings bank may, subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, participate and invest in (1) loans of a type that it is authorized to invest in pursuant to subparagraph (a) of paragraph four of subdivision eight of section two hundred thirty-five of this chapter and (2) in any bond and mortgage or note and mortgage on improved and unencumbered real property including leasehold estates, in which it is individually authorized to invest, which said mortgage is duly recorded or registered in the office of the proper recording officer of the county in which the real property described in the mortgage is located, provided that no such investment shall be made by a savings bank in any part interest in such mortgage which is junior or subordinate to any other part interest nor if the aggregate amount of all part interests in such mortgage when added together will exceed any percentage of the appraised value of such real property by which the authority of a savings bank to invest individually in such mortgage is limited. Investments made by any savings bank in mortgage loans pursuant to this subdivision and pursuant to subdivision twenty-eight of this section shall be included in the computation of permissive investment in mortgage loans pursuant to paragraph (d) of subdivision six of this

section.

(i) A mortgage loan upon a leasehold estate shall not be made unless such leasehold estate shall have an unexpired term of not less than twenty-one years, which term may include the term provided by an option of renewal enforceable at the exclusive discretion of the savings bank. No mortgage loan upon a leasehold estate shall be made or acquired by a savings bank unless the terms thereof shall provide, regardless of the period of the loan, for payments to be made by the borrower on the principal thereof at least once in each year in amounts which would be sufficient to completely amortize a loan whose period extended for four-fifths of the unexpired term of the lease, which term may include the term provided by an option of renewal enforceable at the exclusive discretion of the savings bank; or, in the case of a mortgage loan upon a leasehold estate in real property upon which there is a building in process of construction, such payments of principal need not be required during the period of construction or the first three years of the mortgage, whichever is shorter. The provisions of paragraphs (c), (d), (e), (f), (g), and (h) of this subdivision shall be applicable to loans made upon leasehold estates.

6-a. A savings bank may, in addition to the authority granted under any other subdivisions of this section, 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 bank 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.

7. Railroad obligations as provided in this subdivision. (1) Obligations issued, assumed or guaranteed as to principal and interest by endorsement, or so guaranteed which guaranty has been assumed; or

(2) Obligations for the payment of the principal and interest of which a railroad corporation such as is described in this paragraph is obligated under the terms of a lease made or assumed; or

(3) Equipment obligations in respect of which liability has been incurred: by a railroad corporation incorporated under the laws of the United States, or any state thereof, and owning and operating within the United States not less than five hundred miles of standard-gauge railroad line, exclusive of sidings, or if the mileage so owned shall be less than five hundred miles, the railroad operating revenues from the operation of all railroad operated by it, including such revenues from the operation of all railroad controlled through ownership of all (except directors' qualifying shares) of the voting stock of the owning corporation, shall have been not less than ten million dollars each year for at least five of the six fiscal years next preceding such investment; provided, however, (1) that in the five fiscal years next preceding such investment, the amount of income of such railroad corporation, available for its fixed charges, as hereinafter defined, shall have averaged not less than two and one-half times the amount of fixed charges at the time of investment, as hereinafter defined; (2) that at no time within such period of five years such railroad corporation, unless in process of reorganization or readjustment since completed, pursuant to applicable law, shall have failed regularly and punctually to pay the matured principal and interest on its mortgage and funded indebtedness; and (3) that the security, if any, for such obligations shall be property wholly or in part within the United States and which obligations shall be

(a) fixed interest-bearing bonds secured by direct mortgage on railroad owned or operated by such railroad corporation; or

(b) fixed interest-bearing bonds secured by first mortgage upon terminal, depot or tunnel property, including lands, buildings and appurtenances, used in the service of transportation by one or more such railroad corporations, provided that such bonds be the direct obligation of, or that payment of principal and interest thereof be guaranteed by

endorsement by, or guaranteed by endorsement which guaranty has been assumed by, one or more such railroad corporations; or

(c) equipment obligations, comprising bonds, notes, certificates, conditional sale agreements or assignments of conditional sale agreements and participations therein, issued or made in connection with the purchase for use on railroads of new standard-gauge rolling stock through the medium of an equipment agreement, and which obligations, so long as any thereof shall be outstanding and unpaid or unprovided for, shall be secured by an instrument (1) vesting title to such equipment in a trustee free of encumbrance, or (2) creating a first lien on such equipment, or, pending such vesting of title, by the deposit of cash in trust, which deposit may be invested in whole or in part in obligations of the United States or obligations for which the faith of the United States is pledged to provide for the payment of the interest and principal, or obligations of any public housing agency as defined in the United States housing act of nineteen hundred thirty-seven, as amended, in the United States as are secured either (1) by an agreement between the public housing agency and the public housing administration in which the public housing agency agrees to borrow from the public housing administration, and the public housing administration agrees to lend to the public housing agency, prior to the maturity of such obligations, which obligations shall have a maturity of not more than eighteen months, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such obligations, will suffice to pay the principal of such obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, or (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the public housing administration if such contract shall contain the covenant by the public housing administration which is authorized by section 1421a(b) of Title 42, U.S. Code, and if the maximum sum and the maximum period specified in such contract pursuant to section 1421a(b) of Title 42, U.S. Code, shall not be less than the annual amount and the period for payment which are requisite to provide for the payment, when due, of all installments of principal and interest on such obligations, to an amount equal to the face amount of

such equipment obligations issued in respect of such equipment title to which is not yet so vested; provided further, that the maximum amount of such obligations so issuable shall not exceed eighty per centum of the cost of such equipment; and provided further, that the owner, purchaser or lessee, or the owners, purchasers or lessees, of such equipment shall be obligated by the terms of such obligations or of such instrument (a) to maintain such equipment in proper repair; (b) to replace any thereof that may be destroyed or released with other equipment of equal value, or, if released in connection with a sale thereof, to deposit the proceeds of such sale in trust for the benefit of the holders of such obligations pending replacement of such equipment; (c) to pay any and all taxes or other governmental charges that may be required by law to be paid upon such equipment; (d) to pay, in accordance with the provisions of such obligations or of such instrument, to holders, or to such trustee for the benefit of holders, of such obligations the amount of interest due thereon or of the dividends payable in respect thereof; and (e) to pay the amount of the entire issue of such obligations in such annual or semi-annual installment each year throughout a period of not exceeding fifteen years from the first date of issue of any thereof that the amount of the respective unmatured installments at any time outstanding shall be approximately equal; provided, further, that unless the owner, purchaser or lessee of such equipment or one or more of such owners, purchasers or lessees shall be such railroad corporation as is described in and meets the requirements of this subdivision preceding paragraph (a), such obligations shall be guaranteed by endorsement as to principal and as to interest or dividends by such railroad corporations; or

(d) fixed interest-bearing bonds of such railroad corporation secured by irrevocable pledge as collateral under a trust agreement of other railroad bonds that are legal investments for savings banks under this section, have a maturity not earlier than the bonds that they secure and of a total face amount not less than the total face amount of the bonds that they secure; or

(e) fixed interest-bearing mortgage bonds other than those described in paragraphs (a) or (b) hereof, income mortgage bonds, collateral trust bonds or obligations other than those described in paragraph (d) hereof, or unsecured bonds or obligations, issued, assumed or guaranteed as to

principal and interest by endorsement by, or so guaranteed which guaranty has been assumed by, such railroad corporation, provided that (a) the annual fixed charges and contingent interest charges of such railroad at the time of investment shall not exceed thirty per cent of the average annual income available for such charges for the five fiscal years next preceding, and (b) the net income of such railroad after all taxes and charges shall have averaged not less than fifteen million dollars annually in such period.

The amount of income available for fixed charges shall be the amount obtained by deducting from gross income all items deductible in ascertaining net income other than federal income taxes, contingent income interest and those constituting fixed charges. Fixed charges shall be: rent for leased roads, miscellaneous rents, fixed interest on funded debt, interest on unfunded debt and amortization of discount on funded debt.

Accounting terms used in the preceding paragraph shall be deemed to refer to those used in the accounting reports prescribed by the accounting regulations for common carriers subject to the provisions of the interstate commerce act. If the interstate commerce commission shall prescribe accounting regulations wherein shall be defined the term income available for fixed charges and the term fixed charges, the definitions thereof as so prescribed shall be taken and used in lieu of the definitions set forth in the preceding paragraph of this subdivision for all purposes hereof, except that federal income taxes shall not be deducted, nor shall federal income tax credits be included, in computing income available for fixed charges. In determining income available for fixed charges and fixed charges pursuant to this paragraph or the immediately preceding paragraph interest, dividends and rentals paid by a railroad corporation and included in both such amounts shall be eliminated.

For all purposes of this subdivision seven, the revenues, earnings, income and fixed charges of, and dividends paid by, any railroad corporation prior to the acquisition of all or substantially all of its railroad lines by another railroad corporation, through merger,

consolidation, conveyance or lease, shall, while such lines remain in the possession of the acquiring corporation, be deemed to have been revenues, earnings, income and fixed charges of, and dividends paid by, such acquiring corporation.

Whenever a railroad corporation shall own (directly or through a subsidiary all of the stock of which, except directors' qualifying shares, is owned by such corporation) at least ninety per cent of the capital stock of one or more other railroad corporations, the property of which is operated by it under lease, the consolidated statements of all such railroad corporations may be used in determining the amount of income available for fixed charges and the amount of fixed charges.

Obligations of a railroad corporation the railroad lines of which have been so leased prior to April fifth, nineteen hundred twenty-nine, for the payment of which the lessee is not obligated, that are outstanding and officially listed by the department of financial services of the state of New York as authorized investments prior to that date, shall be and remain authorized investments hereunder; provided, that such railroad lines shall be in the possession of and be operated by a railroad corporation such as is described in and meets the requirements of the provisions of this subdivision preceding paragraph (a).

Notwithstanding any other provisions of this subdivision, equipment obligations described in paragraph (c) which shall have been issued, assumed or guaranteed by any railroad corporation classified by the interstate commerce commission as a class one railroad and which are not in default, shall be authorized investments hereunder.

Notwithstanding any of the provisions of this subdivision, fixed interest-bearing obligations of railroad corporations, excluding terminal, depot and tunnel corporations, which are eligible for purchase by savings banks on December thirty-first, nineteen hundred fifty-two under the provisions of subdivisions seven or nineteen of this section, or which shall thereafter become eligible pursuant to the provisions of this subdivision seven, as amended, if not in default, shall be and remain eligible hereunder, provided that the income available for fixed

charges, as herein defined, of the railroad corporation which has issued, assumed or guaranteed such obligations, or which operates under lease the railroad lines of the corporation which has issued, assumed or guaranteed such obligations, shall have averaged for the five fiscal years next preceding the time of investment not less than twice the interest charges for the last such fiscal year on all equipment obligations, and other obligations eligible hereunder, of such railroad corporation which remain outstanding at time of investment.

Fixed interest-bearing bonds of terminal, depot and tunnel companies which are eligible for purchase by savings banks on December thirty-first, nineteen hundred fifty-two under the provisions of subdivisions seven or nineteen of this section, or which shall thereafter become eligible pursuant to the provisions of this subdivision seven, as amended, shall be and remain eligible hereunder, provided that the principal and interest thereof be guaranteed by endorsement by, or guaranteed by endorsement which guaranty has been assumed by, a railroad corporation which meets the requirements of the preceding paragraph for continuing the eligibility of its own fixed interest-bearing obligations.

Not more than twenty-five per centum of the assets of any savings bank shall be loaned or invested in the bonds, notes, certificates, conditional sale agreements, assignments of conditional sale agreements and participations therein in this subdivision seven defined, and not more than ten per centum of such assets shall be invested in such bonds, notes, certificates, conditional sale agreements, assignments of conditional sale agreements and participations therein for which any one railroad corporation of this state shall be obligated, and not more than five per centum of such assets shall be invested in the bonds, notes, certificates, conditional sale agreements, assignments of conditional sale agreements and participations therein for which any one railroad corporation not of this state shall be obligated.

Street railroad corporations shall not be considered railroad corporations within the meaning of this subdivision.

7-a. Any savings bank which prior to April first, nineteen hundred thirty-eight acquired any railroad obligation eligible at the time of acquisition for investment by savings banks may continue to hold such obligation as though the same continue to be eligible by law for new investment by such savings bank.

8. Promissory notes and other agreements as provided in this subdivision.

(1) Promissory notes payable to the order of the savings bank which are:

(a) Secured by one or more mortgages in which a savings bank may invest; provided 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 bank.

(b) Secured by any of the stocks and bonds in which a savings bank may invest; provided that (1) the amount of the loan is not in excess of ninety per centum of the market value of such stocks and bonds; and (2) the term "stocks," as used in this paragraph, shall be deemed to refer to stocks eligible for investment by a savings bank other than in accordance with the provisions of subdivision twenty-six of this section.

(c) Made by a savings and loan association which has been incorporated three years or more and has an accumulated capital of at least fifty thousand dollars.

(2) Promissory notes payable to the order of the savings bank which are secured by the assignment of a deposit in any savings bank; provided the amount of the loan is not in excess of the amount of such deposit.

(3) Any loan secured by not less than a like amount of direct obligations of the United States or of this state, or of any city, county, town, village or school district of this state or of any such department, agency or instrumentality of the United States or this state.

(4) (a) Promissory notes 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 bank and the borrower in the promissory note; 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 bank 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 bank 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 bank 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 bank 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 subdivision. Notwithstanding the provisions of this paragraph no refund of excess fines shall be required if it amounts to less than one dollar.

(b) Promissory notes 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 bank to the borrower pursuant to this subparagraph 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 bank and the borrower in the promissory note, 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 maximum rate of interest authorized by this subparagraph 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 bank 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 bank 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 bank 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 subparagraph, except under such terms and conditions as the superintendent may from time to time approve. Notwithstanding the provisions of this subparagraph no refund of excess fines shall be required if it amounts to less than one dollar.

(c) Promissory notes 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 subparagraph:

(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 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 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 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 or ten dollars if the interest so computed is less than that amount; provided that the interest which may be charged; if it exceeds ten dollars, shall not exceed one per cent per month on the unpaid principal balance.

(5) The authorized interest shall include all charges incident to investigating and making any loan. No fee, commission, expense, or other charge shall be permitted except that the savings bank 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 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 bank 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 bank insures a borrower under a credit unemployment insurance policy, group life, health, accident, or group 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 bank 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 to a mobile home loan 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 hereto, 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 date of the loan, then, in either event and notwithstanding anything to the contrary in this subparagraph, the loan and all authorized charges shall become immediately due and payable subject to the refund provisions of subparagraph (c) of paragraph four 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 investment shall be made by a savings bank pursuant hereto if the total amount invested by it pursuant to this subparagraph exceeds, or by the making of such investment will exceed, an amount equal to thirty per cent of the assets of the savings bank.

(8) Subject to such limitations and conditions as the superintendent of financial services may prescribe by general regulation, a savings bank may make a loan pursuant to this subparagraph 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 1944." No law of this state 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 item.

(d) A borrower may prepay in full any loan made pursuant to the provisions of subparagraph (a), (b) or (c) of this paragraph or, with the consent of the savings bank, may refinance the loan. In the event of such prepayment or refinancing, the savings bank 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 bank 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 bank, if such premiums were paid or payable by the savings bank periodically or the refund for such insurance premium received or receivable by the savings bank, if such premium was paid or payable in a lump sum by the savings bank, 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.

(5) Promissory notes from a resident of the state of New York provided that payment of each such note is guaranteed by the New York Higher Education Assistance Corporation, or promissory notes that are 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 "Higher Education Act of 1965".

8-a. 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 cooperative ownership of real estate within or without this state, as provided in this subdivision.

A savings bank 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 loan 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 an ownership interest in and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate within or without this state, 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) repayment 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 centum per annum.

8-b. Personal loan departments. Subject to such regulations as the superintendent of financial services may prescribe, a savings bank may operate a personal loan department under the same terms and conditions as are provided under the provisions of subdivisions four and five of section one hundred eight of this chapter.

The superintendent of financial services shall be empowered (a) to prescribe the terms and conditions governing the conduct and operation of personal loan departments including, the maximum amount, expressed as a percentage of assets or otherwise, which a savings bank may invest pursuant to the provisions of this subdivision or in the aggregate, taking into account such other provisions of law authorizing investments by savings banks, and (b) to prescribe such terms and conditions as may be appropriate to effect or facilitate the transfer of accounts operated pursuant to the provisions of any other section of this chapter to the personal loan departments authorized to be operated hereunder.

In pursuance of the authority granted hereunder savings banks shall be empowered to issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations, and to act as financing agency as defined in subdivision nine of section three hundred one and subdivision eighteen of section four hundred one of the personal property law.

8-c. Subject to such regulations as the superintendent of financial services may prescribe, promissory notes and other evidences of indebtedness representing commercial, corporate or business loans, provided that the aggregate amount of all such loans outstanding at any time to any borrower shall, if unsecured, not exceed fifteen per centum of the net worth of such savings bank or, if secured, subject to the same limitations as to amount in relation to net worth as are applicable to banks and trust companies pursuant to article three of this chapter. For purposes of this section the term "net worth" shall have the meaning ascribed to it by subdivision four of section two hundred forty-four of

this chapter.

8-d. Subject to such regulations as the superintendent of financial services may prescribe and subject to the limits of subdivision eight-c of this section and any other applicable limits or requirements imposed by law or regulation, promissory notes and other evidence of indebtedness that represent linked loans, each authorized and approved pursuant to article fifteen of the state finance law and each in an amount equal to a corresponding linked deposit made pursuant to such article.

8-e. Subject to such regulations as the superintendent of financial services may prescribe and subject to the limits of subdivision eight-c of this section and any other applicable limits or requirements imposed by law or regulation, promissory notes and other evidence of indebtedness that represent linked loans, each authorized and approved pursuant to article sixteen of the state finance law and each in an amount equal to a corresponding linked deposit made pursuant to such article.

9. Real estate as provided in this subdivision.

(a) A savings bank may purchase or acquire the following real estate:

(1) A plot whereon there is or may be erected a building suitable for the convenient transaction of the business of the savings bank, from portions of which not required for its own use a revenue may be derived, and a plot whereon parking accommodations are, or are to be, provided, with or without charge, primarily for its customers or employees or both. The aggregate of all investments of a savings bank in such plots and buildings shall not exceed five per centum of the assets of such savings bank, except with the approval of the superintendent.

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(3) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

(4) In lieu of instituting an action to foreclose a mortgage lien, a savings bank may purchase a deed to the underlying real property.

(5) A whole or part interest in a "project" as defined in the New York

state urban development corporation act, pursuant to sections six or eight of such act. An investment by a savings bank in a single project shall not exceed one per centum of the assets or ten per centum of the net worth of such savings bank, whichever is less, and the aggregate of all investments of a savings bank in such projects and investments in securities pursuant to subparagraph one-a of paragraph (a) of subdivision twenty-one of this section shall not exceed five per centum of the assets or fifty per centum of the net worth of such savings bank, whichever is less. For the purposes of this subdivision, "net worth" of a savings bank shall mean the excess of its assets at book value, less allocated reserves, over known liabilities.

* (6) Improved or unimproved real property (either by purchase, lease, exchange or otherwise), or any interest therein, to erect, construct, rebuild, enlarge, alter, improve, maintain, manage and operate buildings or other improvements of any description thereon, to sell, lease, sublet, mortgage, exchange or otherwise dispose of same and execute, perform and carry out contracts for construction, alteration, improvement, maintenance, management or repair thereof, to make loans in connection therewith, as owner, co-owner or otherwise, subject to such specific or general approvals and limitations as shall be required by regulations promulgated from time to time by the superintendent of financial services pursuant to this subparagraph; provided, however, that no activity specified herein, shall be undertaken pursuant to the authority contained in this subparagraph until the superintendent of financial services shall have issued regulations specifying the limitations and requirements which shall be imposed in connection with the investments and activities referred to herein including, without limitation, the consideration of such savings bank's record in meeting the credit needs of local communities within the meaning of section twenty-eight-b of this chapter.

* NB Expired June 30, 1988

(b) Every parcel of real estate acquired by a savings bank shall be conveyed to it directly by name, or, subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, may be taken in the name of a duly authorized nominee, and the conveyance shall be immediately recorded or registered in the office of the proper recording officer of the county in which

such real estate is located.

10. Bonds and other obligations of Savings and Loan Bank of the State of New York.

11. Farm loan bonds, including consolidated bonds, issued by federal land banks, federal intermediate credit bank debentures, including consolidated debentures, issued by federal intermediate credit banks and bonds, debentures or other obligations of banks for cooperatives, including consolidated debentures issued by banks for cooperatives organized under the laws of the United States.

12. Bankers' acceptances and bills of exchange which are eligible for purchase in the open market by federal reserve banks and which have been accepted by a bank, a trust company, a private banker or an investment company, as those terms are defined in this chapter, or by a banking corporation which is organized under the laws of the United States or of any state thereof and which is a member of the federal reserve system.

Aggregate liability of any bank, trust company, private banker, investment company or banking corporation to any savings bank for acceptances shall not exceed twenty-five per centum of the capital and surplus of such bank, trust company, private banker, investment company or banking corporation, or five per centum of the aggregate amount credited to the depositors of such savings bank, whichever amount is less.

12-a. * (a) Obligations of any corporation organized under the laws of any state of the United States maturing within two hundred seventy days, provided that such obligations receive the highest rating of an independent rating service designated by the superintendent of financial services.

* NB Effective until notification of the superintendent of financial services

* (a) Obligations of any corporation organized under the laws of any state of the United States maturing within two hundred seventy days, provided that such obligations meet the standards of creditworthiness

established by regulation by the superintendent.

* NB Effective upon notification of the superintendent of financial services

(b) Subject to such regulations as the superintendent of financial services may impose, certificates of deposit issued by or accounts of (1) a bank, trust company or national bank having a principal, branch or trust office in this state, (2) a banking corporation organized under the laws of the United States or of any state thereof whose deposits are insured by an agency of the United States, or (3) an agency or branch located within the United States of a foreign banking corporation with total worldwide bank assets in excess of one billion dollars.

12-b. Advances of federal funds to designated depositaries, provided such advances are made on the condition that they be repaid on the next business day following the day on which the advance is made. For purposes of this subdivision and subdivision twelve of this section, the term "federal funds" shall mean funds which a savings bank has on deposit at a depositary which are exchangeable for funds on deposit at a federal reserve bank; and the term "business day" shall mean any day on which the savings bank, the depositary and the federal reserve bank where the funds are on deposit are all open for general business.

13. Bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and transacting the business of supplying electrical energy or artificial gas, or natural gas purchased from another corporation and supplied in substitution for, or in mixture with, artificial gas, for light, heat, power and other purposes, or transacting any or all of such business, provided at least eighty per centum of the gross operating revenues of any such corporation are derived from such business, subject to the following conditions:

(a) Such corporation shall have all franchises necessary to operate in territory in which at least seventy-five per centum of its gross income is earned. Such corporation shall file with the superintendent of financial services and make public in each year a statement and a report giving the income account covering the previous fiscal year and a balance sheet showing in reasonable detail the assets and liabilities at

the end of the year.

(b) Either the outstanding full paid capital stock together with premiums thereon and the surplus of such corporation shall be not less than two-thirds of the total debt secured by mortgage lien on any part or all of its property, or the outstanding full paid capital stock together with premiums thereon and surplus and unsecured debt not maturing within five years and not in excess of fifty per centum of such capital stock, premiums and surplus shall be equal to at least three-fourths of the total debt secured by mortgage lien on any part or all of its property, provided, however, that in case of a corporation having no-par value shares, the amount of capital which such shares represent shall be the capital as shown by the books of the corporation.

(c) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a major portion of its property was acquired by consolidation, merger or purchase shall be considered together in determining the required period.

(d) For a period of five fiscal years next preceding such investment the net earnings of such corporation shall have averaged per year not less than two times the average annual interest charges on its total funded debt applicable to that period, and for the last fiscal year preceding such investment such net earnings shall have been not less than twice the interest charges for a full year on its total funded debt outstanding at the time of such investment, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than two million dollars.

(e) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial part thereof within five years immediately preceding the date of such investment by consolidation or merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, the gross operating revenues, net earnings, and

interest charges of the several predecessor or constituent corporations shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (d) of this subdivision have been complied with.

(f) Such bonds shall be (1) bonds secured by a first or refunding mortgage on property owned and operated, or controlled, by the corporation issuing or assuming them, or underlying mortgage bonds secured by a lien on property owned and operated, or controlled, by the corporation issuing or assuming them, provided that such underlying mortgage bonds are to be refunded by a junior mortgage providing for their retirement, that the bonds under such junior mortgage comply with the requirements of this subdivision, and that such underlying mortgage is either a closed mortgage or remains open solely for the issue of additional bonds which are to be pledged under such junior mortgage and provided that the aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying outstanding bonds shall not exceed two-thirds of the net value of the physical property owned or controlled as shown by the books of the owning corporation, and subject to the lien of such mortgage or mortgages securing the total mortgage debt and provided further, that if a refunding mortgage, it must provide for the retirement on or before the date of their maturity of all bonds secured by prior liens on the property, or (2) bonds, other than mortgage bonds, provided, that (a) for a period of five fiscal years next preceding such investment the net earnings of such corporation shall have averaged per year not less than two and one-half times the average annual interest charges on its total funded debt applicable to that period, and for the last fiscal year preceding such investment such net earnings shall have been not less than two and one-half times the interest charges for a full year on its total funded debt outstanding at the time of such investment, and (b) the capital stock together with premiums thereon and surplus of such corporation shall not be less than two-thirds of its total funded debt outstanding, and (c) such bonds, if issued for a term longer than fifteen years, shall have been issued under an indenture containing a covenant providing for the establishment of a sinking fund for the benefit of such bonds whereby such bonds shall be redeemed at an annual rate of not less than two per centum of the largest principal amount of

their issue at any one time outstanding, and (d) the mortgage bonds of such corporation, if any, shall qualify under the provisions of this subdivision.

(g) (1) The gross operating revenues and expenses of a corporation for the purposes of this subdivision shall be, respectively, the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated, or leased and operated, by such corporation, as determined by a system of accounts adopted by a federal, state or municipal public service commission, public utility commission or other similar regulatory body. The gross operating revenues and expenses, as defined above, of subsidiary companies may be included, provided all the mortgage bonds and a controlling interest in stock or stocks of such subsidiary companies are pledged as part security for the mortgage debt of the principal company. The net value of any property shall be its value as shown by the books of the corporation less the amounts of any reserves for depreciation, retirement or amortization thereof. Property shall be deemed to be controlled by a corporation if such corporation shall own not less than ninety per cent of the capital stock of the corporation owning such property.

(2) The net earnings of any corporation for the purposes of this subdivision shall be the balance obtained by deducting from its gross operating revenues, its operating and maintenance expenses, taxes other than federal and state income taxes, rentals and provision for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources but not, however, to exceed fifteen per centum of said balance. The term funded debt shall be construed to mean all interest-bearing debt maturing more than one year from date of issue.

(3) In the computation for the purposes of this subdivision of the ratio of mortgage debt to net mortgaged property value there shall be excluded from the amount of outstanding mortgage bonds the amount of any cash deposited with the trustee of the mortgage and held in trust pursuant to the terms of such mortgage.

(h) Not more than twenty-five per centum of the assets of any savings bank shall be loaned on or invested in bonds of such electric and gas corporations, and not more than two per centum of the assets of any

savings bank shall be invested in the bonds of any one such corporation, as authorized by this subdivision.

(i) As used in this subdivision, the term "bond" includes a note or debenture.

14. Bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and authorized to engage, and engaging, in the business of furnishing telephone service in the United States, subject to the following conditions:

(a) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed, or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a major portion of its property was acquired by consolidation, merger or purchase, shall be considered together in determining the required period; and such corporation shall file with the superintendent of financial services and make public in each year a statement and a report giving the income account covering the previous fiscal year and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(b) The outstanding full paid capital stock together with premiums thereon and the surplus of such corporation shall at the time of such investment be equal to at least two-thirds of the aggregate of its funded debt and the total funded debt, exclusive of any such funded debt held by such corporation, of every telephone corporation a majority of the capital stock of which is owned by such corporation.

(c) For a period of five fiscal years next preceding such investment the net earnings of such corporation shall have averaged per year not less than two and one-half times the average annual interest charges on its total debt applicable to that period, and for the last fiscal year preceding such investment such net earnings shall have been not less than twice the interest charges for a full year on its total funded debt outstanding at the time of such investment, and for such period the

gross operating revenues of any such corporation shall have averaged per year not less than five million dollars.

(d) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial part thereof within five years immediately preceding the date of such investment by consolidation or merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, the gross operating revenues, net earnings and interest charges of the several predecessor or constituent corporations shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (c) of this subdivision have been complied with.

(e) The gross operating revenues and expenses of a corporation for the purposes of this subdivision shall be, respectively, the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated, or leased and operated, by such corporation, as determined by a system of accounts adopted by the federal communications commission, a public service commission, or public utility commission, or other similar federal or state regulatory body.

(f) The net earnings of any corporation for the purposes of this subdivision shall be the balance obtained by deducting from its gross operating revenues, its operating and maintenance expenses, provision for depreciation of the physical assets of the corporation, taxes other than federal and state income taxes, rentals and miscellaneous charges, and by adding to said balance its income from securities and miscellaneous sources but not, however, to exceed fifteen per centum of said balance. The term funded debt shall be construed to mean all interest-bearing debt maturing more than one year from date of issue.

Whenever a corporation shall own a majority of the capital stock of one or more other telephone corporations, the consolidated statements of all such telephone corporations shall be used in determining the amount of net earnings available for interest charges, and the amount of interest charges, of such corporation.

(g) Not more than twenty-five per centum of the assets of any savings bank shall be loaned on or invested in bonds of such telephone corporations, and not more than three per centum of the assets of any

savings bank shall be invested in the bonds of any one telephone corporation, as authorized by this subdivision.

(h) As used in this subdivision, the term "bond" includes a note or debenture.

15. Bonds, debentures, consolidated debentures or other obligations of any federal home loan bank or banks, or of Tennessee Valley Authority, and obligations of, or instruments issued by or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and notes, bonds, debentures, mortgages and other evidences of indebtedness of the United States Postal Service.

16. Stock of a federal reserve bank in the amount necessary to qualify for membership in such bank.

17. Stock of a federal home loan bank in the amount necessary to qualify for membership in such bank and in such additional amounts as are approved by the superintendent of financial services.

19. Securities of corporations which securities are made eligible for investment by savings banks by the superintendent of financial services.

20. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, (a) (1) any bond and mortgage insured by the federal housing commissioner, or for which a commitment to insure has been made by the federal housing commissioner, or (2) any bond and mortgage guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944", or (3) provided the mortgage is a first lien, any bond and mortgage at least twenty per centum of which is guaranteed pursuant to the provisions of such act, or (4) a participation in any loan or a part interest in any bond and mortgage, secured by real property, to the extent that the small business administration is committed to pay the principal and interest thereof; (b) any whole or part interest in any such bond and mortgage or in any whole or part interest in any such bond and mortgage, which bond and mortgage is held for the benefit of the

holder or holders of a whole interest or part interests therein by any entity or entities with which a savings bank is authorized to participate pursuant to this paragraph, but no such investment shall be made in any part interest which is junior or subordinate to any other part interest therein; (c) any bond secured by any such mortgage or mortgages, which mortgage is, or which mortgages are, held for the benefit of the holder or holders of the bond or bonds secured thereby, by a savings bank or bank or trust company; and (d) any property improvement note issued pursuant to the provisions of the national housing act, provided the savings bank investing in such note shall have qualified for and received in connection therewith a contract of insurance from the federal housing commissioner. A savings bank may receive and hold such debentures as are issued in payment of any such insurance. 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 subdivision.

The provisions of subdivision six of this section, except those of paragraph (f) thereof, shall not apply to investments made pursuant to this subdivision by any savings bank. Paragraphs (a), (b) and (c) of section one of chapter eight hundred ninety-seven of the laws of nineteen hundred thirty-four as amended shall not apply to savings banks. The term "bond", as used in this subdivision, includes a note. The authority provided in this subdivision to invest in any bond and mortgage guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944", shall include authority to acquire title to real property in connection with investing in an installment contract for the sale of real property, so guaranteed, where the purchaser under such contract is in possession and control of the property, and title is acquired by the savings bank solely as security for the obligations of the purchaser.

21. (a) Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper:

(1) Stock and obligations, not otherwise eligible for investment by the savings bank, of any corporation organized under any law of this state for the purpose of acquiring, constructing, owning, maintaining, operating, selling or conveying a housing project or projects (not including hotels but including accommodations for retail stores, shops, offices and other community services reasonably incident to such projects) located within this state, provided that all the stock and obligations of any such corporation have been or are originally issued to one or more savings banks of this state.

(1-a). Stock and obligations, not otherwise eligible for investment by the savings bank, of any "subsidiary" of the New York state urban development corporation, as defined in the New York state urban development corporation act, provided that all the stock and obligations of any such subsidiary is or is to be owned by one or more savings banks of this state, or by such other owners of such stock and obligations as may be approved by the superintendent of financial services.

(2) Corporate interest-bearing securities, other than those issued by any corporation organized under the laws of a foreign country except Canada whose securities are not registered with the United States Securities and Exchange Commission or listed on a national securities exchange in accordance with the Securities Exchange Act of 1934, as amended, and interest-bearing securities of any state in the United States or of any public authority, commission or instrumentality organized under the laws of any state of the United States or of any political subdivision of any such state, not otherwise eligible for investment by the savings bank, which are not in default as to either principal or interest when acquired, provided that no investment shall be made pursuant to this subparagraph (2) in the securities of any corporation if the total direct liabilities of such corporation to the savings bank exceed, or by the making of such investment will exceed, ten per centum of the total direct liabilities of such corporation or one per centum of the assets of the savings bank, whichever amount is less. The term "securities", as used in this subparagraph (2), means such bonds, notes, debentures and other obligations for payment of money

as are negotiable, or conditional sale agreements, assignments of conditional sale agreements and participations therein which are issued or made by railroads for the purchase of rolling stock, and which have a maturity of not less than five years from the date of issue or making, or, if issued or made in a series or repayable in installments, an average maturity of not less than five years from the date of issue or making.

(b) No investment shall be made by a savings bank pursuant to subparagraphs one and two of paragraph (a) of this subdivision if the total amount invested by it pursuant to such paragraph, together with the total amount invested by it pursuant to any provisions of any law other than the banking law, exceeds, or by the making of such investment will exceed, an amount equal to ten per centum of the assets of the savings bank. An investment by a savings bank in a single subsidiary of the New York state urban development corporation pursuant to subparagraph one-a of paragraph a of this subdivision shall not exceed one per centum of the assets or ten per centum of the net worth of such savings bank, whichever is less, and the aggregate of all investments of a savings bank in such subsidiaries and investments in securities pursuant to subparagraph five of paragraph (a) of subdivision nine of this section shall not exceed five per centum of the assets or fifty per centum of the net worth of such savings bank, whichever is less. For the purposes of this paragraph, "net worth" of a savings bank shall mean the excess of its assets at book value, less allocated reserves, over known liabilities.

(d) For the purposes of sections two hundred seventy-four, two hundred eighty-five and four hundred thirty-five of this chapter, investments authorized by this subdivision shall not be deemed investments in which savings banks may legally invest, except that investments authorized by subparagraph one-a of paragraph (a) of this subdivision shall be deemed investments in which savings banks may legally invest for the purposes of section three hundred seventy-nine of this chapter.

(e) For the purposes of section three hundred fifty-nine-f of the general business law, investments authorized by sub-paragraph (2) of paragraph (a) of this subdivision shall not be deemed investments in which savings banks may legally invest.

* 21-a. Interest-bearing obligations payable in United States funds

which at the time of investment are rated in one of the three highest rating grades by each rating service, designated by the superintendent of financial services, which has rated such obligations, provided that the aggregate amount invested in the obligations of any single issuer pursuant to this subdivision and pursuant to subparagraph (2) of paragraph (a) of subdivision twenty-one of this section may not exceed one per centum of the assets of the savings bank, and provided further that the aggregate amount invested in the interest-bearing obligations of any single issuer pursuant to this subdivision and pursuant to any provision of this section specifically authorizing such investment, may not exceed the percentage limitations contained in any such provision.

* NB Effective until notification of the superintendent of financial services

* 21-a. Interest-bearing obligations payable in United States funds which at the time of investment meet the standards of creditworthiness established by regulation by the superintendent, provided that the aggregate amount invested in the obligations of any single issuer pursuant to this subdivision and pursuant to subparagraph (2) of paragraph (a) of subdivision twenty-one of this section may not exceed one per centum of the assets of the savings bank, and provided further that the aggregate amount invested in the interest-bearing obligations of any single issuer pursuant to this subdivision and pursuant to any provision of this section specifically authorizing such investment, may not exceed the percentage limitations contained in any such provision.

* NB Effective upon notification of the superintendent of financial services

22. Certificates of investment in savings banks life insurance fund.

23. Certificates representing advances to the surplus fund of its life insurance department.

24. Obligations issued or guaranteed by the international bank for reconstruction and development.

24-a. Obligations issued or guaranteed by the inter-American development bank.

24-b. Obligations issued or guaranteed by the Asian development bank.

24-c. Obligations issued or guaranteed by the African Development Bank.

24-d. Obligations guaranteed by the youth facilities project guarantee fund and participations therein.

24-e. Obligations issued or guaranteed by the International Finance Corporation.

25. Obligations of the Dominion of Canada, or of any province or city of the Dominion of Canada, as provided in this subdivision. (a) Obligations of the Dominion of Canada, or those for which the faith of the Dominion of Canada is pledged to provide for the payment of the interest and principal, provided that the principal and interest of such obligations are payable in United States funds.

(b) Obligations of any province of the Dominion of Canada or those for which the faith of any such province is pledged to provide for the payment of the interest and principal upon which there is no default and upon which there has been no default for more than ninety days; provided, that within ten years immediately preceding the investment such province has not been in default for more than ninety days in the payment of any part of principal or interest of any debt duly authorized by the legislature of such province; and provided that the principal and interest of such obligations are payable in United States funds; and provided further, that if at any time the net debt, as hereinafter defined, of any such province shall exceed twenty-five per centum of the valuation of real property in such province for the purposes of taxation, the obligations of such province shall, thereafter, and until such net debt shall be reduced to twenty-five per centum of the valuation of real property in such province for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks. The term "net debt" as used in this paragraph shall mean the aggregate of all direct obligations funded and unfunded of any such province and all other obligations excluding any on which interest is

being paid out of other than the ordinary revenues of such province; less sinking funds applicable to such obligations.

(c) Obligations of any city in Canada, provided that said city has a population, according to the last federal census of Canada next preceding said investment, of not less than one hundred fifty thousand inhabitants, and has not, within twenty-five years preceding said investment, defaulted for more than one hundred and twenty days in the payment of any part either of principal or interest of any bond, note, or other evidence of indebtedness, provided that the indebtedness of such city does not exceed the limitations imposed by paragraph (c) of subdivision five of this section if applicable; and provided further that the principal and interest of such obligations are payable in United States funds. No obligations of any such city shall be an authorized investment for savings banks unless such city shall have power to levy taxes on the taxable real property therein or to require a levy thereon by municipalities within its area in either case for the payment of such obligation without limitation of rate or amount. The term "city" as used in this paragraph and in paragraph (d) of subdivision five of this section shall include The Municipality of Metropolitan Toronto and any other similar corporation in Canada, and the power to require a levy by municipalities within its area shall be deemed to be a power to levy taxes within the meaning of such last mentioned paragraph.

(d) Not more than ten per centum of the assets of any savings banks shall be invested in the obligations defined in this subdivision, and not more than two per centum of such assets shall be invested in the obligations of any province, nor more than two per centum of such assets in the obligations of any city, as authorized by this subdivision.

26. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper:

(a) Preferred stock of any corporation, created or existing under the laws of the United States or of any state, district or territory thereof, provided (1) the net earnings of such corporation available for its fixed charges for a period of five fiscal years next preceding the date of investment by such savings bank shall have averaged per year not less than one and one-half times the sum of the following, computed as

of the date of such investment: its annual fixed charges, if any, its annual maximum contingent interest, if any, and its annual preferred dividend requirements; and (2) during either of the last two years of such period such net earnings shall have been not less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. As used in this paragraph (a), the term "dividend requirements" shall be construed to mean cumulative or non-cumulative dividends whether or not paid.

(b) Guaranteed stock of any corporation created or existing under the laws of the United States or of any state, district or territory thereof, provided (1) the net earnings of the guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of investment by such savings bank shall have averaged per year not less than one and one-half times its annual fixed charges computed as of the time of such investment; and (2) during either of the last two years of such period net earnings shall have been not less than one and one-half times its fixed charges for such year.

(c) Common stock of any corporation created or existing under the laws of the United States or of any state, district or territory thereof, provided such common stock is registered on a national securities exchange, as provided in an act of congress of the United States, entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended.

(e) Stock or shares of any investment company, as defined by, and which is registered under, an act of congress of the United States, entitled the "Investment Company Act of 1940", approved August twenty-second, nineteen hundred forty, as amended, provided such company may invest only in such investments as are eligible for savings banks, including, without limitation, investments made eligible for savings banks by paragraphs (a), (b) and (c) of this subdivision but excluding investments made eligible for savings banks by subdivisions five-a, six, eight, nine, sixteen, seventeen, eighteen, twenty-two and twenty-three of this section, provided that (i) investment restrictions based upon the assets, surplus fund, net worth or other features of the condition or operation of the savings bank shall not be applicable to such investment company, (ii) the amount of stock of any corporation which may be held by such investment company shall not exceed five per centum

of the number of shares of stock of such corporation outstanding at the time of investment by such investment company, and (iii) at the time the investment is made, the percentage of assets that a savings bank may invest in the stock or shares of the investment company shall not exceed the limitation, if any, applicable to a savings bank's investment in any individual security included in the investment company's portfolio. Nothing contained in the provisions of this chapter shall prevent an officer, director, clerk or other employee of any bank or trust company from being an officer, director or employee of any such investment company.

(ee) Stock of any "bank service corporation", as such term is defined by an act of congress of the United States, entitled the "Bank Service Corporation Act", approved October twenty-third, nineteen hundred sixty-two, as such act may be amended from time to time, provided such investment shall have been authorized by the superintendent.

(eee) Stock or shares of any investment company, as defined by, and which is registered under, an act of Congress of the United States, entitled the "Investment Company Act of 1940", approved August twenty-second, nineteen hundred forty, as amended, provided: (1) such company is managed, advised and has its assets held at a bank or trust company which is supervised and examined by the superintendent; (2) all of the stock and shares, other than stock or shares required by law to qualify directors, of such investment company are or are to be owned by savings banks, savings and loan associations and pension trusts, funds, plans or agreements participated in by one or more savings banks or savings and loan associations to provide retirement benefits, for any or all of its or their active officers and employees; and (3) such investment company may invest only in investments as are made eligible for savings banks by subdivisions one, two, three, four and fifteen of this section. For the purpose of investments authorized by this paragraph, no investment shall be made by a savings bank if the total amount invested by it exceeds, or by the making of the investment will exceed, an amount equal to thirty-five percent of its assets.

(f) For the purposes of this subdivision, (1) the term "net earnings available for fixed charges" shall mean net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary

non-recurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing corporation; provided, however, that in the case of preferred stocks, federal and state income taxes shall also be deducted in determining net earnings available for fixed charges; (2) the term "fixed charges" shall include interest on funded and unfunded debt, amortization of debt discount and rentals for leased properties; (3) if net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary corporations, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any, and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries; and (4) in applying the earnings tests under this subdivision to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within the five years immediately preceding the date of investment by consolidation or merger, or by the purchase of all or a substantial portion of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, the gross operating income, net earnings and interest charges of the several predecessor or constitutent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.

(g) No investment shall be made by a savings bank pursuant to paragraphs (a), (b) or (c) of this subdivision in the stock of any corporation if the total investment by the savings bank in the stock of such corporation exceeds, or by the making of such investment will exceed (1) in amount, one per centum of the assets of the savings bank, or (2) in number of shares, two per centum of the total issued and outstanding shares of stock of such corporation.

(h) No investment shall be made by a savings bank pursuant to paragraph (a), (b) or (c) of this subdivision if the total aggregate amount so invested by it exceeds, or by the making of such investment will exceed, an amount equal to seven and one half per centum of its

assets.

(i) No investment in an investment company shall be made by a savings bank pursuant to paragraph (e) of this subdivision if the total amount invested by it in all such investment companies pursuant to such paragraph exceeds, or by the making of such investment will exceed, an amount equal to seven and one-half per centum of its assets.

(k) For the purposes of sections two hundred seventy-four, two hundred eighty-five and four hundred thirty-five of this chapter, investments authorized by this subdivision shall not be deemed investments in which savings banks may legally invest.

(l) For the purposes of any other statutes which restrict investments to securities authorized for investment by savings banks, including but not limited to section ninety-two of the membership corporation law, section 9.27 of the mental hygiene law and sections fifteen and twenty-five-a of the workmen's compensation law, investments authorized by this subdivision, shall not be deemed investments in which savings banks may legally invest.

26-a. (1) Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, the stock or obligations of one or more corporations engaged, or to be engaged, primarily in originating and servicing mortgages on real property, provided, however, that if the savings bank shall own less than all of the stock and obligations of any such corporation, the remainder of the stock, excluding directors' qualifying shares, if any, and obligations of such corporation shall be owned by one or more savings banks or savings and loan associations located in this state.

(2) No investment shall be made pursuant to this subdivision unless the corporation in which such investment is to be made shall have furnished satisfactory assurance to the superintendent that it will be subject to examination by him to the same extent as if the business of such corporation were being conducted by the savings bank on its own premises. No investment shall be made by a savings bank pursuant to this subdivision if the total amount so invested by it exceeds, or by the making of such investment will exceed, an amount equal to one per centum of its assets.

(4) For the purposes of any other provisions of law which restrict

investments to those in which savings banks may legally invest, other than subdivision five of section three hundred seventy-nine of this chapter, investments authorized by this subdivision shall not be deemed investments in which savings banks may legally invest.

27. For the purposes of this section the term "state", when used generally to include every state of the United States, includes also the commonwealth of Puerto Rico, and the term "city", when used generally to include cities in every state of the United States, includes also any municipality of the commonwealth of Puerto Rico.

28. Bonds, notes or evidences of indebtedness issued by a corporation organized for the purpose of undertaking, constructing, owning, maintaining, operating, selling or conveying a slum clearance and redevelopment project, located within this state, pursuant to title one of an act of congress of the United States approved July fifteenth, nineteen hundred forty-nine, entitled the "Housing Act of 1949," or organized pursuant to articles five and six of the private housing finance law, and secured by a first mortgage upon all of the real property owned by the corporation. A mortgage loan made under this subdivision may equal but shall in no event exceed ninety per centum of the cost as estimated prior to the completion of the project, or ninety per centum of the total actual final cost, if that shall be greater than the estimated cost, but in no event, shall such mortgage loan exceed ninety per centum of the appraised value of the completed project determined pursuant to subdivision six of this section. The estimated cost and the total actual final cost shall be certified as to reasonableness and correctness by an independent engineering organization and shall include the cost to the corporation of the lands owned by the corporation, the cost of demolition, the cost of constructing the improvements, including planning, designing, engineering and landscaping, the cost of relocation of tenants, interest and other carrying charges during the period of acquisition and of construction, all other costs necessarily incurred and properly attributable to undertaking, constructing and completing the project, and an allowance for working capital which shall not exceed an amount equal to three per centum of the estimated cost or of the total actual

final cost of the project if that shall be greater than the estimated cost. A mortgage loan made under this subdivision may be participated in by one or more savings banks. An agreement setting forth the manner in which the participating banks shall administer the mortgage and acquire real estate, if any, shall be executed on behalf of each bank by two persons appointed by the board of trustees of such bank. Investments made by any savings bank in mortgage loans pursuant to this subdivision and pursuant to paragraph (h) of subdivision six of this section shall not, in the aggregate, exceed ten per centum of the assets or an amount equal to the surplus fund and undivided profits and surplus reserve of such savings bank, whichever is less, and shall be included in the computation of permissive investment in mortgage loans pursuant to paragraph (d) of subdivision six of this section. Investments in such mortgage loans shall be subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper.

28-a. Such bonds or other evidences of indebtedness issued or guaranteed by the State of Israel as are approved by the comptroller of the currency for investment by national banks; provided, however, that the principal and interest payable thereon shall be payable in United States dollars; and provided that such investments may not exceed in the aggregate five percent of the bank's capital deposits, undivided profits, surplus and reserves.

28-b. Such acquisitions and leases of personal property as are authorized to be made by commercial banks by subdivision twelve of section ninety-six of this chapter, subject to those limitations applicable to such investments in the case of banks or trust companies.

29. Subject to such restrictions as the superintendent of financial services may prescribe, stock or other equity interest in one or more small business investment companies, as authorized pursuant to the provisions of an act of congress entitled "Small Business Investment Act of 1958," as amended, or in any entity established to invest solely in such small business investment companies, except that in no event shall the total amount of such investments exceed: (a) for a stock form

savings bank five percent of its capital stock, surplus fund and undivided profits; or (b) for a non-stock savings bank five percent of its net worth.

30. Alternative investment authority of savings banks to invest in certain securities. Notwithstanding the limitations contained in subdivision one, two, three, four, five, seven, seven-a, ten, eleven, thirteen, fourteen, fifteen, nineteen, twenty-one-a, twenty-four, twenty-four-a, twenty-four-b, twenty-four-c, twenty-five, twenty-six, twenty-seven, twenty-eight-a, or subparagraph two of paragraph (a) or paragraph (b) of subdivision twenty-one of this section, and subject to such limitations as the superintendent of financial services shall adopt, a savings bank shall be authorized to invest in such debt securities as are not in default as to either principal or interest when acquired, and in such equity securities, in both cases as would be acquired by prudent persons of discretion and intelligence in such matters who are seeking a reasonable income and preservation of their capital.

Without limiting its authority hereunder, the superintendent of financial services shall adopt regulations to require that any savings bank which shall elect to make investments pursuant to this subdivision shall have first established an investment committee of its board of trustees to supervise and monitor the investment activities exercisable pursuant to the authority granted by this subdivision, the majority of the members of which shall be trustees who are not also officers or employees of such savings bank.

The superintendent of financial services shall, in addition, adopt regulations to require that no savings bank, in making investments pursuant to this subdivision shall (either before or after the making of such investments) control, as the superintendent of financial services shall define the term "control", the issuer of any such securities acquired by such savings bank.

For purposes of any other law establishing or limiting the investments of any person or entity to those investments which are permitted for

savings banks, the investments authorized by this subdivision shall not, by virtue of this subdivision alone, be deemed investments in which a savings bank may legally invest.

31. Subject to such regulations as the superintendent of financial services may promulgate, investments which do not qualify under any of the preceding subdivisions of this section, provided that:

(a) No investment shall be made by a savings bank pursuant to this subdivision if the amount of such investment exceeds one per centum of the assets of the savings bank, or if the aggregate amount of all such investments by a savings bank exceeds, or by the making of such investment will exceed, five per centum of its assets;

(b) No investment shall be made by a savings bank in the equity securities of any one issuer pursuant to this subdivision if the aggregate amount invested by it pursuant to this subdivision together with the amount invested in the equity securities of such issuer pursuant to any other provision of law exceeds, or by the making of such investment will exceed, one per centum of the assets of the savings bank, and no investment shall be made by a savings bank in a loan to, or in the debt securities of, any one issuer pursuant to this subdivision, if the aggregate amount invested by it pursuant to this subdivision together with the amount invested in a loan to, or in the debt securities of, such issuer pursuant to any other provision of law exceeds, or by the making of such investment will exceed, one per centum of the assets of the savings bank;

(c) This subdivision shall not be deemed to alter any provision of this chapter limiting the aggregate amount which may be invested in any class of loan or investment;

(e) For the purposes of this subdivision, "net worth" of a savings bank shall mean the excess of its assets at book value, less allocated reserves, over known liabilities; and

(f) For the purposes of sections two hundred seventy-four, two hundred eighty-five and four hundred thirty-five of this chapter, section three hundred fifty-nine-f of the general business law, and any other provisions of law which restrict investments to those in which savings banks may legally invest, other than subdivision six of section three hundred seventy-nine of this chapter, investments authorized by this

subdivision shall not be deemed investments in which savings banks may legally invest.

§ 235-b. Effect of usury. The knowingly taking, receiving, reserving, or charging by a savings bank of interest at a rate greater than six per centum per annum, as computed pursuant to this section, or in excess of such greater rate of interest as may be authorized by law, shall be held and adjudged a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person paying the same or his legal representatives may recover from the savings bank twice the entire amount of the interest thus paid. Nothing in this section shall be deemed to affect the powers of any savings bank with respect to loans or investments it is authorized to make.

* § 235-b. Effect of usury. The knowingly taking, receiving, reserving, or charging by a savings bank of interest at a rate greater than such rate of interest as may be authorized by law shall be held and adjudged a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person paying the same or his legal representatives may recover from the savings bank twice the entire amount of the interest thus paid, if action therefor is brought within two years from the time the excess of interest is taken. Nothing in this section shall be deemed to affect the powers of any savings bank with respect to loans or investments it is authorized to make.

* NB Effectiveness of amendments made by chapter 349/1989 §7 expired September 1, 1971 per §13 of such chapter

§ 235-c. Regulation of certain charges. The superintendent of financial services shall have the power to prescribe by regulation (i) the maximum charge which may be imposed in this state by a savings bank in connection with a check or other written order drawn upon it on insufficient funds, irrespective of whether the instrument is paid, accepted or returned by the bank, and (ii) the maximum charge which may

be imposed in this state by a savings bank in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee.

§ 235-d. Service corporations owned by savings banks; authorized activities of such corporations; investment therein. 1. A savings bank may invest in the stock, capital notes and debentures of one or more service corporations organized under the laws of this state for the sole activities set forth in subdivision two of this section, to the extent and upon such conditions as are or have been authorized by the superintendent of financial services, provided that all of the stock of such service corporations is, or is to be, owned by one or more savings banks; and provided further, that no savings bank may make any investment under this section if its aggregate outstanding investment thereby, determined as prescribed by the superintendent of financial services, would thereupon exceed three per centum of its assets.

2. The activities of such service corporations, performed directly or through one or more wholly owned subsidiaries, shall consist of rendering such services to savings banks and making such investments for itself and for savings banks as are authorized services and investments for such savings banks under the provisions of this chapter, as well as such activities as may be prescribed by general regulation of the superintendent of financial services.

§ 236. Deposits by savings banks with other banking corporations and private bankers; restrictions. 1. Except for investments made pursuant to subdivision twelve-a of section two hundred thirty-five of this chapter, no savings bank shall deposit any of its funds with any other banking corporation or private banker unless such corporation or private banker has been designated as a depositary by vote of a majority of all the trustees of the savings bank, exclusive of any trustee who is an officer, partner, director or trustee of the depositary so designated.

2. The amount deposited by any savings bank in any depositary,

including investments made pursuant to subdivisions twelve-a and twelve-b of section two hundred thirty-five of this chapter, shall not exceed twenty-five per centum of the net worth as shown by the last published statement of such depositary, if a corporation, or twenty-five per centum of the permanent capital and surplus as shown by the last published statement of such depositary, if a private banker, or five per centum of the aggregate amount credited to the depositors of such savings bank, whichever is smaller.

§ 237. Deposits with savings banks; restrictions. 1. No savings bank shall accept any deposit for credit to any executor, administrator, trustee, committee, conservator or guardian, named in a will or appointed by a court of competent jurisdiction, unless a certified copy of the will, order or decree of the court authorizing such deposits or appointing such executor, administrator, trustee, committee, conservator or guardian, or a certificate of such appointment is filed with the savings bank.

2. No savings bank shall accept any deposit for credit to any municipal corporation.

3. A savings bank may limit the aggregate amount which it will receive on deposit; may, in its discretion, refuse to accept a deposit; and may at any time return all or any part of any deposit other than a deposit held pursuant to subdivision one-a of section two hundred thirty-four of this chapter.

4. Notwithstanding any inconsistent provision of law, a savings bank may accept deposits of moneys paid under and as security for the performance of any lease or leases, or to be applied to payments under such lease or leases when due, although the person depositing such moneys is held accountable therefor as a trustee of trust funds. Moneys received from or held for persons under more than one lease may be deposited in one or more accounts.

Notwithstanding any inconsistent provision of law, the word "person"

as used in this subdivision four shall include an individual, municipal corporation, partnership, corporation, association or any other organization operated for profit.

5. Nothing contained in this section shall require a savings bank to return any deposit lawfully held by it at the time this act takes effect.

6. Nothing contained in this section or in this chapter shall be construed to prevent a savings bank from accepting a deposit or deposits in any amount in any account in the name of or to the credit of any bona fide charitable or religious association, corporation or organization.

7. Subject to any regulations and restrictions prescribed by the superintendent of financial services, a savings bank shall have power to act as trustee under a retirement plan established pursuant to the provisions of the act of congress entitled "Self-employed Individuals Tax Retirement Act of 1962", and provisions of law contained therein as amended, provided that the provisions of such retirement plan require the funds of such trust to be invested exclusively in deposits in savings banks. In the event that any such retirement plan which, in the judgment of the savings bank, constituted a qualified plan under the provisions of said Self-employed Individuals Tax Retirement Act of 1962, and provisions of law contained therein as amended, and the regulations promulgated thereunder at the time the trust was established and accepted by the savings bank is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the savings bank may, nevertheless, continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof. No savings bank, in respect to deposits made under this subdivision, shall be bound by any provision of this chapter restricting or limiting the amount of deposits which a savings bank may accept, or be required to segregate such deposits from other deposits of such savings banks, provided, however, that a savings bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subdivision.

8. Subject to any regulations and restrictions prescribed by the superintendent of financial services, a savings bank shall have power to act as trustee of an individual retirement account established pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", provided that the provisions of the written governing instrument creating the trust require the funds of such trust to be invested exclusively in deposits in savings banks. In the event that any such individual retirement account, which in the judgment of the savings bank, constituted a qualified individual retirement account under the provisions of said Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder at the time the trust was established and accepted by the savings bank is subsequently determined not to be such a qualified individual retirement account or subsequently ceases to be such a qualified individual retirement account, in whole or in part, the savings bank may, nevertheless, continue to act as trustee of any deposits theretofore made under such individual retirement account and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof. No savings bank, in respect to deposits made under this subdivision, shall be bound by any provision of this chapter restricting or limiting the amount of deposits which a savings bank may accept, or be required to segregate such deposits from other deposits of such savings banks, provided, however, that a savings bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subdivision.

§ 238. Regulations and restrictions as to repayment of deposits. 1. The repayment of deposits made with any savings bank and any interest credited thereto, shall be subject to the provisions of this chapter and to rules and regulations made in accordance therewith. Any such regulations adopted by the board of trustees shall be posted in a conspicuous place in the office or offices of such savings bank, and shall be available to depositors upon request. All such rules and regulations, from time to time in effect, and all amendments thereto, from time to time in effect, shall be binding upon all depositors.

2. A savings bank may at any time by a resolution of its board of trustees require a notice of sixty days before repaying deposits which are not demand deposits, in which event no non-demand deposit shall be due or payable until sixty days after notice of intention to withdraw the same shall have been personally given by the depositor. Any such non-demand deposit shall cease to be due or payable under such notice or by reason thereof upon the fifteenth day after the expiration of such sixty days' notice if not withdrawn by the fifteenth day thereafter. Nothing herein contained, however, shall be construed as prohibiting any savings bank from making payments of such deposits before the expiration of said sixty days' notice. Except as provided in subdivision four of this section and in subdivision one-a of section two hundred thirty-four of this chapter, no savings bank shall agree with its depositors in advance to waive said sixty days' notice nor shall it require a longer notice than sixty days. In the event that any savings bank shall require that notice be given before such deposits may be withdrawn it shall, upon the day such requirement is made effective, notify the superintendent by telephone or telegraph that such requirement has been made.

3. Except as provided in subdivisions four, five and six of this section, a savings bank shall not pay, nor shall a depositor, his assignee or anyone claiming through a depositor, be entitled to receive any interest or deposit or portion of a deposit, unless the passbook of the depositor be produced and the proper entry be made therein at the time of the payment. The board of trustees, however, may provide in the by-laws for making payments in cases of loss of passbook, or other exceptional cases where the passbooks cannot be produced without serious inconvenience to depositors. The board of trustees may further provide in the by-laws for the payment of interest to a depositor without requiring the production of the passbook, provided that such payment is made (a) pursuant to the written request of the depositor, and (b) by check payable to the order of the depositor. The right to make such payments without production of the passbook shall cease when the superintendent shall so direct, upon his being satisfied that such right is being improperly exercised. Payments, however, may be made upon the

judgment or order of a court. Where payment is made without production of the passbook in accordance with its by-laws, a savings bank shall not be liable to an assignee of that passbook for such payment if such assignee has not, prior to such payment, served upon the savings bank written notice of the assignment. When authorized by the depositor, or, in the case of a joint account, by both depositors, a savings bank may charge the account of such depositor or depositors for any sums due the insurance department of such savings bank, or due the insurance department of any other savings bank for which it is agent, without requiring the production of the passbook for the recording of the charge therein. For the purpose of this subdivision, the term "passbook" shall include any evidence of ownership of a deposit held pursuant to subdivision one-a of section two hundred thirty-four of this chapter, subject, however, to such regulations and restrictions as the superintendent of financial services may prescribe pursuant to such subdivision.

4. A savings bank may contract with its depositors to repay deposits of fixed sums made at regular intervals, other than demand deposits and deposits held pursuant to subdivision one-a of section two hundred thirty-four of this chapter, at a given time with all interest credited thereon or to repay said deposits when, together with interest credited thereon, they shall equal a specific sum and may issue a certificate setting forth the given sum to which such deposits shall be accumulated or the given time during which the deposits and the interest thereon shall be accumulated. Such contract shall not provide for any forfeiture of the sums deposited in the event of the discontinuance of the regular payments. Interest on club accounts, if offered, must be credited at least quarterly and may not be forfeited once credited, in the event of the discontinuance of regular payments. Any savings bank which provides for deposits in club accounts shall, in all advertising, announcements or brochures pertaining to such accounts, state whether or not interest is paid thereon and, if interest is paid, shall state the rate or form of interest so paid in accordance with any rules and regulations that may be prescribed by the superintendent.

4-a. If a deposit held pursuant to subdivision one-a of section two

hundred thirty-four of this chapter is repaid prior to maturity at the request of a depositor, such repayment shall be subject to such penalties as the superintendent of financial services may find to be necessary and proper, except that no such penalty shall be imposed where the depositor has died or been declared legally incompetent.

5. A savings bank may accept deposits from an employer or an employee group, to be credited to the individual accounts of the members of a group of employees having a common employer, without the issuance of a passbook in connection therewith, and may pay to any one of the members of such group, or to his authorized agent, in person, the whole or any part of such deposits credited to his account together with the interest credited thereon, without requiring the production of a passbook.

6. Subject to any regulations and restrictions prescribed by the superintendent of financial services, a savings bank may accept deposits, including demand deposits, without the issuance of a passbook in connection therewith, and may issue such other evidences of its obligation to repay such deposits as may be appropriate to safeguard the interests of the depositors and of the savings bank.

§ 239. Repayment of deposits of minors, trust deposits, joint deposits, and deposits adversely claimed; interpleader in certain actions; statute of limitations. 1. Any deposit made by or in the name of any minor shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid together with the interest credited thereon, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge to the savings bank for any payment so made.

5. Notice to any savings bank of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause such savings bank to recognize such adverse claimant unless he shall also either procure a restraining order, injunction or other

appropriate process against such savings bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands or his executor or administrator is made a party and served with summons, or shall execute to such savings bank, in form and with sureties acceptable to it a bond, indemnifying such savings bank from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the order of the person to whose credit the deposit stands on the books of such savings bank; provided, that this section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, and the facts showing reasonable cause for belief on the part of such claimant that such fiduciary is about to misappropriate such deposit, are made to appear by the affidavit of such claimant.

6. (a) In all actions against any savings bank to recover moneys on deposit therewith, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending may, on the petition of such savings bank, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in any other interpleader provision.

(b) The funds on deposit which are the subject of such an action may remain with such savings bank to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, or, in the case of deposits held pursuant to subdivision one-a of section two hundred thirty-four of this chapter, to interest at the rate specified in the deposit contract until maturity and at the rate at which interest is credited on regular savings accounts from maturity until final judgment, and shall be paid by such savings bank in accordance with the final judgment of the courts; or the deposit in controversy may be paid into court to await the final

determination of the action, and when the deposit is so paid into court such savings bank shall be struck out as a party to the action, and its liability for such deposit shall cease.

(c) The costs in all actions against a savings bank to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

§ 239-a. Preservation of books and records. Every savings bank shall preserve all its records of final entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon; provided, however, that preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with the requirements of this section. Notwithstanding the foregoing, the superintendent of financial services may prescribe by regulation such period of time longer or shorter than six years during which all records kept by saving banks as fiduciary shall be preserved in original form.

§ 240. Restrictions as to place of business; branch offices. 1. A savings bank shall not be located in the same room with or in a room connecting with any bank, trust company or national bank, unless it be a savings bank lawfully so located when this act takes effect. The prohibitions of this subdivision shall not apply to automated teller machines, point-of-sale terminals and similar facilities established pursuant to section one hundred five-a, two hundred forty-a or three hundred ninety-six-a of this chapter or pursuant to any federal law authorizing a national bank to operate a similar facility.

2. No savings bank, or trustee, officer, agent or employee thereof, shall transact any part of its usual business of banking at any place other than its principal office except as follows:

(a) A savings bank may open and occupy one or more branch offices at any location in the state. In addition, a savings bank may open and occupy a branch office or branch offices in one or more places located without the state of New York.

(b) An office of an affiliated bank at which the customers of a savings bank may make deposits, renew time deposits, make withdrawals, close loans, service loans, and receive payments on loans and other obligations shall not be deemed a branch office of such savings bank. For the purposes of this section, the term "affiliated bank" means any bank, as such term is defined in section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1)), that is a subsidiary of the same bank holding company, as that term is defined in section 2 of the Bank Holding Company Act (12 U.S.C. 1841).

(c) Except for the city or village in which its principal office is located, no branch office may be opened and occupied pursuant to paragraph (a) of this subdivision in any city or village with a population of fifty thousand or less and in which is already located the principal office of a bank, trust company or national banking association, other than a bank holding company, if such bank holding company is a banking institution, or a banking subsidiary of a bank holding company, as such terms "bank holding company", "banking institution" and "banking subsidiary" are defined in section one hundred forty-one of this chapter except that the definition of "bank holding company" is modified to change the phrase "a banking institution" wherever it appears therein to "two or more banking institutions" and the definition of "banking institution" is modified to add a national banking association, the principal office of which institution is located in this state.

(d) (1) If so provided in the merger or asset acquisition plan submitted to the superintendent pursuant to section six hundred one or six hundred one-a of this chapter, and if such merger or asset acquisition is permitted by law, a savings bank may, in addition to the authority granted under paragraph (a) of this subdivision, and without limitation by any of the provisions of paragraph (c) of this subdivision, maintain as a branch office, or branch offices, the place or places of business of any savings bank or savings and loan association, federal savings bank, federal savings and loan association, bank, trust company, national bank, or out-of-state state bank (as such term is defined in section two hundred twenty-two of this chapter) which it has received into itself by merger or asset acquisition pursuant to this chapter which were in existence at the time the merger or asset

acquisition becomes effective, including any branch office of the savings bank, savings and loan association, or bank or trust company with which it has merged or from which it has acquired assets which has been approved pursuant to subdivision three of this section or paragraph (c) of subdivision two of section three hundred ninety-six, or subdivision two of section one hundred five of this chapter even if such branch office is not in operation at the time said merger or asset acquisition becomes effective and may maintain, as its principal office rather than as a branch office, the principal office of such institution with which it has merged or from which it has acquired assets (so long as the principal office is located in this state), in which event the former principal office of the receiving savings bank may be maintained as a branch office.

(2) Notwithstanding anything to the contrary in subparagraph one of this paragraph, any public accommodation office of a savings bank, savings and loan association, or bank or trust company which has been merged or had assets acquired in an asset acquisition transaction, including any such office which has been approved pursuant to section one hundred ninety-one of this chapter but which is not in operation at the time said merger or asset acquisition becomes effective, may be maintained by the receiving savings bank as a public accommodation office only.

(e) If so provided in an agreement submitted to the superintendent pursuant to section six hundred one-c of this chapter, a savings bank may, in addition to the authority granted under paragraph (a) of this subdivision, and without limitation by any of the provisions of paragraph (a) or (c) of this subdivision, maintain as a branch office or offices the place or places of business of any savings bank or savings and loan association which it has acquired pursuant to such agreement as authorized by section six hundred one-c of this chapter.

3. Before any branch office shall be opened and occupied pursuant to paragraph (a) of subdivision two of this section, the superintendent shall have given his written approval.

4. The term "village" as used in this section shall mean either an incorporated or an unincorporated village.

§ 240-a. Electronic facilities. A savings bank may conduct a banking business, at automated teller machines, point-of-sale terminals, and similar facilities subject to regulations which may be promulgated by the superintendent of financial services. Such facilities shall not be deemed to be branches and shall not be subject to any of the provisions of this chapter applicable to branches; provided however that notwithstanding the foregoing, for purposes of paragraph (b) of subdivision two of section two hundred forty of this chapter, such facilities shall be deemed to be branches, and such facilities shall be subject to the terms and conditions of section two hundred forty, and for purposes of section twenty-eight-b of this chapter, such facilities shall be deemed to be branches.

§ 240-b. Acceptance of United States currency. No savings bank shall impose a fee, commission or service charge for accepting for deposit or exchanging for other United States currency any United States currency provided that any coins are properly rolled and have the customer's account number for that savings bank displayed on the coin roll, provided further that no more than ten rolls of coins in any denomination are presented for deposit or exchange at any one time.

§ 241. Change of location; change of designation of principal office. Any savings bank may make a written application to the superintendent, such application to be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter, for leave to change its place or one of its places of business to another place in the state or for leave to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office. This application shall state the reasons for such proposed change. Such change may be made upon the written approval of the superintendent. If the superintendent shall grant his or her certificate authorizing the change of location, as provided in article two of this chapter, the savings bank may, upon or after the day

specified in the certificate, remove its property and effects to the location designated therein.

§ 242. Assets; how entered and carried on books; disallowance by superintendent. 1. No savings bank shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any individual, partnership or unincorporated association or of any other corporation, or under any title or designation that is not truly descriptive thereof, except as authorized by the provisions of this article.

2. The stocks, bonds, promissory notes or other interest-bearing obligations purchased by a savings bank shall be entered on its books at the actual cost thereof, and shall not thereafter be carried upon the books at a valuation exceeding their cost as adjusted by amortization for the purpose of bringing them to par at maturity; and where securities purchased at a premium are callable prior to maturity, the rate of amortization thereof shall be increased when necessary to such extent as shall reduce the amount at which such securities are carried upon the books to the call price at the date or dates upon which a call may be made. No adjustment for amortization shall be required to be made on the books except when the books are closed for the purpose of computing net earnings. The superintendent may by regulation vary the requirements of this subdivision to permit the amortization of premiums at the same rate as that required by federal tax statutes or regulations.

3. No savings bank, without the written approval of the superintendent, shall enter on its books its real estate and the building or buildings thereon, or its fixtures, vaults, furniture and equipment, at a valuation exceeding its actual cost to such savings bank, or carry such real estate, building or buildings, fixtures, vaults, furniture or equipment at a valuation exceeding the actual cost less appropriate allowance for depreciation. No adjustment for depreciation shall be required to be made on the books except when the books are closed for the purpose of computing net earnings.

4. Real estate acquired by a savings bank, other than that acquired for use as a place of business, shall be entered on the books of the savings bank in conformity with the method of accounting for troubled debt restructurings approved by the financial accounting standards board or such other method of accounting as may be authorized or required by rules and regulations of the superintendent of financial services.

The provisions of this subdivision shall not, except as the superintendent may otherwise require, apply to any parcel of real estate as to which the savings bank has exercised its option to transfer or convey such real estate to the veterans administration or the federal housing commissioner pursuant to insurance or guaranty.

5. The superintendent may disallow the book value of any assets in whole or in part. In such event the savings bank shall reduce the value at which such assets are carried on its books to the value allowed by the superintendent, or, if the written approval of the superintendent is first obtained, may allocate a reserve for the valuation of such assets.

§ 243. Surplus fund. 1. Every savings bank shall create a fund to be known as a surplus fund. Such fund may be created or increased by contributions made by the incorporators as provided in this article or by transfers from undivided profits or by transfers from earnings as required in this article. Such fund up to ten per centum of the amount due depositors shall not be available for any purpose other than that specified in subdivision two of this section, except with the prior written approval of the superintendent, provided that such fund shall be available without such approval for the purpose of paying expenses or absorbing losses only in the event such savings bank has no undivided profits against which such expenses or losses may be charged.

2. Contributions of incorporators or trustees to the surplus fund may be repaid pro rata in such amounts as will not reduce the surplus fund below five per centum of the amount due depositors, provided the written approval of the superintendent shall be required before any repayments

may be made that will reduce the surplus fund below the amount created at the time of incorporation of the savings bank. In case of the liquidation of the savings bank before the contributions to the surplus fund have been repaid, any portion of such contributions not needed for the payment of the expenses of liquidation and the payment of depositors and creditors in full may be repaid to the contributors pro rata.

3. Contributions heretofore made by incorporators or trustees of any savings bank to pay its expenses or to maintain its solvency, under an agreement with the superintendent that such contributions may be returned whenever such return will not affect the solvency of such savings bank or render it unsafe to continue business, may be returned in accordance with the provisions of such agreement.

4. The aggregate of the guaranty fund and expense fund of every savings bank at the time this act takes effect shall constitute the surplus fund at that date and shall thereafter be subject to all the provisions of this article relating to surplus fund.

§ 244. Earnings; how and when to be computed; transfers to surplus fund. 1. Every savings bank shall close its books no less frequently than quarterly. To determine the amount of gross earnings for any such accounting period the following items shall be included:

(a) All earnings actually received, less interest accrued and uncollected included in a previous computation of earnings;

(b) Interest accrued and uncollected upon debts owing to it, exclusive of debts or portions of debts, which its board of trustees or the superintendent shall have directed to be excluded from the computation of the accrual;

(c) Amounts added to cost for the purpose of amortizing bonds, promissory notes or other interest-bearing obligations purchased for less than par;

(d) Any profits actually received from the sale of securities, real estate or other property owned by it;

(e) Amounts recovered on assets previously charged off, including amounts allowed by the superintendent on account of assets previously

disallowed by him and other amounts allowed by the board of trustees on account of assets previously disallowed by it. For the purpose of this paragraph amounts transferred to valuation reserves shall be considered as amounts charged off;

(f) Provided the superintendent shall have approved, and only to the extent of such approval, any increase in the book value of the real estate and building or buildings thereon used by it as its place or places of business;

(g) Such other items as the superintendent, in his discretion and upon his written consent, may permit to be included.

2. To determine the amount of net earnings for such accounting period, the following items shall be deducted from gross earnings:

(a) Any expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of debts owing to it and the management of its affairs, less expenses incurred and deducted in a previous computation of earnings;

(b) Interest paid or accrued and unpaid upon deposits held by it and upon debts owing by it, less interest accrued upon such deposits and debts and deducted in a previous computation;

(c) Amounts deducted from cost for the purpose of amortizing bonds, promissory notes or other interest-bearing obligations purchased for more than par;

(d) Any losses sustained by it, except to the extent that such losses have been charged against the surplus fund or valuation reserves. Losses to be deducted from gross earnings shall include all deductions from the book value of assets made pursuant to the directions of the board of trustees or by reason of the disallowance of assets by the superintendent, and shall include amounts transferred to a valuation reserve, other than amounts transferred to the surplus fund under subdivision three of this section. With the approval of the superintendent, any items referred to in this paragraph may be excluded. For the purposes of this paragraph, provision for disallowances may be effected by charge off or by establishment of valuation reserve and any existing valuation reserve may be deducted from the related asset in determining the amount of loss sustained.

The balance thus obtained shall constitute the net earnings of such savings bank for such period.

3. If at the close of any accounting period the net worth of any savings bank, including the net earnings for that period, is less than ten per centum of the amount due to depositors, including all interest accrued and credited for that period, such per centum of its net earnings for such period as may be determined by the superintendent of financial services shall be credited to its surplus fund.

4. For purposes of this article, the term "net worth" shall mean the excess of assets at book value, less allocated reserves, over known liabilities.

§ 245. Interest payments. 1. A savings bank may classify its depositors according to the character, amount or duration of their dealings with the savings bank.

2. In the discretion of a majority of all the trustees, the amounts contributed by incorporators or trustees to the surplus fund may be credited with interest at the same rate that interest is credited to depositors. Such interest may be paid in cash or added to the contributions previously made and if so added shall be subject to all provisions of this article relating to contributions of incorporators or trustees to the surplus fund. If interest on such contributions is not paid for any period at the time interest for such period is paid to depositors, the contributors shall not thereafter receive or be credited with any interest for such period.

3. A savings bank shall not pay any interest on any deposit for a longer period than the same has been on deposit, except as provided in subdivision three-a of this section.

3-a. Deposits made not later than the tenth calendar day of any calendar month may be credited with interest from the first day of the month in which such deposits were made, and deposits withdrawn upon one

of the last three business days of any interest period or, in the event that one of such last three business days is a Saturday, deposits withdrawn upon one of the last four business days of any interest period may be credited with interest as if they had remained on deposit to the end of the interest period. If the by-laws so provide, deposits withdrawn before the close of an interest period may be credited with interest to the first day of the month in which such withdrawal is made. The provisions of this subdivision shall not apply to deposits on which interest is credited pursuant to subdivision three-b of this section.

3-b. Subject to such limitations and restrictions as may be prescribed by regulation of the superintendent of financial services, a savings bank may credit interest on deposits from the date on which the deposit is made to the date the deposit is withdrawn.

§ 246. Board of trustees; number; vacancies; qualifications; oath and declaration. 1. (a) The board of trustees shall have the entire management and control of the affairs of the savings bank. A savings bank shall have such number of trustees as the board of trustees may establish from time to time. Such number shall be not less than seven nor more than twenty. Notwithstanding the provisions of this section relating to the number of trustees, where two or more savings banks are merged or where one or more savings and loan associations merge into a savings bank and the merger agreement so provides, the board of trustees may consist of a number not more than thirty, and such number shall be reduced to not more than twenty by the elimination of one authorized office for every two vacancies that occur. No trustee in office on the thirty-first day of March, nineteen hundred thirty-eight shall be required to vacate his office by reason of the provisions of this subdivision relating to the number of trustees. The bylaws may also prescribe three-year terms of office for trustees, in which case the total authorized number of trustees, as well as all incumbent trustees, shall be divided into three classes as nearly equal in number as possible, the terms of each such class to expire in successive years on a date specified in the bylaws.

(b) Notwithstanding the provisions of the foregoing paragraph of this

section, a vacancy now existing or hereafter occurring in the board of trustees of a savings bank, which savings bank resulted from the merger of two or more savings banks or one or more savings and loan associations and a savings bank, may be filled, even though the remaining number of trustees exceeds twenty, by election thereto of one or more of the three highest ranking officers of the savings bank who are not then trustees, provided (1) that the superintendent of financial services shall have given his prior written approval that such vacancy be filled, (2) that the election of such officer or officers shall not result in having more than three active officers on the board of trustees at any one time, and (3) that the total number of trustees shall in no event exceed the number authorized by the merger agreement.

(c) The bylaws of a savings bank may prescribe a maximum age beyond which no person shall be eligible for election to the board of trustees, and may prescribe a mandatory retirement age of seventy-five years or less for trustees, subject to the following limitations:

(i) No person shall be eligible for initial election as a trustee after December thirty-first, nineteen hundred sixty-eight who is seventy years of age or more; and

(ii) No person shall continue to serve as a trustee past December thirty-first of the year in which such trustee reaches the age of seventy-five years.

(d) In the case of a savings bank which does not adopt a bylaw prescribing a mandatory retirement age for trustees prior to January first, nineteen hundred sixty-nine, or which does not maintain thereafter a bylaw prescribing such a mandatory retirement age, the office of a trustee of such savings bank shall become vacant on the last day of the month in which such trustee reaches his seventieth birthday, or on December thirty-first, nineteen hundred sixty-eight, whichever is the later.

2. Vacancies in the board may be filled by election by the remaining trustees at a regular meeting of the board. A savings bank shall report to the superintendent within ten days the occurrence of any vacancy and shall likewise report the name, address, age and occupation of the person elected to fill any vacancy and the name of the person whose place he fills.

3. No person shall be a trustee of a savings bank who

(a) Is not a citizen of the United States and at least eighteen years of age.

(b) Has, within fifteen years immediately prior to his election, been adjudicated a bankrupt or has taken the benefit of any insolvency law, or has made a general assignment for the benefit of creditors.

(c) Has suffered a judgment recovered against him for a sum of money to remain unsatisfied or unsecured for a period of more than six months from the date of entry thereof provided, however, no person shall be ineligible for election as a trustee of a savings bank if such judgment was satisfied of record more than one year prior to the date of such election.

(d) Is a trustee, officer or employee of any other savings bank.

(e) Would, upon his election, become the third salaried full-time employee of the savings bank on its board of trustees if such board, with his election, would have twelve or less trustees, or would, upon his election, become the fourth salaried full-time employee of the savings bank on its board of trustees if such board, with his election, would have more than twelve trustees; provided, however, that with the written approval of the superintendent four salaried full-time employees may serve as trustees of a savings bank resulting from the merger of two or more savings banks or the merger of one or more savings and loan associations into a savings bank if, immediately prior to such merger, each such person was a salaried full-time employee and a trustee or a director of a merging institution.

(f) No trustee in office on April first, nineteen hundred sixty-eight, shall be ineligible for the office of trustee by reason of the provisions of paragraph (e) of this subdivision.

4. No person shall be a trustee of a savings bank if:

(a) Such person's spouse is a trustee or one of the five highest paid salaried officers of such institution;

(b) Such person or such person's spouse is the grandparent, parent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of a trustee or one of the five highest paid salaried officers of such institution; or

(c) A trustee or one of the five highest paid salaried officers of such institution is the spouse of such person's child, grandchild, brother or sister.

No trustee in office on September first, nineteen hundred seventy-one shall be ineligible for the office of trustee by reason of the provisions of this subdivision.

5. No person who is a director or trustee of a bank, trust company or a national bank located in this state, operating a special interest department, or of a mortgage or title company organized under the banking law or insurance law, shall be eligible to election as trustee of a savings bank, if, after such election a majority of the trustees of such savings bank will be directors or trustees of such other institutions.

6. Every trustee, before entering upon his duties, shall take an oath that he will diligently and honestly administer the affairs of the savings bank. Such oath shall be subscribed by the trustee making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent.

7. In each year every trustee shall subscribe and acknowledge a declaration that he has not resigned, become ineligible, or in any other manner vacated his office as such trustee. Such declaration shall be filed with the superintendent on or before the first day of March. The superintendent, in his discretion, may extend the time within which such declaration may be subscribed and filed.

§ 246-a. Executive committee and other committees. 1. If the organization certificate or the by-laws so provide, the board of trustees by resolution adopted by a majority of the entire board, may designate from among its members an executive committee consisting of at least five trustees and other committees each consisting of two or more trustees, officers or other persons, not including alternate members, but not less than may otherwise be required by this chapter nor

differing in composition from any requirement of this chapter, and each of which shall have such authority as may be provided in the resolution or in the organization certificate or by-laws or under this chapter, except that no such committee shall have authority as to the following matters:

(a) The filling of vacancies in the board of trustees or in any such committee;

(b) The fixing of compensation of the trustees for serving on the board or on any committee;

(c) The amendment or repeal of the by-laws, or the adoption of new by-laws;

(d) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable;

(e) The taking of action which is expressly required by any provision of this chapter to be taken at a meeting of the board or by a specified proportion of the trustees.

2. Each such committee shall serve at the pleasure of the board. The designation or appointment of, or making of provision for, any such committee and the delegation thereto of authority shall not alone relieve any trustee of his duty to the savings bank under any provision of this chapter.

3. Minutes shall be kept of each meeting of each such committee and records shall be kept of all action taken in exercise of the authority or in performance of the function of each such committee. Such minutes and records shall be submitted to the board of trustees and shall be filed with the records of the savings bank.

§ 247. Restrictions upon trustees and officers. 1. A trustee of a savings bank shall not

(a) Have any interest, direct or indirect, in the profits of the savings bank, but may receive interest upon the amounts contributed by him or her to the surplus fund, may make deposits in the savings bank and receive interest thereon and may acquire from the life insurance department of the savings bank, or through the savings bank as agent for

the life insurance department of another savings bank, life insurance issued on his or her life, or that of another, in accordance with the provisions of article six-A of this chapter and may receive dividends thereon. Notwithstanding the provisions of this paragraph, an officer of a savings bank who also serves as a trustee of such institution may receive compensation as an officer of such institution, as approved by the board of trustees, which in whole or in part is based upon the financial performance of the institution.

(b) Become a member of the board of directors of a bank, trust company or national bank of which board enough other trustees of the savings bank are members to constitute with him a majority of the board of trustees.

(c) Become a director or trustee of a bank, trust company or national bank located in this state, operating a special interest department, or of a mortgage or title company organized under the banking law or insurance law, if, after election as such director or trustee a majority of the trustees of the savings bank will be directors or trustees of such other institutions.

2. Neither a trustee nor an executive officer of a savings bank shall

(a) Receive directly or indirectly and retain for his or her own use any commission on or benefit from any loan made by the savings bank, or any pay or emolument for services rendered to any borrower from the savings bank in connection with such loan, except as provided in section two hundred forty-nine of this article.

(b) Direct or require a borrower on a mortgage to negotiate any policy of insurance on the mortgaged property through any particular insurance broker or brokers, or attempt to divert to any particular insurance broker or brokers the business of borrowers from the savings bank, or refuse to accept any such insurance policy because it was not negotiated through a particular insurance broker or brokers.

(c) Become an indorser, surety, or guarantor, or in any manner an obligor, for any loan made by the savings bank.

(d) For himself or as agent or partner of another, directly or indirectly borrow or use any of the funds of the savings bank or become the owner of real property on which the savings bank holds a mortgage.

2-a. Notwithstanding paragraph (c) or (d) of subdivision two of this section an executive officer of a savings bank may borrow from such savings bank or become the owner of real property on which the savings bank holds a mortgage if the loan is secured by (a) a first mortgage or is a cooperative apartment unit loan, which property or apartment is to be occupied as the executive officer's primary residence and is specifically approved in writing by the board of trustees or (b) a deposit maintained by the executive officer with the savings bank.

2-b. As used in subdivisions two and two-a of this section, the term "executive officer" shall be defined as set forth in section 22(h)(9)(C) of the Federal Reserve Act 12 U.S.C. 375b(9)(C), and regulations promulgated thereunder, as amended.

3. A loan to or a purchase by a corporation in which he is a stockholder to the amount of fifteen per centum of the total outstanding stock, or in which he and other trustees of the savings bank hold stock to the amount of twenty-five per centum of the total outstanding stock, shall be deemed a loan to or a purchase by such trustee within the meaning of this section; except when the loan to or purchase by such corporation shall have occurred without his knowledge or against his protest. A deposit with a banking corporation shall not be deemed a loan within the meaning of this section.

4. This section shall not be construed to prohibit a savings bank from making a loan to a religious corporation, club, or other membership corporation of which one or more trustees of such savings bank may be members or officers but in which they have no financial interest, nor shall it be construed to prohibit a savings bank from making loans to or purchasing guaranteed mortgages from any stock corporation, provided no trustee owns more than fifteen per centum of the capital stock of such corporation, and the total amount of such stock owned by all the trustees of such savings bank is less than twenty-five per centum of such capital stock.

5. (a) No executive officer of a savings bank may be an executive officer, director or trustee of another savings bank, or of a bank or

trust company, savings and loan association, national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, bank holding company or foreign banking corporation maintaining a branch in this state, unless permission therefor has been granted by the superintendent pursuant to the provisions of paragraph (b) of this subdivision.

(b) The superintendent shall have the power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer, and by regulation, to grant permission to an executive officer of a savings bank to be an executive officer, director or trustee or both an executive officer and director or trustee of another savings bank or a bank or trust company, savings and loan association, national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, bank holding company or foreign banking corporation maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent shall have the power to revoke such permission whenever the superintendent finds, after reasonable notice and an opportunity to be heard, that the public interest requires such revocation.

(c) For the purposes of this subdivision, the term "bank holding company" shall be given the same meaning as is contained in section one hundred forty-one of this chapter, and the definition of the term, "banking institution" is modified to include a national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, and a foreign banking corporation maintaining a branch in this state.

(d) All other restrictions and limitations imposed by this chapter on officers and trustees of savings banks shall continue in effect.

§ 248. Removal and forfeiture of office of trustee. 1. Whenever the conduct and habits of a trustee are of such a character as to be injurious to the savings bank, or a trustee has been guilty of acts that are detrimental or hostile to the interests of the savings bank, he may

be removed from office at any regular meeting of the trustees, by the affirmative vote of three-fourths of all the trustees; provided, however, that a written copy of the charges made against him shall have been served upon him personally at least two weeks before such meeting, that the vote of such trustees shall be entered in the record of the minutes of such meeting, and that such removal shall receive the written approval of the superintendent, which shall be attached to the minutes of such meeting and form a part of the record.

2. The office of a trustee of a savings bank shall become vacant whenever he

(a) Shall fail to comply with any of the provisions of this article relating to his official oath and declaration.

(b) Shall become disqualified for any of the reasons specified in this article.

(c) Shall have failed to attend the regular meetings of the board of trustees and also of any committee of the board of which he is a member, for a period of six successive months, unless excused by the board for such failure by resolution adopted at the first or second regular meeting of the board after expiration of such six months period and entered upon its minutes; provided, however, that a trustee who has forfeited or vacated his office by reason of such failure to attend meetings shall not be eligible for re-election until the expiration of one year from the date of the first regular meeting of the board at which a resolution could have been adopted by it, as herein provided, to excuse such failure. A copy of such resolution shall be transmitted to the superintendent by the savings bank within five days after its adoption.

(d) Shall violate any of the provisions of this article imposing restrictions upon trustees and officers.

(e) Shall reach the mandatory retirement age, if any, prescribed in the by-laws of the savings bank.

3. A trustee who has forfeited or vacated his office shall not be eligible for re-election, except when the forfeiture or vacancy occurred solely by reason of his

(a) Failure to comply with the provisions of this article relating to

his official oath and declaration; or

(b) Failure to attend the regular meetings of the board of trustees or neglect of his official duties as prescribed in paragraph (c) of subdivision two of this section; or

(c) Disqualification through becoming a non-resident, or becoming a trustee, officer or employee of another savings bank, or becoming a director or trustee of a bank, trust company, national bank, mortgage or title company and such disqualification shall have been removed.

(d) Resignation while free of any of the disqualifications specified in this article.

§ 249. Compensation of trustees and officers. 1. A trustee of a savings bank shall not directly or indirectly receive any pay or emolument for any services rendered to the savings bank, except as provided in this section.

2. A trustee may, by affirmative vote of a majority of all the trustees, receive reasonable compensation for (a) attendance at meetings of the board of trustees; (b) service as an officer of the savings bank, provided his duties as officer require and receive his regular and faithful attendance at the savings bank; (c) service in appraising real property for the savings bank; and (d) service as a member of a committee of the board of trustees.

3. An attorney for a savings bank, although he be a trustee thereof, may receive a reasonable compensation for his professional services, including examinations and certificates of title to real property on which mortgage loans are made by the savings bank; or if the savings bank requires the borrowers to pay all expenses of searches, examinations and certificates of title, including the drawing, perfecting and recording of papers, such attorney may collect of the borrower and retain for his own use the usual fees for such services, excepting any commissions as broker or on account of placing or accepting such mortgage loans.

§ 250. Pensions; insurance. Subject to such regulations as the superintendent of financial services may prescribe, a savings bank may, in the discretion of a majority of all the trustees:

1. Provide pensions to officers and employees pursuant to a nondiscriminatory plan for service rendered to the savings bank or for having become incapacitated while in service to the savings bank, including annual supplements to retirees based upon the "current cost of living index figure" for any calendar year based upon the Consumer Price Index as issued by the bureau of labor statistics of the United States department of labor.

2. Provide life insurance for its officers and employees, provided that life insurance is not purchased solely for or on behalf of officers and highly compensated employees.

§ 251. Meetings; quorum; by-laws; officers. 1. Regular meetings of the board of trustees shall be held at least once a month, unless otherwise provided by the by-laws. The board of trustees shall hold not less than ten regular monthly meetings per year provided, however, that during any three consecutive calendar months, the board shall meet at least twice.

2. A savings bank may provide in its by-laws the number of trustees necessary to constitute a quorum at meetings of its board. Such number shall not be less than four nor less than one-third of all the trustees. In the absence of such a provision, a majority of the total number of trustees which a savings bank would have if there were no vacancies shall constitute a quorum for the transaction of business or of any specified item of business. Any reference in this chapter to corporate action to be taken by the board shall mean such action at a meeting of the board. Except as otherwise provided in this chapter, the vote of a majority of the trustees present at the time of the vote, if a quorum is present at such time, shall be the act of the board.

3. (a) Unless otherwise provided by the by-laws, regular meetings of the board may be held without notice if the time and place of such

meetings are fixed by the by-laws or the board. Special meetings of the board shall be held upon notice to the trustees.

(b) The by-laws may prescribe what shall constitute notice of meeting of the board. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board, unless required by the by-laws.

(c) Notice of a meeting need not be given to any trustee who submits a signed waiver of notice whether before or after the meeting or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

(d) A majority of the trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the by-laws so provide, a notice of any adjournment of a meeting of the board to another time or place shall be given to the trustees who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other trustees.

4. The board may from time to time make by-laws, rules and regulations, not inconsistent with law, for the election and appointment of officers and committees, and for their respective powers and duties; for the increase or reduction of the number of trustees; for the repayment of deposits, and generally for the transaction and management of the affairs of the savings bank. A copy of such by-laws, and of any amendment thereto or change therein shall be transmitted to the superintendent.

5. The board shall elect or appoint such officers as they may deem proper. Such officers need not be trustees. Each officer shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified. Any two or more offices may be held by the same person except the offices of president and secretary. The trustees may require any officer to give security for the faithful performance of his duties and all officers as between themselves and the savings bank shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws or, to the extent not so provided, by the board.

6. Any officer elected or appointed by the board may be removed by the board, or his authority suspended by it, with or without cause. Such removal or suspension without cause, however, shall be without prejudice to his contract rights. The election or appointment of an officer shall not be deemed of itself to create contract rights. This subdivision does not affect the powers of the superintendent under section forty-one of this chapter.

§ 252. Reports to trustees. The board of trustees of every savings bank shall designate, by resolution duly recorded in the minutes, an officer or officers whose duty it shall be to prepare and submit to each trustee present at a regular meeting of the board, or to each member of an executive committee of not less than five members of such board, present at a regular meeting of such committee, a written report as described in this section. Except as otherwise provided by the superintendent by regulation, which regulation may define the terms contained herein and establish such requirements according to size and/or business activities of a savings bank, such report shall include all the purchases and sales of securities, made by such savings bank since the date of the last preceding report made pursuant to this section. Unless otherwise provided by the superintendent, such report shall also contain a statement showing every loan, made or invested in by such savings bank, which is outstanding, at the time of such report, in an amount equal to or greater than a reportable amount, as hereinafter in this section defined, describing the collateral to such indebtedness as of the date of such report. A copy of such current report, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such report, together with a list of the trustees present at such meeting, shall be filed with the records of the savings bank within one day after such meeting, and shall be presumptive evidence of the matters therein stated. The superintendent, by regulation, may require the preparation and submission of such a report to trustees at other than regular board and committee meetings. For the purposes of this section, (a) the term "loan" shall mean the aggregate of all loans to the same borrower, except that, with respect to loans secured by real estate, it shall mean

the aggregate of all loans upon the security of the same real estate; (b) the term "borrower" shall, with respect to any loan, mean the individual, partnership, unincorporated association or corporation primarily liable upon the loan; and (c) the term "reportable amount" shall, at each time of the determination thereof, mean two hundred fifty thousand dollars or one per centum of the net worth of such savings bank, whichever is less; provided, however, that such term shall not include (1) an amount less than one thousand dollars, or (2) the amount of any loan which loan is fully secured by the assignment of one or more deposits in such savings bank, or (3) the then amount of a loan which loan was outstanding in an equal or greater amount at the date of the last preceding report made pursuant to this section.

§ 253. Official communications from department of financial services to be submitted to trustees and noted in minutes. Every official communication, as defined in article two of this chapter, shall be submitted by the officer receiving it to the board of trustees at the next meeting of such board, and duly noted in the minutes.

§ 254. Examinations by trustees. 1. Once in each calendar year the trustees of each savings bank by a committee of not less than three of their number, none of whom shall be an officer or salaried employee of, or an attorney who receives any fee, compensation or any other form of emolument for legal services rendered to, such savings bank, shall fully examine the records and affairs of such savings bank, for the purpose of determining its true financial condition. Such examination shall be made as of a date not less than six months after the date of the previous such examination. In the conduct of each such examination inquiry shall be made into the policies of management for the purpose of determining whether such policies are sound and consistent with the requirements of law, and into such other matters as shall be necessary to enable the trustees to determine whether adequate protection is afforded to depositors. The trustees may employ such assistants as they deem necessary in making the examination prescribed by this section, other than an attorney who receives any fee, compensation or any other form of

emolument for legal services rendered to such savings bank.

2. A savings bank's compliance with section one hundred twelve of the Federal Deposit Insurance Corporation Act of 1991, as implemented by the provisions of part three hundred sixty-three of the rules and regulations of the Federal Deposit Insurance Corporation, as they may be amended from time to time, shall be deemed to satisfy the examination requirement of this section.

3. A report of each such examination, in such form as may be prescribed by the superintendent, sworn to by the trustees making the same shall, within thirty days after the completion of such examination, be presented to the board of trustees of such savings bank at a regular meeting and thereafter filed with the records of such savings bank. Within ten days after the presentation of such report to the board of trustees a duplicate thereof shall be filed in the office of the superintendent, together with a certificate that such report was presented to the board of trustees, in the form prescribed by the superintendent.

§ 255. Reports to superintendent; penalty for failure to make. 1. On or before the first day of February in each year every savings bank shall make a written report to the superintendent, which shall contain a statement of its conditions as of the morning of the first day of January of such year. Such report shall contain such information and be in such form as the superintendent may prescribe and shall be subscribed by the president or a vice-president and another principal officer and affirmed by such officers as true under the penalties of perjury.

2. Every savings bank shall also make such other special reports to the superintendent as he may from time to time require, in such form and at such date as may be prescribed by him and such reports shall, if required by him, be subscribed and affirmed as true under the penalties of perjury.

3. If a savings bank shall fail to make any report required by or

pursuant to this section, on or before the day designated for the making thereof, or shall fail to include therein any information required by the superintendent to be included, such savings bank shall forfeit to the people of the state an amount as determined pursuant to section forty-four-a of this chapter for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted information, unless the time therefor shall have been extended by the superintendent as provided in this chapter.

4. No savings bank shall be required to make any annual or other report or be subject to any inspection or supervision, except as provided in this chapter.

§ 255-a. Publication and delivery of annual report. Every savings bank shall (1) prepare a complete statement of its financial condition, including a summary of income and expense since its last previous statement, and publish the same annually, such publication to be made in the form and manner determined by the superintendent and in accordance with the requirements of this section, (2) mail a copy of such financial statement to each depositor on application therefor, and (3) make copies of such financial statement available to depositors and other persons in a convenient and conspicuous location on the premises of each of its authorized places of business.

§ 256. Photographic reproduction of records. Any photograph, microphotograph or reproduction on film of any of the documents and records of a savings bank relating to the accounts of its depositors and the operation of its business, which such savings bank has caused to be made in the conduct of its business, shall be deemed to be the equivalent of the original thereof for all purposes, provided that the original of any such documents and records has been destroyed, that such photograph, microphotograph or reproduction on film shall be of durable material, and that the device used to reproduce such documents and records shall be one which accurately reproduces the original thereof in all details.

§ 257. Duties of trustees and officers. 1. Trustees and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which prudent men would exercise under similar circumstances in like positions. In discharging their duties, trustees and officers, when acting in good faith, may rely (a) upon financial statements of the savings bank represented to them to be correct by the president or the officer of the savings bank having charge of the books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such savings bank and (b) upon reports required to be submitted to them by any provision of this chapter or prepared in the ordinary course of business by an officer or committee charged with the responsibility therefor. Nothing in this section shall be deemed to require the trustees to perform functions vested in any committee, officer or other person pursuant to the provisions of any other section of this chapter.

2. An action may be brought against one or more trustees or officers of a savings bank to procure a judgment for the following relief:

(a) To compel the defendant to account for his official conduct in the following cases:

(1) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of the savings bank's assets committed to his charge.

(2) The acquisition by himself, transfer to others, loss or waste of the savings bank's assets due to any neglect of or failure to perform, or other violation of his duties.

(b) To set aside a conveyance, assignment or transfer of the savings bank's assets by one or more trustees or officers, contrary to a provision of law, where the transferee knew the purpose of the transfer.

(c) To enjoin such a conveyance, assignment or transfer of the savings bank's assets by one or more of the trustees or officers where there is good reason to apprehend that it will be made.

3. Subject to section six hundred thirty-one of this chapter, an

action may be brought for the relief provided in this section by a savings bank or an officer, trustee or judgment creditor thereof.

4. This section shall not affect any liability otherwise imposed by law upon any trustee or officer.

§ 258. Prohibition of unauthorized savings banks and use of the word "savings"; exception as to school savings. 1. No individual, partnership, unincorporated association or corporation other than a savings bank, state or federal chartered savings and loan association, bank, trust company, industrial bank, private banker, national bank, foreign banking corporation licensed pursuant to this chapter to transact in this state the business of receiving deposits or state and federal chartered credit unions shall make use of the word "saving" or "savings" or their equivalent in its banking or financial business, or use any advertisement containing the word "saving" or "savings", or their equivalent in relation to its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank; but nothing herein shall be construed to prohibit the use of the word "savings" in the name of the Savings and Loan Bank of the State of New York or in the name of a trust company all of the stock of which is owned by not less than twenty savings banks. Any bank, trust company, industrial bank, private banker, national bank, foreign banking corporation, state or federal chartered credit unions, individual, partnership, unincorporated association or corporation violating this provision shall forfeit to the people of the state for every offense the sum of one hundred dollars for every day such offense shall be continued.

2. Any school in the state of New York may collect from time to time amounts of money from the pupils of such school and any philanthropic agency incorporated for philanthropic purposes, if such agency be so authorized by certificate of the superintendent of financial services, may collect from time to time amounts of money from the children or persons under the direction or guidance of, or the promotion of whose welfare is an object of, such philanthropic agency. As to each such

school, such money shall be collected by or under the supervision of, the principal or superintendent of such school or by, or under the supervision of, any person designated for that purpose by the board of education or other authority having jurisdiction over such school. As to each such philanthropic agency, such money shall be collected by, or under the supervision of, the superintendent or other designated head of such agency. All money so collected shall, not later than the day following the day of collection, be deposited in some savings bank in the state, be used for the purchase of shares in any savings and loan association organized under this law, or under the laws of the United States, whose principal office is located in the state of New York, or be deposited in any trust company or state or national bank located in the state and having an interest department. All money so collected from any person shall be deposited, or used to purchase shares, in his name; provided, however, that if the principal, superintendent, designated person or agency head by whom, or under whose supervision, such money was collected shall deem the amount of money so collected at any one time to be insufficient for the opening of individual accounts, such money shall be deposited, or used to purchase shares, in the name of such principal, superintendent, designated person or agency head, in trust, to be by him eventually transferred to the credit of the respective persons to whom the same belongs, and pending such transfer, said principal, superintendent, designated person or agency head shall furnish to the depositary institution or savings and loan association receiving such money the name, signature, address, age and place of birth of each person from whom such money was collected, and such other data concerning such person as the institution may require. Any depositary institution or savings and loan association authorized to receive any amounts collected by a school or philanthropic agency in accordance with this subdivision, may, on the request of any person authorized by this subdivision to collect such amounts for such school or philanthropic agency, send a collector to such school or philanthropic agency to receive and receipt for same. Any certificate of authorization issued to a philanthropic agency by the superintendent of financial services in accordance with this subdivision shall specify the period for which such authorization is to be effective and the area in which collections may be made, and may specify any other terms or

conditions upon which such authorization is granted. Any such authorization may be terminated by the superintendent of financial services by written notice served upon the philanthropic agency or mailed to it at its last known address. As used in this subdivision with reference to the placing of amounts with a depositary institution or savings and loan association, the words "the day following the day of collection" shall mean the next day, after the day of collection, on which such institution or association is open for business. As used in this subdivision, the words "philanthropic agency" shall be deemed to include, without limitation a corporation, not organized for profit, engaged in promoting the welfare of seamen.

3. Money, deposited pursuant to the provisions of subdivision two of this section and held by such banking organizations in the name of such principal, superintendent, designated person or agency head in a school district in a city having a population of more than one million, and under whose custodial authority said money has remained for a period of thirty years may be used by such a school district to establish a trust fund after due and diligent effort by such principal, superintendent, designated person, or agency head to locate and notify any such persons entitled to receive such property. The income of said trust fund shall be used to provide college scholarships to disadvantaged youth on a competitive basis pursuant to rules promulgated by the board of education of said district provided however that such scholarships shall not exceed the cost of attendance. Any person or persons entitled to receive such property shall be reimbursed from funds held in trust pursuant to this subdivision. A bank shall not be liable as a result of action taken under the provisions of this subdivision. Furthermore, no banking organization acting on the instructions of or otherwise dealing with any such principal, superintendent, designated person or agency head shall be responsible for determining whether any such person is acting in accordance with this section or is obliged to inquire into the validity or propriety of the actions or instructions executed by any such person or is bound to see to the application of any funds.

§ 260. Charters of all savings banks conformed to this article. The

powers, privileges and duties, and all restrictions, heretofore or hereafter conferred or imposed upon any savings bank by whatever name known, by its charter or act of incorporation, are hereby abridged, enlarged or modified, as each particular case may require, in such manner that every such charter or act of incorporation shall be made to conform to the provisions of this article and to such amendments thereof as may be hereafter made. Every savings bank shall possess the powers, rights and privileges, and be subject to the duties, restrictions and liabilities, conferred and imposed by this article, notwithstanding anything to the contrary in their respective charters or acts of incorporation.

§ 260-a. Amendment of organization certificate and by-laws. Any proposed change in the organization certificate or the by-laws of any savings bank shall be submitted to the superintendent and, upon the superintendent's written approval thereof, shall be posted in a conspicuous place in the office of the savings bank for thirty days. Such proposed changes may thereafter be incorporated in the organization certificate or the by-laws of the savings bank by being duly adopted by its trustees. A copy of such change shall be filed in the office of the superintendent within thirty days after such adoption.

§ 260-b. Conversion of a savings bank into a savings and loan association. 1. Any savings bank may convert itself into a savings and loan association upon receiving the approval of the superintendent as hereinafter provided. A meeting of the board of trustees shall be held upon not less than thirty days' written notice to each trustee, either served personally or mailed to him at his last known address and containing a statement of the time, place and purpose of such meeting. Proof by affidavit of due service of such notice shall be filed in the office of the savings bank before or at the time of such meeting.

2. At such meeting the trustees may, by vote of not less than two-thirds of all the members of such board of trustees, authorize the conversion of such savings bank into a savings and loan association

subject to the approval of the superintendent as hereinafter provided. A copy of the minutes of such meeting, verified by the presiding officer and by the secretary of the meeting, shall be filed in the office of the superintendent within thirty days after the date of such meeting together with a copy of the affidavit of due service of the notice of the meeting, a statement setting forth the reasons why the trustees believe the conversion would be in the best interests of the savings bank, its depositors and the public, and such other information as the superintendent may require. If the superintendent determines that the proposed conversion would be in the best interests of the savings bank, its depositors and the public, he shall so advise the board of trustees of the savings bank and deliver to them his written approval of the proposed conversion.

3. Upon receiving the superintendent's written approval of the proposed conversion, there shall be filed with the superintendent, the organization certificate required by section three hundred seventy-five of this chapter, executed by a majority of the directors, and proposed by-laws as required by section three hundred seventy-six of this chapter.

4. When the superintendent shall have approved the organization certificate and the proposed by-laws and shall have issued the authorization certificate, provided in article two of this chapter, the savings bank shall cease to be a savings bank and shall thereupon be converted into a savings and loan association, but such savings bank shall be deemed to be continued for the purpose of prosecuting or defending suits and of enabling it to wind up its affairs as a savings bank and to dispose of and convey its property.

At the time when such conversion becomes effective all the property of the savings bank shall immediately by act of law and without any conveyance or transfer become the property of the savings and loan association and the savings and loan association shall succeed to all the offices, rights, obligations and relations of the savings bank.

ARTICLE VI-B

FUND FOR INSURING DEPOSITS IN SAVINGS BANKS AND/OR OTHERWISE PROTECTING DEPOSITORS

Section 282. Creation of fund.
283. Management of fund.
284. Agreement; filing and provisions thereof.
285. Powers which may be granted to trustee.
286. Taxation and exemption of property held in fund; exemption of mortgages from mortgage recording tax.
287. Member savings banks.
288. Contributions as assets.
289. Confirmation of powers.
289-a. Immunity of trustee and member savings banks.
289-b. Construction.

§ 282. Creation of fund. Any seventy-five or more savings banks organized under the laws of the state of New York whose deposits aggregate not less than fifty per cent of the total deposit liabilities of all the savings banks in the state, may enter into an agreement (hereinafter called the agreement) subject to the approval of the superintendent of financial services to create a fund (hereinafter called the fund) and from time to time make such contributions to such fund as the said agreement may provide for, for the purpose of insuring deposits and/or otherwise protecting the interests of depositors in the banks (hereinafter referred to as member banks) which become parties to the said agreement. Once this agreement has become effective, if at any subsequent time there should be fewer member banks than the number required to create the fund, the remaining member banks are authorized to continue the fund.

§ 283. Management of fund. The fund shall be collected, held, administered and disbursed by a corporate trustee or a board of trustees composed of individuals who are trustees of mutual savings banks, either of which shall be approved by the superintendent of financial services, which corporate trustee or board of trustees are hereinafter referred to

as the trustee. In the event there be a board of individual trustees, a majority of them at any time in office shall constitute a quorum, and the vote of a majority at any meeting, provided a quorum be present, shall be determinative and any action taken pursuant thereto be the action of the trustee.

§ 284. Agreement; filing and provisions thereof. The agreement when approved by the superintendent of financial services shall be executed by the savings banks parties thereto and filed in his office. The agreement may be executed in any number of counterparts, all of which taken together shall constitute the original. The agreement shall name the trustee and contain suitable provisions for the removal or resignation of the trustee, or if the trustee named be a board of trustees, for the removal or resignation of any or all of them, and for the appointment of a successor trustee or for the filling of vacancies in such board of trustees, whether caused by death, resignation, disqualification or removal; it shall also provide the amount of the initial contributions to the fund and the manner of making subsequent calls, and may contain such limitations thereon as the superintendent shall approve, but all such initial contributions to the fund and payments pursuant to further calls shall be made ratably by all the member banks in proportion to their several deposit liabilities, except that the superintendent of financial services may exempt from any such call in whole or in part any member bank or banks the condition of which makes such exemption in his opinion desirable; it may also provide for the liquidation of the fund pursuant to rules and regulations for that purpose acceptable to the superintendent of financial services, provided that on any such liquidation the liabilities incurred or assumed by the trustee pursuant to the provisions hereof shall first be paid and the balance, if any, be distributed among the member banks pro rata according to their contributions; and the agreement may similarly provide for the change or amendment thereof with the approval of the superintendent of financial services and with such approval may be amended in such manner as may be provided therein; and the agreement shall also define the powers of the trustee, which may be all or any one or more or the powers hereinafter set forth, together with any

additional powers not inconsistent with the powers herein enumerated or with the purposes of the fund, set forth in the agreement.

§ 285. Powers which may be granted to trustee. In addition to such other powers as may be set forth in the agreement not inconsistent herewith or with the purposes of the fund, the trustee shall have such of the following powers as the agreement may provide:

1. To insure in whole or in part the deposits in member banks, subject to such terms and conditions as the agreement may provide.

2. To buy any assets owned by any member bank at the book value thereof notwithstanding such value may exceed the market value thereof, or such other value as the trustee may elect either with or without an agreement providing for the repurchase of the same at such price or value and at such time and subject to such conditions as may be agreed upon by the trustee in its discretion and to make loans or advances to any member bank upon such terms and conditions as may seem desirable and with such security as the trustee may determine or without security; in any agreement of repurchase or repayment it may be provided that the savings bank receiving such loan or advance or making such sale of assets may not be obligated to repay the same or repurchase such assets until the superintendent of financial services shall certify that such savings bank is in a safe and sound condition to make such repurchase or repayment.

3. To deposit all or any part of any moneys in said fund in any savings bank or savings banks and such savings bank or savings banks may receive the same notwithstanding the provisions of section two hundred thirty-seven of this act and/or in any one or more banks or trust companies organized under the laws of the state of New York selected by the trustee with the approval of the superintendent, and such deposits in case of suspension or liquidation of any such depositary other than a savings bank shall have the same priority as deposits of savings banks pursuant to law. In the event of the liquidation of a savings bank which is such depositary, such deposits shall be subordinate to the claims of

the depositors in such bank but prior to all other claims except those of the state of New York or of the United States.

4. In addition to any other uses authorized herein and provided in the agreement, to invest and reinvest the fund in such securities and property as are legal for investment by savings banks subject to those limitations applicable to such investments in the case of savings banks.

5. To make contributions to the surplus fund of any member bank upon such terms and conditions for the use and the repayment thereof and evidenced in such manner as the superintendent of financial services may approve, and such savings bank may make such repayment as such agreement may provide notwithstanding any provisions of law; but no such agreement shall require such repayment except if, as and when the surplus and surplus fund of such savings bank shall be not less than five per centum of the amount due its depositors nor shall any such agreement require any payment on account of such contribution in such an amount as to reduce the surplus and surplus fund of such savings bank below five per centum of the amount owed its depositors. The agreement may provide the manner in which the surplus and surplus fund shall be computed for the purpose of this subdivision. Such contributions shall not constitute a liability of such member bank except as herein provided.

6. If it shall appear by certificate of the superintendent of financial services filed in his office, that any member bank to which the trustee with the approval of the superintendent has made any loan or advance, or to the surplus fund of which it has made a contribution, or from which the trustee has purchased any asset at a price in excess of the market value thereof, would but for such loan, advance, contribution or purchase be in such condition that the superintendent might take possession of the business and property of the same pursuant to law, or that any such member bank to which the trustee with the approval of the superintendent has made any loan or advance, or to the surplus fund of which it has made a contribution, or from which the trustee has purchased any asset at a price in excess of the market value thereof, or the deposits in which have been insured by the fund in whole or in part shall have committed such an act or is in such condition that the

superintendent might take possession of the business and property of the same pursuant to law, the trustee shall have the right if it so elects, and in such case the superintendent, on such conditions and subject to such rules and regulations as he shall prescribe, shall permit the trustee to take possession and control forthwith of the property and business of such bank and operate and/or liquidate the same. The trustee may, while carrying on such business, pay to such bank out of the moneys in or available to the fund such sums as the agreement may authorize as the trustee deems necessary for the protection of the bank's depositors.

7. At any time after the trustee has taken over the control, possession and operation of any savings bank, as provided in subdivision six hereof, it may, with the approval of the superintendent, turn back the control, possession and operation thereof to such bank which may continue or resume business, provided the moneys advanced from the fund have been repaid or satisfactory arrangements made for the repayment thereof and the superintendent has certified such bank to be in a safe and sound condition or upon such other conditions authorized in the agreement as may seem proper to the trustee.

8. The trustee, with the approval of the superintendent of financial services may at any time after it has taken over the control, possession and operation of any bank under subdivision six hereof discontinue the business of such bank and proceed to liquidate its affairs. The trustee may use the assets in the fund to pay to the depositors of any such savings bank out of moneys in or available to the fund the excess, if any, or such portion thereof as the agreement may provide, of the full amount of their respective deposits over the dividends received therefor on such liquidation.

9. To carry out the provisions aforesaid, the trustee shall have and may exercise all the rights, powers, privileges and franchises of any savings bank taken over by it, and at any time, with the approval of the superintendent of financial services, to suspend the authority of the trustees of any savings bank and exercise the powers and duties of such trustees, and in addition to the foregoing, in the event it shall operate and/or liquidate any such savings bank it shall have and may

exercise all of the rights and powers which the superintendent of financial services would have pursuant to law in connection with the operation and/or liquidation of such bank and be subject to the same duties and supervision. The trustee, or any duly authorized agent of the trustee, in connection with the operation and/or liquidation of any such bank may execute, acknowledge and deliver in the name of such bank, and under its seal, or may authorize any officer or officers of any such bank to execute, acknowledge and deliver in the name of such bank and under its seal any instrument affecting or relating to the property, business or affairs of such bank, and in the event any such officer is so authorized by the trustee, such authorization shall be deemed the authorization of the board of trustees of such bank and he may swear or affirm the usual certificate of acknowledgment to the effect that he executed the same and such seal was affixed by the authority of the board of trustees thereof. Any instrument executed in any manner provided herein shall be valid and effectual for all purposes.

10. To borrow money for the purpose of the fund and pledge any assets in the fund as security for such loans, and in connection therewith may rehypothecate any securities or collateral pledged to it by any savings bank.

11. To collect, or enforce by legal proceedings if necessary, the contributions for which each member bank is liable pursuant to the provisions of the agreement, or any debt or obligation due to the fund or mortgage or lien held by the fund.

§ 286. Taxation and exemption of property held in fund; exemption of mortgages from mortgage recording tax. The fund and the income thereof shall be exempt from all taxation now or hereafter imposed by the state of New York or by any county, municipality or local authority or subdivision, except that any real property constituting an asset of the fund shall be subject to city, county, municipal or local taxation to the same extent according to its value as other similar real property is taxed. Mortgages executed by the fund and/or its trustee shall be exempt from the mortgage recording taxes imposed by article eleven of the tax

law.

§ 287. Member savings banks. Any savings bank incorporated in the state of New York may become a member of the fund upon the terms and conditions set forth in the agreement by executing the agreement authorized by this article, or a counterpart thereof.

§ 288. Contributions as assets. All contributions and payments pursuant to call paid into the fund by any member savings bank may be carried by it as an asset to the extent authorized by the superintendent of financial services.

§ 289. Confirmation of powers. Any savings bank shall have the authority to do and permit to be done any of the acts and things and make any of the payments and contributions herein authorized.

§ 289-a. Immunity of trustee and member savings banks. The trustee shall in no event be individually liable for anything done or any liability incurred or assumed by virtue hereof, and any such liability shall be collectible only out of the fund, nor shall any member bank be subject to any liability except for its unpaid contributions to the fund.

§ 289-b. Construction. The provisions of this article shall be liberally construed with a view to the protection of the depositors of savings banks.

ARTICLE VI-C

MUTUAL HOLDING COMPANIES

Section 290. Authorization of the formation of mutual holding companies.
291. Required approvals.

292. Formation of a mutual holding company.
293. Mutual holding company powers.
294. Conversion of mutual holding company into stock holding company.

§ 290. Authorization of the formation of mutual holding companies. 1. Notwithstanding any other provision of law, and in accordance with general regulations which the superintendent of financial services shall promulgate to facilitate such reorganizations, a mutual savings bank may reorganize so as to cause its deposit-taking and one or more other activities to be conducted by a stock savings bank subsidiary of a mutual holding company formed for such purpose, upon the payment of a fee as prescribed pursuant to section eighteen-a of this chapter.

2. Except to the extent that such provisions are inconsistent with this article, the stock savings bank subsidiary of the mutual holding company shall be subject to the same provisions of this chapter as apply to savings banks which have converted to stock form pursuant to sections fourteen-e and nine thousand nineteen of this chapter.

§ 291. Required approvals. 1. A reorganization of a mutual savings bank pursuant to this article shall be approved by a majority of the board of trustees of the mutual savings bank.

2. (a) A mutual savings bank proposing a reorganization pursuant to this article shall provide the superintendent with written notice of such proposed reorganization. Such notice shall include a copy of the plan of reorganization approved by the board of trustees pursuant to subdivision one of this section, the proposed organization certificate for the mutual holding company and the stock savings bank subsidiary and shall contain such other information as the superintendent shall require. The superintendent shall approve or disapprove the plan of reorganization within sixty days of the submission of such plan together with such other information as the superintendent shall require.

(b) In determining whether to approve the plan of reorganization, the

superintendent shall consider:

(i) whether the formation of the mutual holding company would not be detrimental to the interests of the depositors of the mutual savings bank proposing to reorganize as provided in section two hundred ninety of this article;

(ii) whether disapproval is necessary to prevent unsafe or unsound banking practices;

(iii) whether the interest of the public will be served by the proposed reorganization;

(iv) whether the financial or management resources of the mutual savings bank proposing to reorganize as provided in section two hundred ninety of this article warrant disapproval of the proposed plan of reorganization; and

(v) whether the mutual savings bank proposing to reorganize as provided in section two hundred ninety of this article fails to furnish any information required under paragraph (a) of this subdivision or furnishes information containing any statement which, at the time and in the circumstances under which it was made, was false or misleading with respect to any material fact or omits to state any material fact necessary to make the statements therein not false or misleading.

(c) When the superintendent shall have determined to approve or disapprove the plan of reorganization, the superintendent shall so advise the mutual savings bank in writing and shall endorse approval on an organization certificate and cause it to be filed in the office of the superintendent and with the clerk of the county in which the principal office of the mutual savings bank is located. Upon the filing of the organization certificate the existence of the mutual holding company shall commence. As used in this article, the term "organization certificate" shall include an amended organization certificate.

3. If approved by the superintendent, the mutual savings bank shall submit the plan of reorganization to its depositors for approval at a meeting convened in accordance with general regulations promulgated by the superintendent of financial services for the sole purpose of approving or disapproving such plan. At such meeting:

(a) all depositors whose aggregate deposit balance equals at least one hundred dollars as of a record date shall be entitled to approve the

plan of reorganization, either in person or by valid proxy;

(b) each depositor entitled to vote shall be entitled to cast one vote for each full one hundred dollars of deposits of such depositor shown on the books and records of the mutual savings bank as of the record date;

(c) no depositor shall be entitled to cast any vote for any deposit balance in amounts of less than one hundred dollars; and

(d) no plan of reorganization shall be effective unless approved by the affirmative vote of at least seventy-five per centum of the aggregate dollar amount of the book value of deposits represented at such meeting either in person or by valid proxy and entitled to vote thereat.

§ 292. Formation of a mutual holding company. 1. The plan of reorganization may authorize the formation of a mutual holding company by:

(a) (i) the organization by the mutual holding company of a stock savings bank subsidiary and the transferal to such stock savings bank of the substantial part of its assets and liabilities, including all of its deposit liabilities, in accordance with general regulations promulgated by the superintendent of financial services;

(ii) the organization by the mutual savings bank of a mutual holding company and the organization by such mutual holding company of a stock savings bank subsidiary which merges with the mutual savings bank; or

(iii) the reorganization of the mutual savings bank under any other method approved pursuant to general or specific regulations promulgated by the superintendent of financial services.

(b) For the purposes of paragraph (a) of this subdivision, such regulations shall permit the stock savings bank to issue to persons other than the mutual holding company of which it is a subsidiary an amount of common stock and securities convertible into common stock which in the aggregate does not exceed forty-nine per centum of the issued and outstanding common stock of such stock savings bank, provided that if a mutual holding company which owns all of the common stock and securities convertible into common stock of its savings bank subsidiary subsequently determines to make such an issuance it shall pay a fee as prescribed pursuant to section eighteen-a of this chapter. Issued and

outstanding securities that are convertible into common stock shall be considered issued and outstanding common stock for the purposes of computing the forty-nine per centum limitation. This paragraph shall not limit the authority of such stock savings bank to issue equity or debt securities other than common stock and securities convertible into common stock.

2. In connection with the reorganization of a mutual savings bank as provided in section two hundred ninety of this article, the mutual holding company may retain or acquire assets of the mutual savings bank to the extent that such assets are not then required to be transferred to or retained by the stock savings bank in order to satisfy capital or reserve requirements of any applicable state or federal law or regulation.

3. A stock savings bank at least fifty-one per centum but less than one hundred per centum of the outstanding common stock of which is owned by a mutual holding company shall have at least one director, but no more than two-fifths of its directors, who are "unaffiliated directors" who shall represent the interests of the minority shareholders. An "unaffiliated director" is a director who is not (a) an officer or employee of the stock savings bank (or any affiliate thereof) or (b) an officer, trustee or employee of the mutual holding company. If the organization certificate or bylaws of the stock savings bank provide that the board of directors shall be divided into two or more classes, then to the extent possible, each class shall contain the same number of unaffiliated directors as each other class.

§ 293. Mutual holding company powers. 1. Upon the formation of a mutual holding company by a mutual savings bank:

(a) except as provided pursuant to the provisions of subdivision two of this section, the mutual holding company shall possess all the rights, powers and privileges, except deposit-taking powers, and shall be subject to all the limitations, not inconsistent with this article, of a mutual savings bank under articles six and sixteen of this chapter.

(b) the mutual holding company shall be subject to the limitations

imposed by the Bank Holding Company Act of 1956 (title twelve United States Code Section 1841, et seq.) or, in the case of a mutual holding company resulting from the reorganization of a savings bank which has elected either prior or subsequent to such reorganization to be treated as a savings association as that term is defined in title twelve United States Code Section 1467a, such mutual holding company shall be subject to the limitations imposed by the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a).

2. Notwithstanding any inconsistent provisions of section fourteen-e, six hundred, six hundred one, six hundred one-a or six hundred one-b of this chapter, subject to regulations of the superintendent, a mutual holding company may:

(a) merge with, acquire or purchase the assets of a mutual holding company established pursuant to this article or the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a);

(b) acquire or purchase the assets or stock of a stock savings bank, a stock savings and loan association, a stock federal savings bank or a stock federal savings and loan association;

(c) acquire a mutual savings bank, a mutual savings and loan association, a federal mutual savings bank or a federal mutual savings and loan association through the merger of such institution with a stock subsidiary of such mutual holding company;

(d) engage in any other acquisition or combination specifically permitted by regulations of the superintendent; provided, however, that any such regulation shall only authorize activities which are authorized by the provisions of the Bank Holding Company Act of 1956, as amended, (title twelve United States Code, Section 1841, et seq.) and the provisions applicable, to mutual holding companies under the Home Owners Loan Act, as amended, (title twelve United States Code, Section 1467a) and any regulations or rules of the Federal Reserve Board and the federal Office of Thrift Supervision pursuant thereto, respectively, to the extent such authorized activities are not otherwise limited or prohibited by this chapter.

§ 294. Conversion of mutual holding company into stock holding company. 1. If approved by the superintendent, a mutual holding company may convert to a stock holding company in accordance with general regulations promulgated by the superintendent of financial services.

2. If approved by the superintendent, the mutual holding company shall submit the plan of conversion to its depositors for approval at a meeting convened for that purpose in accordance with such regulations. The provisions of paragraphs (a), (b), (c) and (d) of subdivision three of section two hundred ninety-one of this article shall apply to such meeting. For the purpose of this subdivision, the term "depositors" shall mean those depositors as of a record date, of a stock savings bank subsidiary of the mutual holding company which:

(a) was organized as a result of the reorganization of a mutual savings bank as provided in section two hundred ninety of this article; and

(b) has not at any time subsequent to its organization issued more than forty-nine per centum of its issued and outstanding common stock to any persons other than a mutual holding company organized pursuant to this article or the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a).

ARTICLE VIII
SAFE DEPOSIT COMPANIES.

Section 317. General powers.
318. Branch offices.
319. Limitations upon the powers of safe deposit companies.
320. Books and records.
321. Change of location; change of designation of principal office.
323. Assessment of stockholders to make good impairment of capital; sale of stock.
324. Change of control.
327. Use of sign or words indicating safe deposit company by unauthorized persons prohibited.

328. Communications from department of financial services must be submitted to directors and noted in minutes.
329. Reports to superintendent; penalty for failure to make.
330. Liability of safe deposit company for assessments by superintendent.

§ 317. General powers. Every safe deposit company shall, subject to the limitations and restrictions contained in this article, have the power:

1. To receive upon deposit as bailee for storage, upon terms and conditions to be prescribed by the safe deposit company, personal property and papers of any kind.

2. To engage in the safe deposit business by renting vaults, safe deposit boxes and other receptacles upon premises occupied by the safe deposit company upon such terms and conditions as may be prescribed by the safe deposit company.

§ 318. Branch offices. Any safe deposit company having a capital of one hundred thousand dollars or more may, in accordance with the provisions of article two of this chapter, be permitted to open and maintain a branch office or branch offices in the city or village where its principal office is located.

Any safe deposit company having a capital of one hundred thousand dollars or more, the majority of stock of which is owned by any other banking organization or a national bank may, in accordance with the provisions of article two of this chapter, be permitted to open and maintain a branch office at a location at which such banking organization or national bank is maintaining a duly authorized branch office.

§ 319. Limitations upon the powers of safe deposit companies.

No safe deposit company shall:

1. Lend money, or make any advance, on any property left in its possession, or belonging to others.

2. Open or maintain any branch offices, except as provided in section three hundred and eighteen of this article.

§ 320. Books and records. Every safe deposit company shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to the provisions of article two of this chapter. Any safe deposit company that refuses or neglects to obey such order shall be subject to a penalty of an amount as determined pursuant to section forty-four of this chapter for each day it so refuses or neglects.

§ 321. Change of location; change of designation of principal office. Any safe deposit company may make a written application to the superintendent for leave to change its place or one of its places of business to any place at which it could be authorized, under the provisions of this chapter, to open and maintain a branch office or for leave to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office. The application shall state the reasons for such proposed change, and shall be accompanied by a copy of a resolution authorizing the making of the application, certified by a principal officer of the safe deposit company to have been adopted by vote of a majority of its entire board of directors at a meeting of such board, duly convened and held, as well as by a fee as prescribed pursuant to section eighteen-a of this chapter. If the proposed place of business is within the limits of the village, borough or city if in a city not divided into boroughs, in which the place of business sought to be changed is located, such change may be made upon the written approval of the superintendent. If the proposed place of business is beyond such

limits, notice of intention to make such application, signed by a principal officer of the safe deposit company shall be published once a week for two successive weeks in a newspaper to be designated by the superintendent for the purpose, in accordance with the provisions of article two of this chapter. If the superintendent shall grant his certificate authorizing the change of location, as provided in article two of this chapter, the safe deposit company may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein.

§ 323. Assessment of stockholders to make good impairment of capital; sale of stock.

Whenever the superintendent shall have made requisition upon any safe deposit company pursuant to the provisions of article two of this chapter to make good the amount of an impairment of its capital, the directors of the safe deposit company shall immediately give notice of such requisition to each stockholder of the amount of the assessment which he must pay for the purpose of making good such deficiency, by a written or printed notice mailed to such stockholder at his place of residence, or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in such notice within sixty days from the date thereof, the directors of such safe deposit company shall have the right to sell to the highest bidder at public auction the stock of such stockholder, after giving previous notice of such sale once a week for two successive weeks in a newspaper of general circulation in the county where the principal office of such safe deposit company is located; or such stock may be sold at private sale, and without such published notice, provided, however, that before making a private sale thereof an offer in writing to purchase such stock shall first be obtained, and a copy thereof served upon the owner of record of the stock sought to be sold either personally or by mailing a copy of such offer to such owner at his place of residence or the address furnished by him to the safe deposit company; and if, after service of such offer, such owner shall still refuse or neglect to pay such assessment within two weeks from the time of service of such offer, the

said directors may accept such offer and sell such stock to the person or persons making such offer, or to any other person or persons making a larger offer than the amount named in the offer submitted to such stockholder; but said stock shall in no event be sold for a smaller sum than the amount of the assessment called for and the necessary costs of sale. Out of the avails of the stock sold the directors shall pay the necessary costs of sale and the amount of the assessment called for thereon. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock as herein provided shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall render the same null and void and a new certificate or certificates shall be issued to the purchaser or purchasers of said stock.

§ 324. Change of control. 1. It shall be unlawful, except with the prior approval of the superintendent, for any company, as defined in subdivision two of section one hundred forty-one of this chapter, to directly or indirectly acquire control of any safe deposit company subject to the provisions of this article.

As used in this section, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a safe deposit company, whether by means of the ownership of the voting stock or equity interests of such safe deposit company or of one or more companies controlling such safe deposit company by means of a contractual arrangement, or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock of any safe deposit company or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock of such safe deposit company, but no person shall be deemed to control a safe deposit company solely by reason of his being an officer or director of such safe deposit company. The superintendent may, in his discretion, upon the application of a safe deposit company or any company which, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or holds

with power to vote any voting stock of such safe deposit company, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such safe deposit company for purposes of this section.

2. (a) A company which seeks to acquire control of a safe deposit company subject to the provisions of this article shall file a written application therefor with the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall be in such form and shall contain such information as the superintendent may require.

(b) The superintendent shall disapprove the proposed exercise of control of any safe deposit company if, after notice to and an opportunity to be heard by the applicant and such safe deposit company, he finds the acquisition of control therein contrary to law or determines that disapproval is reasonably necessary to protect the interests of the people of this state. In making such determination, the superintendent shall only consider (i) whether the character, responsibility and general fitness of the company which seeks to control such safe deposit company are such as to command confidence and warrant belief that the business of such safe deposit company will be honestly and efficiently conducted in a manner consistent with the public interest, the interests of bailors and creditors of such safe deposit company and (ii) whether the exercise of control may impair the safe and sound conduct of the business of such safe deposit company, the conservation of its assets, or public confidence in its business. Unless the superintendent shall have denied such application in writing within ninety days of the receipt thereof, or shall have advised the applicant in writing before the expiration of ninety days of his determination to extend such period an additional sixty days, such application shall be deemed approved.

(c) For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe in writing, the provisions of this subdivision shall not apply to a transfer of control by operation of law to a legal representative, as hereinafter defined, who has control of a safe deposit company.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in a ancillary capacity thereto in accordance with the provisions of such court appointment.

§ 327. Use of sign or words indicating safe deposit company by unauthorized persons prohibited. 1. No entity, other than a duly chartered safe deposit company, shall make use of any office sign at the place where such business is transacted having thereon any artificial or corporate name, or other words indicating that such place or office is the place of business or office of a safe deposit company; nor shall any such entity make use of or circulate any letterheads, billheads, blank forms, notes, receipts, certificates, circulars, or any written or printed or partly written and partly printed paper whatever, having thereon any artificial or corporate name, or other word or words, indicating that such business is the business of a safe deposit company.

2. Nothing in this section shall be deemed to prevent any banking organization, foreign banking corporation duly licensed to maintain a branch in the state, national bank, federal savings and loan association or federal savings bank from engaging in the safe deposit business in this state.

§ 328. Communications from department of financial services must be submitted to directors and noted in minutes. Every official communication as defined in article two of this chapter directed to a safe deposit company or to any officer thereof shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

§ 329. Reports to superintendent; penalty for failure to make. On or

before the first day of February in each year, every safe deposit company shall make a written report to the superintendent of financial services which shall contain a statement of its condition on the morning of the first day of January in said year. Every such report shall be subscribed and affirmed as true under the penalties of perjury, according to the best of their knowledge and belief, by the two principal officers in charge of the affairs of the safe deposit company at the time of such subscription and shall state that the usual business of the safe deposit company has been transacted at the location required by this article and not elsewhere.

Every safe deposit company shall also make such other special reports to the superintendent as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be subscribed and affirmed as true under the penalties of perjury.

If any safe deposit company shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, it shall forfeit to the people of the state an amount as determined pursuant to section forty-four-a of this chapter for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided in article two of this chapter.

§ 330. Liability of safe deposit company for assessments by superintendent. When the superintendent, pursuant to the powers conferred on him by article two of this chapter, shall have levied any assessment upon any safe deposit company and shall have duly notified such safe deposit company of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such safe deposit company to the superintendent.

ARTICLE VIII-A

SAFE DEPOSIT BUSINESS

Section 332. Definitions.
333. Access to safe deposit boxes by certain fiduciaries.
334. Leases to minors.
335. Special remedies where rental of safe deposit box is not paid or when safe deposit box is not vacated on termination of lease.
336. Special remedies where property is deposited.
337. Sale of safe deposit business.
338. Notice to renters of safe deposit boxes regarding insurance.

§ 332. Definitions. As used in this article, the following terms have the following meanings:

1. Lessor. The term, "lessor" means a banking organization, foreign banking corporation or a national banking association authorized to engage in the safe deposit business.

2. Safe deposit box. The term, "safe deposit box" means a vault, safe deposit box or other receptacle.

§ 333. Access to safe deposit boxes by certain fiduciaries. Where a safe deposit box is let by a lessor to one or more persons acting as executors, administrators, trustees, guardians, a committee, or as conservators, the lessor may, except as otherwise expressly provided by the terms of the lease or by the will or other instrument or order or decree under which such person or persons may be acting, allow access thereto as follows:

1. By any one or more of the persons acting as executors or administrators;

2. By any one or more of the persons acting as trustees, guardians, a

committee, or as conservators when authorized in writing signed by the other person or all other persons so acting.

3. By any agent, authorized in a writing signed and duly acknowledged by the person, or if more than one, by all the persons acting as executors, administrators, trustees or guardians, a committee, or as conservators.

§ 334. Leases to minors. A lessor may let a safe deposit box to a minor with the same effect as if such lessee were of full age and with the same effect may allow access to such safe deposit box and to the contents thereof to such lessee or to any deputy or agent appointed in writing by such lessee.

§ 335. Special remedies where rental of safe deposit box is not paid or when safe deposit box is not vacated on termination of lease. Every lessor shall be entitled to the following special remedies:

1. (a) If the amount due for the rental of any safe deposit box let by any lessor shall not have been paid for one year, or if the lessee thereof shall not have removed the contents thereof within thirty days from the termination of the lease therefor for any reason other than for non-payment of rent, the lessor may, at the expiration of such period, send to the lessee of such safe deposit box by registered or certified mail, return receipt requested, a notice in writing in a securely closed postpaid letter, directed to such person at his last known post-office address, as recorded upon the books of the lessor, notifying such lessee that if the amount due for the rental of such safe deposit box is not paid within thirty days from date, and/or if the contents thereof are not removed within thirty days from date, the lessor may, at any time thereafter, cause such safe deposit box to be opened, and the contents thereof to be inventoried and removed from such safe deposit box.

(b) At any time after the expiration of thirty days from the date of mailing such notice, and the failure of the lessee of the safe deposit box to pay the amount due for the rental thereof to the date of payment,

and/or remove the contents thereof, the lessor may, in the presence of a notary public and of any officer of the lessor or any other employee of the lessor designated for such purpose by the lessor, cause such safe deposit box to be opened, and the contents thereof, if any, to be removed and inventoried. Such contents shall be retained by the lessor for safe-keeping for a period of not less than two years unless sooner removed by the lessee of the safe deposit box so opened. The charge for such safe-keeping shall not exceed the original rental of the safe deposit box so opened. The notary public shall file with the lessor a certificate under seal, which shall fully set out the date of the opening of such safe deposit box, the name of the lessee of such safe deposit box and a list of the contents, if any.

(c) A copy of such certificate shall within ten days after the opening be mailed by registered or certified mail, return receipt requested, to the lessee of the safe deposit box so opened, at his last known post-office address, in a securely closed postpaid letter, together with a notice that the contents will be kept, at the expense of the lessee, by the lessor for a period of not less than two years. Upon the payment of all rentals due at the time of the opening of the safe deposit box, the cost of the opening thereof, the fees of the notary public for issuing his certificate thereon, and the payment of all further charges and costs of safe-keeping such contents for the period since the opening of the safe deposit box, the lessee may require the delivery of such of the contents set out in such certificate as have not been sold pursuant to paragraph (d) of this subdivision or destroyed pursuant to paragraph (f) of this subdivision, or become abandoned property.

(d) At any time after the expiration of two years from the time of mailing the certificate herein provided for, the lessor may mail by registered or certified mail, return receipt requested, in a securely closed postpaid letter, addressed to the lessee at his last known post-office address, a notice stating that the lessor will sell all the property or articles of apparent value set out in such certificate, at a time and place stated in such notice, not less than thirty days after the time of mailing such notice and stating the amount which shall have then been due for rental up to the time of opening such safe deposit box, the cost of the opening thereof, the fees of the notary public for issuing his certificate thereon and the further charges and costs of

safe-keeping all of its contents for the period since the opening of the safe deposit box. Unless the lessee shall pay on or before the day mentioned all such sums and all the charges and costs accruing to the time of payment, including advertising, the lessor may sell all the property or articles of apparent value set out in such certificate, at public auction, at the time and place stated in such notice, provided a notice of the time and place of sale has been published once within ten days prior to the sale, in a newspaper published in the place where the sale is to be held or, if there be no newspaper published in such place, then in a newspaper published in the same or in an adjoining county and in general circulation in the place where the sale is to be held.

(e) From the proceeds of the sale, the lessor shall deduct all its charges and costs as stated in such notice, together with any further charges and costs that shall have accrued since the mailing thereof, including reasonable expenses for notice, advertising and sale. The balance, if any, may be used to pay from time to time the further costs and charges of safe-keeping and destroying the other contents, if any, of the safe deposit box. Unless sooner claimed by the lessee of the safe deposit box so opened, such balance or such part as shall remain after the payment of such further charges and costs shall, after the expiration of three years from the time of the opening of the safe deposit box, be deemed abandoned property subject to the provisions of article three of the abandoned property law.

(f) Any documents, letters or other papers of a private nature and any property or articles of no apparent value among the contents of any such safe deposit box shall not be sold, but shall be retained by the lessor for a period of at least ten years from the time of the opening of the safe deposit box, and, unless sooner claimed by the lessee of the safe deposit box, may thereafter be destroyed.

(f-1) Any military awards, medals, or decorations among the contents of any safe deposit box shall not be sold, but shall be sent to the division of military and naval affairs of the executive department where such awards, medals, or decorations shall be retained indefinitely until claimed by the lessee of the safe deposit box or the lessee's estate or released to a person or entity lawfully entitled to possession thereof. The state comptroller shall develop regulations specifying the procedures and requirements for delivering such items to the division of

military and naval affairs and for reporting such information to the state comptroller's office. The New York state military museum and veterans research center under the jurisdiction of the division of military and naval affairs of the executive department shall provide storage for and shall display any such awards, medals, or decorations.

(g) United States coin or currency among the contents of any safe deposit box so opened need not be sold, but may be used by the lessor to pay the amount which shall have been due for rental up to the time of opening such safe deposit box, the cost of the opening thereof, the fees of the notary public for issuing his certificate thereon, and to pay from time to time the further charges and costs of safe-keeping, selling and destroying the contents of the safe deposit box so opened, including reasonable expenses for notices, advertising and sale and destruction. Unless sooner claimed by the lessee of the safe deposit box, such coin and currency or such part as shall remain after payment of the said charges and costs shall, after the expiration of three years from the time of the opening of the safe deposit box, be deemed abandoned property subject to the provisions of article three of the abandoned property law.

2. Whenever in subdivision one of this section, a lessor is given the power to sell the contents of a safe deposit box, such power shall be deemed to include the power to sell any bonds, stock certificates, promissory notes, choses in action or other securities and any other tangible and intangible properties found in such safe deposit box, regardless of whether or not it shall appear from such securities or properties that the lessee of the safe deposit box possesses title to or any interest in such securities, or other properties, or power to transfer such title or interest.

3. If the principal of or interest or dividends on any securities found in a safe deposit box opened pursuant to the provisions of this section, is due and payable at the time of the opening of such safe deposit box or thereafter while the same remains in the possession of the lessor shall become due and payable, the lessor may, at its election, collect such principal and/or interest and/or dividends and from the proceeds thereof may deduct all sums due from the lessee of the

safe deposit box for rental to the time of opening such safe deposit box and for the cost of opening thereof, the fees of the notary public for issuing his certificate thereon, and the further charges and costs of safe-keeping of the contents thereof from the time of the opening thereof including reasonable expenses for notices, advertising and sale and destruction. The balance, if any, of such collection shall, after the expiration of three years from the time of the opening of such safe deposit box, be deemed abandoned property subject to the provisions of article three of the abandoned property law.

4. A lessor holding a safe deposit box originally let by a predecessor in interest, or a lessor which has been dissolved, or a lessor holding the contents of such safe deposit box may have the remedies provided by this section as to such safe deposit box or the contents thereof in like manner and to the same extent as if such safe deposit box had been rented from such lessor in the first instance.

5. The provisions of this section shall not preclude any other remedy by action or otherwise for the enforcement of the claims of the lessor against the person to whom a safe deposit box shall have been let, nor bar the right of the lessor to recover the debt due it in any other lawful manner.

§ 336. Special remedies where property is deposited. 1. Every banking organization, foreign banking corporation or national banking association authorized to receive personal property upon deposit for safe-keeping or as bailee for storage, and which shall have received any such property and shall have issued a receipt therefor, shall have the remedies of a warehouseman as to such property, and the banking organization, foreign banking corporation or national banking association shall have a lien on such deposits or the proceeds thereof to the same extent and with the same effect, and enforceable in the same manner, as is provided by article seven of the uniform commercial code.

2. A banking organization, foreign banking corporation or national banking association holding personal property upon deposit for which a

receipt was issued by a predecessor in interest may have the remedies provided by this section.

3. The provisions of this section shall not preclude any other remedy by action or otherwise for the enforcement of the claim of the banking organization, foreign banking corporation or national banking association against the person from whom personal property has been received upon deposit and to whom a receipt shall have been issued therefor, nor bar the right of the banking organization, foreign banking corporation or national banking association to recover the debt due it in any other lawful manner.

§ 337. Sale of safe deposit business. Subject to the provisions of subdivision eight of section six hundred five of article thirteen of this chapter, any banking organization or foreign banking corporation may, with the approval of the superintendent, sell to another banking organization, foreign banking corporation or national banking association authorized to conduct the business of renting safe deposit boxes, all or any part of its safe deposit business, and upon at least thirty days notice in writing to the lessees of the safe deposit boxes so sold, such safe deposit boxes may be delivered to the possession of such purchasing banking organization, foreign banking corporation or national banking association and thereupon, except for claims against the selling banking organization or foreign banking corporation asserted in writing prior to such delivery, the obligations and rights of the selling banking organization or foreign banking corporation upon the leases relating thereto shall be deemed to be assumed by the purchasing banking organization, foreign banking corporation or national banking association as a successor in interest of the selling banking organization or foreign banking corporation and the selling banking organization or foreign banking corporation shall be discharged from liability in respect thereof. Any lessee of a safe deposit box, upon receipt of a notice in writing of the proposed sale of such safe deposit box by a banking organization or foreign banking corporation, may terminate his lease therefor by removing the contents therefrom and surrendering such safe deposit box to the banking organization or

foreign banking corporation prior to the date fixed in such notice for the delivery of such safe deposit box to the purchasing banking organization, foreign banking corporation or national banking association and thereupon such lessee shall be entitled to a refund of the unearned rent, if any, paid by such lessee to the selling banking organization or foreign banking corporation.

§ 338. Notice to renters of safe deposit boxes regarding insurance. 1. Any banking organization or safe deposit company which offers safe deposit boxes for rent shall provide each customer at the time of rental with a copy of a safe deposit box rental agreement. Such agreement shall include, on its face, or on an attachment thereto a notice in at least eight point bold type reading as follows:

> Important Notice: (1) The contents of your safe deposit box may not be fully protected against loss under the insurance coverage maintained by the bank or safe deposit company. (2) For your protection, you may wish to secure your own insurance through an insurance company of your choice. (3) You should keep a complete list and description of all property stored in your safe deposit box, and any available proof of ownership.

2. The notice required under subdivision one of this section shall also appear on all subsequent rental bills or attachments thereto.

ARTICLE IX

LICENSED LENDERS

Section 340. Doing business without license prohibited.
341. Application for license; fees; capital requirements.
342. Conditions precedent to issuing license; procedure where application denied.
343. License provisions; separate license for each place of business; change of location.
344. Issuance of license upon acquisition of business of licensed lender.
345. Application for acquisition of control of licensed lender

by purchase of stock.
347. Grounds for revocation or suspension of license; procedure.
348. Superintendent authorized to examine.
349. Licensee's books and records; reports.
350. Restrictions concerning advertising, liens on real estate, and places where loans made.
351. Restrictions on loans subject to the provisions of this article; interest; other charges.
352. Acts required of licensees; acts prohibited.
353. Limitation on licensee's charges on certain loans.
354. Restrictions on assignments of compensation for services.
355. Solicitation of loans.
356. Restrictions on certain loans by non-licensees, interests, other charges; loans made outside this state.
357. Insurance.
358. Penalties.
359. Authority of superintendent.
360. Short title.
361. Severability.

§ 340. Doing business without license prohibited. No person or other entity shall engage in the business of making loans in the principal amount of twenty-five thousand dollars or less for any loan to an individual for personal, family, household, or investment purposes and in a principal amount of fifty thousand dollars or less for business and commercial loans, and charge, contract for, or receive a greater rate of interest than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this article and without first obtaining a license from the superintendent.

For the purposes of this section, a person or entity shall be considered as engaging in the business of making loans in New York, and subject to the licensing and other requirements of this article, if it solicits loans in the amounts prescribed by this section within this state and, in connection with such solicitation, makes loans to individuals then resident in this state, except that no person or entity

shall be considered as engaging in the business of making loans in this state on the basis of isolated, incidental or occasional transactions which otherwise meet the requirements of this section.

Nothing in this article shall apply to licensed collateral loan brokers.

§ 341. Application for license; fees; capital requirements. 1. (a) As used in this article, the term master license shall mean an original license granted to a person or entity.

(b) As used in this article, the term supplemental license shall mean the license granted to a person or entity having a master license for additional licensed locations.

2. An application for a master license shall be in writing, under oath, and in the form prescribed by the superintendent and shall contain such information as the superintendent may require by regulations. The application shall set forth all of the locations at which the applicant seeks to conduct business hereunder. At the time of making the application for a master license, the applicant shall pay to the superintendent a fee as prescribed pursuant to section eighteen-a of this chapter for each proposed location for investigating the application.

3. In addition to the investigation fee and annual license fee every licensee hereunder shall pay to the superintendent the sums provided to be paid under the provisions of section seventeen of the banking law.

4. In connection with an application for a master license, the applicant shall submit an affidavit of financial solvency noting such capitalization requirements and access to such credit as may be prescribed by the regulations of the superintendent.

5. The applicant shall also prove, in form satisfactory to the superintendent, that the applicant has available for the operation of such business at the location or locations specified in the application

liquid assets of at least fifty thousand dollars. This amount shall be maintained for the period within which the licensee makes loans in the amounts prescribed in section three hundred forty of this article at such location.

6. If a person or entity holding a master license seeks to open another location for the conduct of activities licensable under this article, the licensee shall first submit written notification of this fact to the superintendent. The notification shall contain the address of the new location and the master license number. An investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid for each additional location. Upon receipt of the notification and fees, the superintendent shall issue a temporary supplemental license, valid for a period not exceeding thirty days, pending the final approval of the new location. The superintendent, in his or her sole discretion, may extend the validity of the temporary supplemental license for additional thirty day periods pending investigation, but such extension shall not exceed a total of sixty days. The temporary supplemental license shall, upon written approval by the superintendent, become permanent after thirty days of issuance, or after the expiration of any extension granted by the superintendent, unless the superintendent finds that the opening of the new location by the licensee is not in the public interest, in which case, the superintendent shall send a written denial to the licensee. Upon receipt of such written denial, the temporary supplemental license issued to the licensee shall become void and the licensee shall immediately cease all activity licensable under this article at the location set forth on such license. The failure of the superintendent to give written approval or denial of the permanence of the temporary supplemental license prior to expiration of the initial thirty day period or any extension thereof shall not be deemed to constitute the approval of a permanent supplemental license.

§ 342. Conditions precedent to issuing license; procedure where application denied. Upon the filing of such application and the payment of such fees, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the

applicant, and of the members thereof if the applicant be a partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this article, and if the superintendent shall find that the applicant has available for the operation of such business at each specified location liquid assets of at least fifty thousand dollars, the superintendent shall thereupon execute a master license, and if applicable one or more supplemental licenses, to make loans in accordance with the provisions of this article at the location or locations specified in the said application. The superintendent shall transmit one copy of such license or licenses to the applicant and file the same in the office of the department. Each such license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the superintendent shall not so find, a master license shall not be issued and the superintendent shall notify the applicant of the denial. If an application is denied or withdrawn the superintendent shall return to the applicant the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The superintendent shall approve or deny every application for a master license hereunder within ninety days from the filing thereof with the said fees.

§ 343. License provisions; separate license for each place of business; change of location. 1. A license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. A master license shall be kept conspicuously posted in the principal place of business of the licensee and a supplemental license shall be conspicuously posted at the location identified in the license. No master or supplemental license shall be transferable or assignable.

2. A separate license shall be required for each location at which a

licensee makes loans under the provisions of this article. The superintendent may issue more than one license to the same licensee. For each new license, the licensee shall comply with all the requirements for obtaining a license as stated in this article.

3. (a) A licensee may change the location of a licensed lender business by giving written notice to the superintendent at least thirty days prior to such change. The licensee shall pay to the superintendent a fee as prescribed pursuant to section eighteen-a of this chapter for each change of location and shall provide any information which may be required regarding the change of location.

(b) The superintendent shall, if satisfied that there is no reasonable objection to such change of location and upon the surrender of the license for the location which is being changed, issue a license containing the information required by subdivision one of this section. If the superintendent shall not be satisfied that such change is in accordance with the purposes of this article, the superintendent shall refuse such change of location and notify the licensee of the determination.

§ 344. Issuance of license upon acquisition of business of licensed lender. 1. Prior to any acquisition, by merger, consolidation, purchase of assets or otherwise, except by purchase of stock, of the assets or business, or a substantial part thereof, of a licensee under this article, the person desirous of continuing to maintain and operate any place of business theretofore maintained and operated by such licensee and each person who controls such person shall file with the superintendent, for all such places of business, one application, in such form and containing such information, including the information required under section three hundred forty-one of this article, as the superintendent may require. At the time of making such application, the applicants shall pay to the superintendent an investigation fee, as prescribed pursuant to section eighteen-a of this chapter if the person desirous of continuing to maintain and operate such places of business is already licensed under this article, or, if such person is not so licensed, an investigation fee as prescribed pursuant to section

eighteen-a of this chapter. If such person is licensed, the superintendent shall amend the license accordingly within thirty days if it is found that the acquisition is in accordance with the purposes of this article. If such person is not licensed, the superintendent shall determine whether the financial responsibility, experience, character, and general fitness of the applicants, and of the members thereof if any applicant be a partnership or association, and of the officers, directors and controlling stockholders thereof if any applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this article and the superintendent shall approve or deny such application within ninety days of the filing thereof. If the superintendent disapproves such application, or, if no such application has been made, the license for each such place of business shall become null and void and the applicants or licensee, whoever has possession of each such license, shall forthwith surrender the license theretofore in effect to the superintendent. If the superintendent approves such application, the person being acquired shall surrender to the superintendent the license theretofore in effect for each such place of business and the superintendent shall issue and transmit one copy of a new license to maintain and operate each such place of business to the person desirous of continuing to maintain and operate such place of business and file another copy in the department.

As used in this subdivision one, (a) the term "person" includes an individual, partnership, corporation, association or any other organization and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by means of the ownership of the voting stock or equity interests of such person or of one or more persons controlling such persons, by means of a contractual arrangement, or otherwise. Control shall be presumed to exist if any person directly or indirectly owns, controls or holds with the power to vote ten per centum or more of the voting stock or equity interests of the person desirous of continuing to maintain and operate a licensee's place of business or of any entity which directly or indirectly controls such

person. The superintendent may, upon the application of a licensee or any such person or entity, determine whether or not the ownership, control or holding of such voting stock or equity interests constitutes or would constitute control for purposes of this subdivision.

2. The transfer by operation of law to a legal representative, as hereinafter defined, of the assets or business of a licensee under this article, or a substantial part thereof, shall not, to the extent hereinafter provided, be deemed an acquisition within the meaning of this section. Such legal representative, if duly qualified to act in this state, may continue to maintain and operate any place of business theretofore maintained and operated by such licensee, subject to all the provisions of this chapter including the payment of license fees, for a period of not more than six months from the date of his qualification as legal representative and for such additional period of time as the superintendent may prescribe in writing. During such period, the legal representative shall be deemed a licensee under this article. The appointment and qualification of a successor to the legal representative shall not, without the approval of the superintendent, operate to extend such period.

Each such legal representative shall promptly following his or her appointment file with the superintendent a certificate or duly certified copy of an order of the court to evidence his authority to acquire the assets of the licensee and to maintain and operate the business thereof. If a legal representative desires to continue to maintain and operate any place of business theretofore maintained and operated by the licensee he or she shall, prior to the expiration of such six month period or any extension thereof prescribed by the superintendent, file an application pursuant to this section and comply with all of the provisions of this chapter. The investigation fee payable upon filing such application shall be as prescribed pursuant to section eighteen-a of this chapter.

The term "legal representative," for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction as an executor, administrator, trustee, committee, conservator or receiver,

including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

If any provision of this section, or the application of such provision to any individual, company, corporation or circumstance, shall be held invalid, the remainder of this section, and the application thereof to anyone other than the one to which it is held invalid, shall not be affected thereby.

§ 345. Application for acquisition of control of licensed lender by purchase of stock. 1. Prior to the acquisition of control of a licensee under this article by means of the acquisition of the capital stock or equity interests in such licensee or in any person who directly or indirectly controls such licensee, the person desirous of acquiring such capital stock or other equity interests shall make written application to the superintendent. Such application shall be in such form and shall contain such information, including the information required under section three hundred forty-one of this article, as the superintendent may require and such applicant, at the time of making such application if not licensed, shall pay to the superintendent an investigation fee as prescribed pursuant to section eighteen-a of this chapter. If such licensee is licensed, upon payment of an investigation fee as prescribed pursuant to section eighteen-a of this chapter, the superintendent shall approve the acquisition if it is found that such acquisition is in accordance with the purposes of this article. If such person is not licensed, the superintendent shall determine whether the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a partnership or association, and of the officers, directors and controlling stockholders thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this article. Unless the superintendent shall have denied such application in writing within ninety days of the filing thereof, such application shall be deemed approved. If no such application has

been made, the license for each place of business maintained and operated by the licensee shall, at the discretion of the superintendent, become null and void and each such license shall be surrendered to the superintendent. In addition, the superintendent may, in a proceeding after notice and a hearing, require any person who has failed to make application pursuant to this subdivision to pay the people of this state a penalty in an amount as determined pursuant to section forty-four of this chapter for each day of said violation.

As used in this subdivision, (a) the term "person" includes an individual, partnership, corporation, association or any other organization and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by means of the ownership of the voting stock or equity interests of such person or of one or more persons controlling such person, by means of a contractual arrangement, or otherwise. Control shall be presumed to exist if any person directly or indirectly owns, controls or holds with the power to vote ten per centum or more of the voting stock or equity interests of the person desirous of continuing to maintain and operate a licensee's place of business or of any entity which directly or indirectly controls such person. The superintendent may, upon the application of a licensee or any such person or entity, determine whether or not the ownership, control or holding of such voting stock or equity interests constitutes or would constitute control for purposes of this subdivision.

2. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe in writing, the provisions of subdivision one of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivision one of this section. The provisions of subdivision one of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative," for the purposes of this section,

shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

If any provision of this section, or the application of such provision to any individual, company, corporation or circumstance, shall be held invalid, the remainder of this section, and the application thereof to anyone other than one to which it is held invalid, shall not be affected thereby.

§ 347. Grounds for revocation or suspension of license; procedure. The superintendent may suspend or revoke any license issued hereunder if the superintendent shall find that:

(a) The licensee has failed to pay any sum of money lawfully demanded by the superintendent or to comply with any demand, ruling, or requirement of the superintendent;

(b) The licensee has violated any provisions of this article, the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, or of any rule or regulation lawfully made by the superintendent;

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

(d) The licensee has engaged in the business of a sales finance company and has done or failed to do any act, except the failure to pay the fees required, which would be grounds for the suspension or revocation of its license pursuant to section four hundred ninety-five of this chapter were it required to obtain such a license.

The superintendent may on good cause shown, without notice or hearing, suspend any license for a period not exceeding thirty days, pending investigation.

The superintendent may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if the superintendent shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, the superintendent shall revoke or suspend all of the licenses issued to such licensee or such number of licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the superintendent written notice that the licensee thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until it shall have been surrendered, revoked, or suspended in accordance with the provisions of this article, but the superintendent shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the superintendent in refusing originally to issue such license under this article.

Whenever the superintendent shall revoke or suspend a license issued pursuant to this article, the superintendent shall execute a written order to that effect. The superintendent shall file one copy of such order in the office of the department and serve a copy upon the licensee, which order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such special proceeding for review as authorized by this section must be commenced within thirty days from the date of such order of suspension or revocation.

§ 348. Superintendent authorized to examine. For the purpose of discovering violations of this article or securing information lawfully required hereunder, the superintendent may at any time, and as often as may be determined, either personally or by a person duly designated by the superintendent, investigate the loans and business and examine the books, accounts, records, and files used therein of every licensee. For that purpose the superintendent and duly designated representatives shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The superintendent shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony may be required relative to such loans or such business.

§ 349. Licensee's books and records; reports. The licensee shall keep and use in its business such books, accounts, and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein. Preservation of photographic reproduction thereof or records in photographic form, including an optical disk storage system and the use of electronic data processing equipment that provides comparable records to those otherwise required and which are available for examination upon request shall constitute compliance with the requirements of this section.

Each licensee shall annually on or before the first day of April file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state under authority of this article. Such report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and shall be in the form prescribed by the superintendent who shall make and publish annually a consolidated

statement of condition showing the combined assets and liabilities of all licensed lenders. Such consolidated statement of condition shall be based upon the information contained in such reports. In addition to annual reports, the superintendent may require such additional regular or special reports as may be deemed necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

§ 350. Restrictions concerning advertising, liens on real estate, and places where loans made. 1. (a) No licensee or other entity shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcasted, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the loaning of money, credit, goods, or things in action which is false, misleading or deceptive, or in violation of chapter three of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

(b) No licensee shall make, directly or indirectly, orally or in writing, by any method, practice or device, any representation that it is licensed under this chapter, except a representation that such licensee is licensed as a licensed lender by the New York state department of financial services.

2. No licensee shall take a lien upon real estate as security for any loan under the provisions of this article, except such lien as is created by law upon the recording of a judgment.

3. No licensee shall conduct the business of making loans under the provisions of this article within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except (a) a licensee may, after obtaining any required license, conduct on its premises businesses authorized under articles eleven-B, twelve-B, twelve-D and thirteen-B of this chapter, or (b) as may be authorized in writing by the

superintendent upon a finding that such other business would not result in evasions of this article or of the rules and regulations lawfully made hereunder.

4. No licensee shall transact such business or make any loan provided for by this article under any other name or at any other place of business than that named in the license, except as may be authorized by the superintendent.

§ 351. Restrictions on loans subject to the provisions of this article; interest; other charges. 1. Every licensee hereunder may loan any sum of money not exceeding the maximum principal amounts prescribed in section three hundred forty of this article, and may charge, contract for, and receive thereon interest at the rate or rates agreed to by the licensee and the borrower. Such interest may either (a) be calculated on the actual unpaid principal balances of the loan or in the case of a loan commitment from the date of each advance thereunder for the actual time outstanding, according to a generally accepted actuarial method at a fixed or variable rate and in accordance with the provisions of the evidence of the indebtedness or (b) precomputed under subdivision five of this section.

2. On any loan with a variable rate of interest made pursuant to this subdivision, the rate shall be determined at regular intervals as set forth in the evidence of indebtedness and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the licensee, and (d) approved by the superintendent.

The superintendent of financial services shall adopt regulations, including but not limited to: (i) providing for disclosure to the borrower by the licensee of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (ii)

providing for disclosure to the borrower by the licensee of a history of the fluctuations of the index over a reasonable period of time; and (iii) providing for notice to the borrower from the licensee prior to any rate increase or change in the terms of payment.

3. Loans may be granted under an open end or closed end loan agreement providing for a fixed or variable rate.

4. Interest, consideration, or charges for the use of money shall not be deducted or received in advance and shall be computed on unpaid principal balances. Such interest, consideration, or charges shall not be compounded; provided that, if part or all of the principal amount of any loan contract is the unpaid principal balance of a prior loan, the unpaid interest, consideration or charges for the use of money on such prior loan which have accrued within sixty days before the making of such loan contract may be incorporated as interest bearing principal in the principal amount of such loan contract, and for the purposes of this subdivision any such new loan shall be deemed a separate loan transaction.

5. When a closed-end loan agreement requires repayment in substantially equal and consecutive monthly installments of principal and interest combined, the interest may be precomputed at the agreed rate on scheduled unpaid principal balances according to the terms of the agreement and added to the principal amount of the loan. Every payment may be applied to the combined total of principal and precomputed interest until the loan agreement is fully paid and the acceptance or payment of interest on loans made under the provisions of this subdivision shall not be deemed to constitute payment, deduction or receipt thereof in advance nor compounding under subdivision four of this section. Such precomputed interest shall be subject to the following adjustments:

(a) If the loan agreement is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall receive a refund of (i) the unearned portion of the interest the amount of which portion shall be determined according to a generally accepted actuarial method; provided, however, that if the amount of

precomputed interest (A) is less than ten dollars, no refund shall be required; or (B) exceeds the sum of ten dollars and the earned interest is less than that amount, the licensee may retain such an additional amount as will bring the earned interest to 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 (ii) if a charge was made to the borrower for credit related insurance for insuring the borrower the excess of the charge to the borrower therefor over the insurance charges paid or payable by the licensee, if such insurance charges were paid or payable by the licensee periodically, or the refund for such insurance charges received or receivable by the licensee, if such premium was paid or payable in a lump sum by the licensee, 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 credit related insurance policy for which a charge was made to the borrower for the premium thereon, the borrower or legal representative, as the case may be, shall be entitled to the same refund of interest and insurance charges as if the loan had been prepaid in full on the date of acceleration or repayment.

(b) (i) In the event of default of more than ten days in the payment of any scheduled installment, the licensee may charge and collect a default charge not exceeding five percent of the installment in default. This charge may not be collected more than once for the same default and may be collected at the time of such default or at any time thereafter.

(ii) After the final due date or upon acceleration of maturity for default, the licensee may charge interest at the original agreed rate on actual unpaid balances if the loan agreement so provides.

(c) If payment of all unpaid installments on which no default charge has been charged and collected is deferred one or more full months, and if the loan agreement so provides, the licensee may charge and collect an amount which shall be equal to the difference between the refund that would be required for prepayment in full as of the scheduled due date of the first deferred installment and the amount which would be required for prepayment in full as of one month prior to said date, multiplied by the number of months in the deferment period. The deferment period is

that period in which no scheduled payment has been made and in which no payment is required by reason of the deferment. Such charge may be collected at the time of deferment or may be collected at any time thereafter. If a refund of precomputed interest is required during a deferment period the borrower shall also receive a refund of the deferment charge for the number of months remaining in said period, for which purpose a portion of a month exceeding fifteen days shall be deemed a month.

(d) If two or more installments or parts thereof are in default for five days or more, the licensee may, if the loan agreement so provides, elect to convert the loan from a precomputed one to one in which interest is paid on actual unpaid balances. In this event, the licensee shall make the same refund of interest as if the loan were prepaid in full on the scheduled payment due date preceding the date of conversion and thereafter may charge interest at the agreed rate, by the actuarial method, on actual unpaid balances for the time actually outstanding.

6. * (a) In addition to the interest, consideration, or charges above specified, no further or other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except the premium or identifiable charge for insurance authorized by section three hundred fifty-seven of this article; the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter or non-filing insurance premiums not in excess of seven dollars in lieu of filing, recording or releasing any such instrument; an annual fee on open end loans authorized by the superintendent and made pursuant to subdivision three of this section, provided, however, that no such fee shall exceed an amount equal to one percent of the amount of the loan or fifty dollars, whichever is less; and a fee, not to exceed the amount set forth in section 5-328 of the general obligations law, for return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft.

* NB Effective until June 30, 2027

* (a) In addition to the interest, consideration, or charges above specified, no further or other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except the premium or identifiable charge for insurance authorized by section three hundred fifty-seven of this article; the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter or non-filing insurance premiums not in excess of seven dollars in lieu of filing, recording or releasing any such instrument; and a fee, not to exceed the amount set forth in section 5-328 of the general obligations law, for return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft.

* NB Effective June 30, 2027

(b) Any licensee which knowingly receives, reserves or charges a greater rate of interest than that authorized by this section shall forfeit the entire interest which the note, or other evidence of debt carries with it, or which has been agreed to be paid thereon, and if a greater rate of interest has been paid, the person paying the same or his legal representative may recover from the licensee twice the entire amount of interest thus paid.

* (c) In addition to other such information as the superintendent may require, any licensee which charges an annual fee on open end loan accounts shall annually report, in a manner and form prescribed by the superintendent, information to the department on open end loan borrowers, which shall include: average annual income of borrowers at the time of the loan, average amount of loans outstanding at the end of each calendar year, average interest charged, average amount of annual fees, and geographic distribution of loans made by the licensee.

* NB Repealed June 30, 2027

§ 352. Acts required of licensees; acts prohibited. Every licensee shall:

Deliver to the borrower at the time any loan is made or prior to the first advance under an open-end loan agreement a statement, in the English language showing in clear and distinct terms the name and address of the borrower and of the licensee and all items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

For each cash payment made on account of any closed-end loan, give to the person making it at the time the payment is made, a plain and complete receipt containing the information required by regulations of the superintendent.

Permit payment to be made in advance in any amount on any loan agreement at any time, but the licensee may initially apply such payment to all interest and other charges due to the date of such payment.

Upon repayment of the loan in full, mark indelibly every obligation signed by the borrower or a copy thereof with the word "paid" or "cancelled", and release any mortgage or security agreement no longer securing an obligation of the borrower, restore any pledge, cancel and return any note or a copy thereof, and cancel and return any assignment or a copy thereof given to the licensee by the borrower. An open-end loan shall not be deemed to be repaid in full for this purpose unless any balance is paid in full and the borrower relinquishes all power to receive further advances under the contract and makes a written request for the release of all collateral for the loan. Every licensee which holds collateral of a borrower shall be fully liable for the return of the collateral upon payment of the indebtedness in full.

No licensee shall collect, evaluate, report or maintain in the file on a borrower the credit worthiness, credit standing or credit capacity of members of the borrower's social network for purposes of determining the credit worthiness of the borrower; the average credit worthiness, credit standing or credit capacity of members of the borrower's social network; or any group score that is not the borrower's own credit worthiness, credit standing or credit capacity. The provisions of this paragraph

shall be enforced concurrently by the superintendent and the director of the division of consumer protection and each shall utilize their consumer complaint and assistance hotlines to document complaints by borrowers who believe that group credit ratings of their social media network are being used to deny them credit. The superintendent shall ensure that the credit scoring formulas filed with the department do not contain variables which account for internet viewing history as part of that formula by asking the licensee to certify to that fact.

No licensee shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding.

No licensee shall take any instrument in which blanks are left to be filled in after execution.

§ 353. Limitation on licensee's charges on certain loans. No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than the maximum amounts prescribed in section three hundred forty of this article greater than the rate permitted by section 5-501 of the general obligations law. The foregoing prohibition shall also apply to any licensee which permits any person, as borrower or as endorser, guarantor, or surety for any borrower or otherwise, to owe directly or contingently or both to the licensee at any time more than the maximum amounts prescribed in section three hundred forty of this article.

§ 354. Restrictions on assignments of compensation for services. 1. A licensee shall not take an assignment of unearned wages or other earnings unless:

(a) the assignment by its terms is revocable at the will of the borrower; or

(b) the assignment is a payroll deduction plan.

2. No assignment of wages or other earnings given to secure any loan hereunder shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution.

§ 355. Solicitation of loans. 1. Any loan made by a person not licensed under this article to a resident of this state, in the amount, not exceeding the maximum amounts prescribed in section three hundred forty of this article, where solicitation of the loan was made within this state, and where the interest, discount, consideration or other charge contracted for or received exceeds that permitted to a licensee under the laws of this state shall be void, and the lender shall have no right to collect or receive any principal, interest or charge whatsoever. No action to enforce a loan made in violation of this subdivision may be maintained, even though the amount demanded to be paid in such action does not exceed that permitted to a licensee under the laws of this state.

2. For purposes of this article, solicitation of a loan shall include any solicitation, request or inducement to enter into a loan made by means of or through a direct mailing, television or radio announcement or advertisement, advertisement in a newspaper, magazine, leaflet or pamphlet distributed within this state, or visual display within this state, whether or not such solicitation, request or inducement constitutes an offer to enter into a contract.

§ 356. Restrictions on certain loans by non-licensees, interests, other charges; loans made outside this state. No person or other entity, other than a licensee under this article, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the person or other entity would be permitted by law to charge if it were not a licensee hereunder upon a loan not exceeding the maximum amounts prescribed in section three hundred forty of this article.

The foregoing prohibition shall apply to any person or other entity who or which, by any device, subterfuge, or pretense whatsoever shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by the laws of this state for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

Any loan in an amount not exceeding the maximum amounts prescribed in section three hundred forty of this article for which a greater rate of interest, consideration, or charges than is permitted by the laws of this state has been charged, contracted for, or received, wherever made, shall not be enforced in this state and every person or other entity participating therein in this state shall be subject to the provisions of this article. An action to enforce any such loan made in any other state to a person then a resident of that state, who now resides in this state may be maintained in this state if the amount of interest, discount, consideration or other charge for such loan, demanded to be paid in such action, does not exceed that permitted to a licensee by section three hundred fifty-one of this article for a loan of the same amount repayable in the same manner.

§ 357. Insurance. 1. The licensee may require a borrower, on loans of two hundred and fifty dollars or more, excluding insurance premiums and precomputed interest, to insure tangible personal property, except household goods, taken as security for a loan against any substantial risk of loss, damage or destruction for an amount not to exceed the lesser of the reasonable value of the property insured or the principal amount of the loan, and for the customary insurance term approximating the term of the loan contract. The policy may insure the interest of the borrower as well as the interest of the licensee. A policy covering a motor vehicle securing the loan may also insure the borrower against liability for bodily injury and property damage, but such liability insurance shall be at the option of the borrower and shall not be required by the licensee. The premiums for all such insurance shall not exceed the premiums chargeable in accordance with rate filings made with the superintendent of financial services for such insurance by the

insurer. Such insurance shall be written by, or through, a duly licensed insurance agent or broker, or shall be provided directly by a company qualified to do business in this state.

2. For purposes of this section, the term "household goods" shall mean clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) owned by the consumer and his or her dependents, but shall not include works of art, other electronic entertainment equipment, items acquired as antiques, and other jewelry.

3. When a licensee provides credit life insurance, credit accident and health insurance, or credit unemployment insurance, or credit property insurance pursuant to section two thousand three hundred forty of the insurance law, or any combination thereof with respect to one or more borrowers, such licensee may collect from the borrower a premium or identifiable charge which shall not exceed the premium rates or identifiable charges chargeable in accordance with rate filings made with the superintendent of financial services for such insurance by the insurer, subject to a refund of the insurance charge computed as provided in paragraph (a) of subdivision five of section three hundred fifty-one of this article, in the event of prepayment by cash, a new loan, refinancing or otherwise. Only one such amount may be collected in connection with any loan contract irrespective of the number of obligors and only one obligor need be insured.

4. The insurance authorized by this section, with the exception of insurance provided under group insurance policies, may be written by or arranged through the licensee or an affiliate, associate or employee of the licensee only if such licensee, affiliate, associate or employee is a duly licensed insurance agent or broker, provided, however, no licensee shall decline new or existing insurance which meets or exceeds the standards set forth in this section, nor prevent any borrower from obtaining such insurance coverage from other sources.

5. If a borrower procures such insurance by or through a licensee, the statement required by section three hundred fifty-two of this article

shall disclose the cost or rate of charge to the borrower and the type of insurance, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate, or other evidence therefor within a reasonable time.

6. The insurance authorized by this section and all benefits or returns therefrom accruing to the licensee or to any affiliate, associate or employee of the licensee shall not be prohibited by any other provision of this article.

7. No insurance shall be required, requested, sold or offered for sale in connection with any loan made under this article, except as and to the extent authorized by this section or as provided in subdivision six of section three hundred fifty-one of this article.

If the borrowers on any loan are husband and wife, joint credit life insurance and joint credit accident and health insurance may be issued on such loan pursuant to this section.

§ 358. Penalties. Any person or other entity including the officers, directors, agents, and employees thereof, which shall violate or participate in the violation of any of the provisions of section three hundred forty of this chapter shall be guilty of a misdemeanor.

§ 359. Authority of superintendent. The superintendent is hereby authorized and empowered to make such general rules and regulations, and such specific rulings, demands, and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this article, in addition hereto and not inconsistent herewith.

§ 360. Short title. This article shall be known and may be cited as the New York licensed lender law.

§ 361. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

ARTICLE IX-A
LICENSED CASHERS OF CHECKS

Section 366. Definitions.
367. License requirements; fees; capital requirements.
369. Conditions precedent to issuing license; issuance and filing of license; posting license.
370. Restrictions as to place or area of doing business; establishment of stations; change of location.
370-a. Changes in control.
371. Regulations.
372. Fees and charges; posting schedule; records and reports.
372-a. Superintendent authorized to examine.
372-b. Forged checks for cashing; signage.
373. Acts prohibited; suspension or revocation of license; penalties.
374. Application of article.

§ 366. Definitions. When used in this article. 1. The term "licensed casher of checks" means any individual, partnership, unincorporated association or corporation duly licensed by the superintendent of financial services to engage in business pursuant to the provisions of this article.

2. The term "licensee" means a licensed casher of checks, drafts and/or money orders.

3. The term "mobile unit" means any vehicle or other movable means

from which the business of cashing checks, drafts or money orders is to be conducted.

§ 367. License requirements; fees; capital requirements. 1. No person, partnership, association or corporation shall engage in the business of cashing checks, drafts or money orders for a consideration without first obtaining a license from the superintendent.

2. Application for such license shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the name, and the address both of the residence and place of business, of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also, if the business is to be conducted at a specific address, the address at which the business is to be conducted, and if the business is to be conducted from a mobile unit, the New York state registration number or other identification of such mobile unit and the area in which the applicant proposes to operate such mobile unit; and also such further information as the superintendent may require.

3. Such applicant at the time of making such application shall pay to the superintendent a fee as prescribed pursuant to section eighteen-a of this chapter for investigating the application. Any licensee requesting a change of address, shall at the time of making such request, pay to the superintendent a fee as prescribed pursuant to section eighteen-a of this chapter for investigating the new address; provided, however, that the superintendent may, in his or her discretion, waive such investigation fee if warranted, and provided further, that no fee shall be payable for the relocation of a limited station.

4. Every applicant shall prove, in form satisfactory to the superintendent that he or it has available for the operation of such business, for each location and for each mobile unit specified in the application, liquid assets of at least ten thousand dollars, and every licensee shall continuously maintain for the operation of such business for each location and for each mobile unit liquid assets of at least ten

thousand dollars. Notwithstanding the foregoing provisions of this subdivision, the superintendent, upon application by an applicant and for good cause shown, may permit a reduction from ten thousand dollars to not less than five thousand dollars of minimum liquid assets required for each location.

§ 369. Conditions precedent to issuing license; issuance and filing of license; posting license. 1. If the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this article, and if the superintendent shall find that the granting of such application will promote the convenience and advantage of the area in which such business is to be conducted, and if the superintendent shall find that the applicant has available for the operation of such business for each location and for each mobile unit specified in the application liquid assets of at least ten thousand dollars, the superintendent shall thereupon execute a license in duplicate to permit the cashing of checks, drafts and money orders in accordance with the provisions of this article at the location or in the area specified in such application. In finding whether the application will promote the convenience and advantage to the public, the superintendent shall determine whether there is a community need for a new licensee in the proposed area to be served. No license shall be issued to an applicant for a license, at a location to be licensed which is closer than one thousand five hundred eighty-four feet (three-tenths of a mile) from an existing licensee, except with the written consent of such existing licensee or pursuant to subdivision three of section three hundred seventy of this article, subject to any restriction or condition as the superintendent may promulgate by regulation; provided, however, the superintendent may permit a location to be licensed that is closer than three-tenths of a mile from an existing licensee provided such applicant engages in the cashing of checks, drafts or money orders only for payees

of such checks, drafts or money orders that are other than natural persons at the location to be licensed and such applicant was engaged in the cashing of such checks, drafts or money orders for payees that are other than natural persons at such location on or before the fourteenth day of July, two thousand four, and provided further that upon licensing any such location by the superintendent, such license as it pertains solely to such location shall not be affected thereafter by any change of control of such license pursuant to section three hundred seventy-a of this article, provided that the licensee continues thereafter to engage at that location in the cashing of checks, drafts or money orders only for payees that are other than natural persons and provided further that such license shall bear a legend stating that such location is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons. The three-tenths of a mile distance requirement as set forth in this section shall not apply in cases where the existing licensee is a restricted location as authorized in the preceding sentence, or is any other licensed location that engages solely in the cashing of checks, drafts or money orders only for payees that are other than natural persons. For purposes of this section, such distance shall be measured on a straight line along the street between the nearest point of the store fronts of the check cashing facilities. The primary business of the licensee, at the location to be licensed, shall be financial services. The superintendent shall transmit one copy of such license to the applicant and file another in the office of the department. Notwithstanding the foregoing provisions of this subdivision, the superintendent, upon application by an applicant and for good cause shown, may permit a reduction from ten thousand dollars to not less than five thousand dollars of minimum liquid assets required for each location.

2. Such license shall state the name of the licensee; and if the licensee is a co-partnership or association, the names of the members thereof; and if the licensee is a corporation, the date of its incorporation; and if the business is to be conducted at a specific address, the address at which such business is to be conducted; and if the business is to be conducted through the use of a mobile unit, the New York state registration number or other identification of such

mobile unit and the area in which such mobile unit is authorized to do business.

3. Such license shall be kept conspicuously posted in the place of business of the licensee or, in the case of a mobile unit, upon such mobile unit. Such license shall not be transferable or assignable.

4. Such license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in this article.

5. If the superintendent shall find that the applicant fails to meet any of the conditions set forth in subdivision one of this section, he shall not issue such license, and he shall notify the applicant of the denial. If an application is denied or withdrawn, the superintendent shall retain the investigation fee to cover the costs of investigating the application and return the license fee to the applicant.

6. The superintendent may, consistent with article twenty-three-A of the correction law, refuse to issue a license pursuant to this article if he shall find that the applicant, or any person who is a director, officer, partner, agent, employee or substantial stockholder of the applicant, (a) has been convicted of a crime in any jurisdiction or (b) is associating or consorting with any person who has, or persons who have, been convicted of a crime or crimes in any jurisdiction or jurisdictions. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or magistrate, or shall have been found guilty thereof by the decision or judgment of a court or magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof. The term "substantial stockholder," as used in this subdivision, shall be deemed to refer to a person owning or controlling ten per centum or more of the total outstanding stock of the corporation in which such person is a stockholder. In making a determination pursuant to this subdivision, the superintendent shall require fingerprinting of the applicant. Such fingerprints shall be submitted to the division of criminal justice

services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check.

7. No license pursuant to this article shall be issued to any applicant to do business at the place specified in the application as the place where the business is to be conducted if, within the twelve months preceding such application, a license to engage in business pursuant to this article at such place shall have been revoked.

§ 370. Restrictions as to place or area of doing business; establishment of stations; change of location. 1. No more than one place of business or one mobile unit shall be maintained under the same license; provided, however, that more than one license may be issued to the same licensee upon compliance with the provisions of this article for each new license.

2. Any licensed casher of checks may open and maintain, within this state, one or more limited stations for the purpose of cashing checks, drafts or money orders for the particular group or groups specified in the license authorizing each such station. Such stations shall be licensed pursuant to and be subject to all the provisions of this chapter applicable to licensed cashers of checks, except that (a) such station shall not be subject to the distance limitation set forth in subdivision one of section three hundred sixty-nine of this article, (b) the fee for investigating the application for a station shall be as prescribed pursuant to section eighteen-a of this chapter, and (c) where such a station is at the premises of a specified employer for the purpose of cashing checks, drafts and money orders for the employees of such employer, the fees and charges for cashing such checks, drafts or money orders shall not be subject to the limitations of subdivision one of section three hundred seventy-two of this article if such fees and charges are paid by such employer.

3. A licensee may make a written application to the superintendent for

leave to change his or her place of business, or in the case of a mobile unit, the area in which such unit is authorized to be operated, stating the reasons for such proposed change. Such application may be approved for relocation from a site within three-tenths of a mile of another licensee to another site within three-tenths of a mile of such other licensee provided that such new site is farther from such existing licensee than the site from which permission to relocate is sought. Only in situations in which a licensee seeks to change its place of business due to extraordinary circumstances, as may be determined by the superintendent pursuant to regulations, may the superintendent, in his or her discretion, determine that an application may be approved for relocation from a site within three-tenths of a mile of another licensee to a new site which is closer to such existing licensee than the site from which permission to relocate is sought. Notwithstanding any other provision of this subdivision, a licensee may relocate from any location to a location that is within three-tenths of a mile from another licensee with the written consent of the other licensee. If the superintendent approves such application he or she shall issue a new license in duplicate in accordance with the provisions of section three hundred sixty-nine of this article, stating the new location of such licensee or, in the case of a mobile unit, the new area in which such mobile unit may be operated.

§ 370-a. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall approve or disapprove the proposed change

of control of a licensee in accordance with the provisions of subdivisions one and six of section three hundred sixty-nine of this article. The superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the superintendent.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. As used in this section: (a) the term "person" includes an individual, partnership, corporation, association or any other organization, and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The

superintendent may in his discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

§ 371. Regulations. The superintendent is hereby authorized and empowered to make such rules and regulations, and such specific rulings, demands, and findings as he may deem necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this article, in addition hereto and not inconsistent herewith.

§ 372. Fees and charges; posting schedule; records and reports. 1. The superintendent shall, by regulation, establish the maximum fees which may be charged by licensees for cashing a check, draft, or money order. No licensee shall charge or collect any sum for cashing a check, draft, or money order in excess of that established by the superintendent's regulations; provided, however, that no maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.

2. The schedule of fees and charges permitted under this section shall be conspicuously and continuously posted in every location and mobil unit licensed under this article.

3. No change in fees shall become effective earlier than thirty days after the superintendent shall notify the majority leader of the senate, the speaker of the assembly, and the chairmen of both the senate and assembly committees on banks of his intention to change fees.

4. The fees in effect immediately prior to the effective date of this subdivision shall continue to be the maximum allowable fees until revised by the superintendent's regulations.

5. Each licensee shall keep and use in its business such books, accounts, and records as the superintendent may require to carry into effect the provisions of this article and the rules and regulations made by the superintendent hereunder. Every licensee shall preserve such books, accounts and records for at least two years.

6. Before a licensee shall deposit with any banking organization, or with any organization engaged in the business of banking, a check, draft or money order cashed by such licensee, the same must be endorsed with the actual name under which such licensee is doing business and must have the words "licensed casher of checks" legibly written or stamped immediately after or below such name.

7. Every licensee shall submit to the superintendent, or such person as the superintendent may designate, such suspicious activity reports or currency transaction reports as are required to be submitted to federal authorities pursuant to provisions of the Bank Secrecy Act (subchapter 11, chapter 53, title 31, United States code) and regulations and administrative orders related thereto, as amended, within the periods of time as required by such act and regulations. A licensee may submit a copy of any such report to the superintendent, or such person as the superintendent may designate, that is filed with such federal authorities. The superintendent may adopt such regulations or require such additional reports as he or she deems necessary to insure the effective enforcement of this subdivision.

§ 372-a. Superintendent authorized to examine. 1. For the purpose of discovering violations of this article or securing information lawfully required in this section, the superintendent may at any time, and as often as may be determined, either personally or by a person duly designated by the superintendent, investigate the cashing of checks by licensees and examine the books, accounts, records, and files used therein of every licensee.

2. For the purpose established in subdivision one of this section, the

superintendent and his or her duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The superintendent shall have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to such cashing of checks or such business.

§ 372-b. Forged checks for cashing; signage. All licensees shall post in a conspicuously prominent place, clearly visible to all patrons, a statement printed in plain language as provided by the superintendent informing the public that cashing a forged check is illegal and that those who knowingly cash forged checks will be prosecuted pursuant to article one hundred seventy of the penal law.

§ 373. Acts prohibited; suspension or revocation of license; penalties. 1. No licensee shall engage in the business of making loans of money, credit, goods or things or discounting of notes, bills of exchange, checks, or other evidences of debt pursuant to the provisions of article nine of this chapter, nor shall a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks or other evidences of debt be conducted on the same premises where the licensee is conducting business pursuant to the provisions of this article. Except as otherwise provided by regulation of the superintendent, all checks, drafts and money orders shall be deposited in the licensee's bank account not later than the first business day following the day on which they were cashed. No licensee shall at any time cash or advance any moneys on a post-dated check or draft or engage in the business of transmitting money or receiving money for transmission; provided, however, that a licensee may cash a check payable on the first banking business day following the date of cashing (a) if such check is drawn by the United States, the state of New York, or any political subdivision of the state of New York, or by any department, bureau, agency, authority, instrumentality or officer, acting in his official capacity, of the United States or of the state of New York or of any political subdivision of the state of New York, or

(b) if such check is a payroll check drawn by an employer to the order of its employee in payment for services performed by such employee. No licensee shall cash any check, draft or money order if the face amount for which it is drawn is in excess of fifteen thousand dollars; provided, however, that this restriction shall not apply to the cashing of checks, drafts or money orders drawn by the United States, any state thereof or any political subdivision of any such state, or by any department, bureau, agency, authority, instrumentality or officer, acting in his official capacity, of the United States, any state thereof or any political subdivision of any such state, or any banking institution, or to any check or draft drawn by any insurance company, any broker or dealer registered with the securities and exchange commission, or any attorney for the settlement of claims, or to any check which has been certified by the banking institution on which it has been drawn; provided further, however, that any such restriction upon the maximum face amount that may be cashed by a licensee shall not apply to the cashing of checks, drafts or money orders by licensees for payees of such checks, drafts or money orders that are other than natural persons. For purposes of this subdivision, "banking institution" means any bank, trust company, savings bank, savings and loan association or credit union which is incorporated, chartered or organized under the laws of this state or any other state or the United States.

2. The superintendent may suspend or revoke any license or licenses issued pursuant to this article if, after notice and a hearing, he shall find that the licensee (a) has committed any fraud, engaged in any dishonest activities or made any misrepresentation; or (b) has violated any provisions of the banking law or any regulation issued pursuant thereto, or has violated any other law in the course of its or his dealings as a licensed casher of checks; or (c) has made a false statement in the application for such license or failed to give a true reply to a question in such application; or (d) has demonstrated his or its incompetency or untrustworthiness to act as a licensed casher of checks; or (e) is not doing sufficient business pursuant to this article to justify the continuance of the license, or if he shall find that any ground or grounds exist which would require or warrant the refusal of an

application for the issuance of the license if such an application were then before him. Such a hearing shall be held in the manner and upon such notice as may be prescribed by the superintendent. Pending an investigation or a hearing for the suspension or revocation of any license or licenses issued pursuant to this article, the superintendent may temporarily suspend such license or licenses for a period not to exceed ninety days, provided the superintendent shall find that such a temporary suspension is in the public interest.

3. Whenever the superintendent shall suspend or revoke a license issued pursuant to this article, he shall forthwith execute a written order to that effect. The superintendent shall on the date such order is executed file one copy thereof in the office of the department and serve a second copy thereof on the licensee either personally or by mailing the same to the last known address of such licensee. Such order shall be subject to review by the supreme court in the manner provided in article seventy-eight of the civil practice law and rules; provided, however, that a special proceeding for review of such order must be commenced within thirty days from the date of such order of suspension or revocation and, provided further, that no stay shall be granted pending the determination of the matter except on notice to the superintendent and for a period not exceeding thirty days.

4. Any person, partnership, association or corporation and the several members, officers, directors, agents and employees thereof, who shall violate any of the provisions of this article, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

5. Notwithstanding the provisions of subdivision four of this section, any person, partnership, association or corporation and the several members, officers, directors, agents and employees thereof who shall violate the provisions of subdivision one of section three hundred sixty-seven of this article shall be guilty of a class A misdemeanor.

§ 374. Application of article. 1. The provisions of this article shall not apply when checks, drafts or money orders are cashed, other than by a licensee, without a consideration or charge; nor when checks, drafts or money orders are cashed, other than by a licensee, as an incident to the conduct of any other lawful business where not more than one dollar is charged for cashing each check, draft or money order; nor shall the provisions of this article apply to any national bank, federal reserve bank, or to any person, partnership, association, corporation or other organization doing business under or pursuant to the provisions of this chapter, except a licensee under this article.

2. The provisions of this article shall apply to the operation of electronic check cashing machines. No person, partnership, association, corporation or other organization required to be licensed under this article shall operate an electronic check cashing machine without being duly licensed by the superintendent to engage in such business pursuant to this article.

* 3. Notwithstanding the provisions of subdivisions one and two of this section, no national bank or any person, partnership, association, corporation or other organization doing business under or pursuant to the provisions of this chapter, except a licensee under this article, shall conduct the business of cashing checks at a separate location which is used primarily by any such entity for the purpose of cashing checks, or at a separate location by means of an electronic check cashing machine, unless such separate location is not closer than one thousand five hundred eighty-four feet (three-tenths of a mile) from an existing licensee; provided however that this restriction shall not apply to any separate location which was in operation prior to the effective date of this subdivision nor shall it apply to any national bank or any person, partnership, association, corporation or other organization doing business under or pursuant to the provisions of this chapter which was engaged in the business of electronic check cashing machines in this state prior to the effective date of this subdivision.

* NB Repealed August 1, 2027

4. Notwithstanding the provisions of article four-A of this chapter and any rules or regulations adopted thereunder, a public accommodation

office shall be deemed a separate location for purposes of subdivision three of this section if such office is used primarily for the purpose of cashing of checks. A public accommodation office, for purposes of this subdivision, shall include, without limitation, both those public accommodation offices for which regulatory approval is required and those public accommodation offices for which regulatory approval is not required. The provisions of this subdivision shall be deemed to apply to any similar facility established by a national bank.

ARTICLE X

SAVINGS AND LOAN ASSOCIATIONS

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§ 375. Incorporation; organization certificate. When authorized by the superintendent as provided in article two of this chapter, fifteen or more persons, residents of the state of New York, may form a corporation to be known as a savings and loan association. Such persons shall subscribe and acknowledge and submit to the superintendent an organization certificate in duplicate, which shall specifically state:
1. The name by which the association is to be known, which shall contain

as a part thereof the words "savings and loan association."

2. The place where its principal office is to be located.

3. The name, occupation and place of residence of each incorporator and the number of shares for which he has subscribed.

4. The total matured value of the shares for which the incorporators have subscribed, which shall be at least: (a) Twenty-five thousand dollars if the place where the principal office is to be located has a population of ten thousand or more; or

(b) Ten thousand dollars if the principal office is to be located elsewhere.

5. The number of directors of the association, or that the number of directors shall not be less than a stated minimum nor more than a stated maximum. Such number, or the minimum and the maximum stated, shall be within the limitations prescribed by section three hundred ninety-seven of this article.

6. The names of the incorporators who shall be its directors until the first annual meeting. The incorporators named as directors must possess the qualifications of directors as to citizenship and residence specified in section three hundred ninety-seven of this article.

§ 376. Proposed by-laws. 1. The incorporators shall subscribe and acknowledge and submit to the superintendent proposed by-laws in duplicate, which shall make provision for the following: (a) The dates of regular meetings of shareholders; the notice, if any, to be given; the qualifications of voters and the manner of voting; the manner of calling special meetings; and the number of members which shall constitute a quorum.

(b) The number of directors, and their qualifications, other than those specified in this article; their terms of office, which shall not be less than one year nor more than three years, and if the terms of office be more than one year, the method of division into classes for

the purpose of electing, as nearly as may be, an equal number of directors each year; and the removal or suspension of directors. The by-laws may provide that the number of directors shall be not less than seven nor more than fifteen, in which event the by-laws shall also provide the manner in which the number of directors shall be fixed within the minimum and maximum limits.

(c) The meetings of the board of directors, of which there shall be no less than ten regular monthly meetings per year, provided, however, that during any three consecutive calendar months the board of directors shall meet at least twice; its powers and duties; the appointment or election of auditors and their compensation; the establishment of policies governing the appointment of appraisers and their compensation.

(d) The officers; the manner of their election; their terms of office, duties and compensation; and the bonds which shall be required of officers.

(e) The classes of shares which may be issued; whether they shall be issued in series or otherwise; the times when they may be issued; and their matured value.

(f) The manner in which evidence of share ownership shall be issued to members.

(g) The dues that shall be paid upon shares and the time of their payment; the time and manner of apportioning, crediting and paying dividends.

(h) The conditions upon which shares may be transferred, matured, withdrawn, retired or suspended and forfeited.

(i) If a member thereof, the voting of shares in the Savings and Loan Bank of the State of New York and the nomination of a director of such bank.

(j) The manner and conditions under which the by-laws may be altered or amended.

2. Such by-laws may make provision for the following:

(a) The fees that may be charged, which shall be only an entrance fee at a rate not exceeding twenty-five cents a share with a maximum amount of five dollars, or in lieu thereof a membership fee not exceeding one dollar; a transfer fee not exceeding twenty-five cents a share, or in lieu thereof a total fee not exceeding one dollar on each transfer.

(b) Loans and investments; the security to be taken for loans, and the conditions under which loans may be repaid.

(c) The fines and penalties which may be imposed for failure promptly to make payments when due.

(d) Prohibiting or further limiting proxies for members, and their duration, pursuant to subdivision two of section three hundred seventy-eight.

(e) The receipt of time and demand deposits.

§ 377. When corporate existence begins. When the superintendent shall have approved the organization certificate and the proposed by-laws, and shall have issued his authorization certificate as provided in article two of this chapter, the corporate existence of the association shall begin.

§ 378. Power to issue shares; dues thereon. 1. Every savings and loan association shall be either permanent or serial in character. A permanent association shall be one which issues instalment shares, not in series, and credits dividends thereon to the holders of such shares individually. A serial association shall be one which issues instalment shares in series and credits the dividends apportioned to such shares by series. No additional shares shall be issued in any series after a dividend has been credited thereto unless the person to whom such shares shall be issued shall pay therefor the book value of such shares including the estimated accrued dividend thereon since the close of the preceding dividend period. Dividends credited by a serial association upon shares issued by it other than instalment shares may be credited to the holders of such shares individually.

2. The members of a savings and loan association shall be: (1) those persons who are the holders of record of shares whose membership shall continue until such shares have matured and been paid, or have been withdrawn, retired, suspended, forfeited, or transferred; and (2) all borrowers from the association and all persons obligated to the association on loans whose membership shall continue until such loans or

obligations have been paid. Each member shall be entitled to at least one vote upon all question at any meeting of such members of the association, except when by statute the vote is required to be based upon the capital of the association. Every member entitled to vote at a meeting of members of the association may authorize another person or persons to act for him by proxy, but no director, officer, clerk, teller or bookkeeper of the savings and loan association shall act as proxy at any meeting of such association. Every proxy must be signed by the member or his attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it. The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the officer of the association responsible for maintaining the list of members. The by-laws may prohibit or further limit proxies for members and their duration. No director or officer of a savings and loan association shall be eligible to act as an inspector of an election of directors at any meeting of members of the association.

3. The capital of every such association shall consist of the dues and dividends credited to its members upon their shares either individually or by series, time deposits held by such association pursuant to section three hundred seventy-eight-a of this chapter together with interest accrued on such deposits, and demand deposits held by such association pursuant to subdivision thirteen of section three hundred eighty-three of this chapter.

4. Any savings and loan association may issue shares of the following classes: (a) Instalment shares, class one, upon which regular payments of dues shall be made as provided in the by-laws of the association, until such shares reach their matured value or are withdrawn, retired or forfeited; and instalment shares, class two, which shall have no participation in dividends and upon which the dues payable in regularly increasing amounts are applied in reduction of a debt due to the association from the holder of such shares in accordance with a

direction given by him.

(b) Savings shares, upon which dues shall be paid in such sums, at such times and for such purposes as the holder thereof may elect, until the shares are withdrawn or retired. Upon the request of the holder thereof, such savings shares may be converted by the issuing association into special savings shares authorized for issuance by paragraph (bb) of this subdivision. The association may enter such conversion in its records and on the evidence of ownership of the savings shares as an alternative to withdrawal or retirement of the savings shares and issuance of special savings shares.

(bb) Subject to such limitations and restrictions as may be prescribed by regulation of the superintendent of financial services, special savings shares, upon which dues shall be paid in such sums, at such times and for such purposes as the holder thereof may elect, and which shall provide that dividends shall be credited from the date of actual receipt of such dues to the date they are withdrawn or retired. Dividends on special savings shares shall be credited and shall be made available no later than the end of a regular dividend period, or at the time such special savings shares are withdrawn or retired if in the opinion of a majority of the board of directors it appears the savings and loan association will have sufficient profit available at the end of such regular dividend period to pay dividends and if the board of directors chooses payment of dividends at withdrawal as an option to periodic payment of dividends. Any savings and loan association which does not make dividends available pursuant to the provisions of this paragraph shall promptly notify the superintendent of financial services of such decision. Withdrawals or retirements of special savings shares during the last three business days of any regular dividend period or, in the event that any one of such last three business days is a Saturday, withdrawals of such shares upon one of the last four business days of any such period may receive dividends apportioned for the full period.

(c) Accumulative prepaid shares upon which a single payment of dues to the amount of fifty per centum or more of the matured value thereof shall be paid at the time when such shares are issued. The whole or a part of the dividends apportioned to such shares shall be credited thereto until such shares are matured, withdrawn or retired. Any balance

of such dividends not so credited shall be paid in cash.

(d) Income shares, upon which a single payment of dues amounting to one hundred dollars per share shall be paid at the time when such shares are issued. The dividends on such shares shall be paid in cash or, in accordance with the written order of the holder, applied to the purchase of other shares in the association. Income shares may be issued which shall not be withdrawable without the consent of the board of directors, until the expiration of a fixed period, which shall be not more than ten years. Whenever income shares are issued which are not withdrawable until the expiration of a fixed period, a statement that they are not withdrawable until the expiration of such fixed period shall be printed upon the face of the certificate of shares or other evidence of ownership in such manner as to be clearly legible. Whenever any association is unable to locate the holder of income shares and dividends shall have been apportioned which cannot be paid to the holder thereof by reason of the inability of such association to locate such holder, such association may credit such dividends as dues upon another class of shares in the name of holder of such income shares and shall carry such other shares and any accumulations thereon for the benefit of such shareholder. Income shares which are not withdrawable until the expiration of a fixed period shall be termed "income shares, class two." Other income shares shall be termed "income shares, class one."

(e) Cumulative income shares upon which a single payment of dues of not less than one hundred dollars shall be paid at the time such shares are issued. The dividends on such shares may be credited thereto until such shares are matured, withdrawn or retired. Cumulative income shares may be issued which shall not be withdrawable without the consent of the board of directors, until the expiration of a fixed period, which shall be not more than ten years nor less than ninety days. Whenever cumulative income shares are issued which are not withdrawable until the expiration of a fixed period, a statement that they are not withdrawable until the expiration of such fixed period shall be printed upon the face of the certificate of shares or other evidence of ownership in such manner as to be clearly legible. Cumulative income shares which are not withdrawable until the expiration of a fixed period shall be termed "cumulative income shares, class two." Other cumulative income shares shall be termed "cumulative income shares, class one."

5. All shares hereafter issued by any savings and loan association shall have a matured value of one hundred dollars, except that instalment shares may be issued having a matured value of not less than one hundred nor more than two hundred fifty dollars.

6. Shares issued in the name of more than one person shall confer no greater voting rights than if issued in the name of one person.

7. Persons who hold shares in a fiduciary capacity shall have all the rights and privileges of membership, except to hold office.

8. A savings and loan association shall have a lien upon the shares of its members to the extent of any lawful fines or other obligations due to it, whether or not such shares are specifically transferred or pledged to it, and may, at its option, after five days' notice to the member, apply such shares toward the payment of any matured obligations due it.

9. A savings and loan association may in its discretion accept or refuse advance payments of dues.

10. Notwithstanding any provision of this chapter, a savings and loan association, in its organization certificate, by-laws, advertising matter or any other instrument, document or other writing used in or in connection with its business, may designate its shares as "deposit accounts" or "savings accounts" its members as "depositors", its dues or share payments as "deposits", and its capital as "deposit liability". The use of any term permitted by this subdivision shall not affect any right, duty, privilege or liability which the savings and loan association, any member or any depositor would otherwise have.

§ 378-a. Time deposits. 1. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, a savings and loan association may contract to receive time deposits including deposits upon which the savings and loan

association contracts to pay interest at a fixed rate.

2. Any time deposit made by or in the name of any minor shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid together with interest credited thereon, to the person in whose name the deposit shall have been made. The receipt or acquittance of such minor shall be a valid and sufficient release and discharge to the association for any payment so made. When any time deposit shall be made by any person in trust for another, including a minor, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the deposit, together with the interest credited thereon, may be paid to the person for whom the deposit was made. The receipt of acquittance of such person shall be a valid and sufficient release and discharge to the association for any payment so made.

3. The repayment of time deposits made with any association and any interest credited thereto, shall be subject to the provisions of this chapter and to rules and regulations made in accordance therewith. Any such regulations adopted by the board of directors shall be posted in a conspicious place in the office or offices of such association, and shall be available to depositors upon request. All such rules and regulations, from time to time in effect, and all amendments thereto, from time to time in effect, shall be binding upon all depositors.

4. Notice to any association of an adverse claim to a time deposit standing on its books to the credit of any person shall not be effectual to cause such association to recognize such adverse claimant unless he shall also either procure a restraining order, injunction or other appropriate process against such association from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands or his executor or administrator is made a party and served with summons, or shall execute to such association, in form and with sureties acceptable to it a bond, indemnifying such association from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the

dishonor of the order of the person to whose credit the deposit stands on the books of such association; provided, that this section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, and the facts showing reasonable cause for belief on the part of such claimant that such fiduciary is about to misappropriate such deposit, are made to appear by the affidavit of such claimant.

5. (a) In all actions against any association to recover a time deposit, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending may, on the petition of such association, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendants thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in any other interpleader provision.

(b) The time deposit which is the subject of such an action may remain with such association to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such association in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such association shall be struck out as a party to the action, and its liability for such deposit shall cease.

(c) The costs in all actions against an association to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

7. Subject to any regulations and restrictions prescribed by the superintendent of financial services, a savings and loan association may accept time deposit without the issuance of a passbook in connection therewith, and may issue such other evidences of its obligation to repay such time deposits as may be appropriate to safeguard the interests of

the depositors and of the savings and loan association.

§ 378-b. Club accounts. 1. No contract under which a savings and loan association agrees to repay shares of fixed sums made at regular intervals at a given time with all interest or dividends credited thereon, or to repay said shares when, together with interest or dividends credited thereon, they shall equal a specified sum, may provide for any forfeiture of the sums deposited in the event of the discontinuance of the regular payments. Interest or dividends on club accounts, if offered, must be credited at least quarterly and may not be forfeited once credited, in the event of the discontinuance of regular payments.

2. Any savings and loan association which provides for deposits in club accounts shall, in all advertising announcements or brochures pertaining to such accounts, state whether or not interest or dividends are paid thereon and, if interest or dividends are paid, shall state the rate or form of interest or dividends so paid in accordance with any rules and regulations that may be prescribed by the superintendent.

§ 378-c. Excelsior linked deposit program. A savings and loan association may accept moneys deposited by the comptroller or the commissioner of taxation and finance as linked deposits pursuant to article fifteen of the state finance law and enter into agreements, pledge assets or furnish other security, satisfactory in form and amount to such authorized depositor, for the repayment of such moneys.

§ 378-d. Preservation of books and records. Every savings and loan association shall preserve all its records of final entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon; provided, however, that preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with the requirements of this section. Notwithstanding the

foregoing, the superintendent of financial services may prescribe by regulation such period of time longer or shorter than six years during which all records kept by savings and loan associations as fiduciary shall be preserved in original form.

§ 378-e. Water pollution control linked deposit program. A savings and loan association may accept moneys deposited by the New York state environmental facilities corporation as linked deposits pursuant to article sixteen of the state finance law and enter into agreements, pledge assets or furnish other security, satisfactory in form and amount to New York state environmental facilities corporation, for the repayment of such moneys.

§ 379. Power to invest in securities. A savings and loan association may invest its funds in the following securities: (1) Shares of the Savings and Loan Bank of the State of New York, in an amount not exceeding five per centum of the assets of such association at the time of such investment, except that such amount may exceed five per centum with the written approval of the superintendent.

(2) Capital stock of a federal home loan bank, in an amount not exceeding five per centum of the assets of such association at the time of such investment, except that such amount may exceed five per centum with the written approval of the superintendent.

(3) Obligations of the Savings and Loan Bank of the State of New York.

(4) Bonds, debentures, consolidated debentures, or other obligations of a federal home loan bank or banks.

(5) Securities, certificates of deposit and other accounts and corporate obligations in which investments are authorized to be made by savings banks subject to those limitations applicable to such investments in the case of savings banks, including, without limiting the foregoing, investments made under the provisions of subdivision thirty of section two hundred thirty-five of this chapter.

(6) Such additional investments as are authorized to be made by savings banks by subdivision thirty-one of section two hundred thirty-five of this chapter, subject to those limitations applicable to

such investments in the case of savings banks.

(7) Such bonds or other evidences of indebtedness issued or guaranteed by the State of Israel as are approved by the comptroller of the currency for investment by national banks; provided, however, that the principal and interest payable thereon shall be payable in United States dollars; and provided that such investments may not exceed in the aggregate five percent of the association's capital deposits, undivided profits, surplus and reserves.

§ 379-b. Service corporation owned by associations; authorized activities of such corporation; investment therein. 1. A savings and loan association may invest in the stock, capital notes and debentures of a service corporation organized under the laws of this state for the sole activities set forth in subdivision two of this section, to the extent and upon such conditions as are or have been authorized by the superintendent of financial services, provided that all of the stock of such service corporation is, or is to be, owned by one or more savings and loan associations; and provided further, that no savings and loan association may make any investment under this section if its aggregate outstanding investment thereby, determined as prescribed by the superintendent of financial services, would thereupon exceed three per centum of its assets.

2. The activities of such service corporation, performed directly or through one or more wholly owned subsidiaries, shall consist of rendering such services to savings and loan associations and making such investments for itself and for savings and loan associations as are authorized services and investments for such associations under the provisions of this chapter as well as such activities as may be prescribed by general regulation of the superintendent of financial services.

§ 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.

§ 380-a. Power to purchase mortgage, loan or investment. Subject to such regulations and restrictions as the superintendent of financial services may prescribe therefor, an association may acquire by purchase any mortgage, loan or invetsment which by the provisions of this article it is authorized to make and hold.

§ 380-b. Power to purchase mortgages from mortgage holders. A savings

and loan association may purchase from mortgage holders; (1) any bond and mortgage insured or guaranteed by the United States or any instrumentality thereof, or for which there is a commitment to so insure or guarantee, or (2) provided the mortgage is a first lien, any bond and mortgage at least twenty per centum of which is guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944". A savings and loan association may receive and hold such debentures as are issued in payment of any such insurance. 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 subdivision.

§ 380-c. Power to participate in certain loans and mortgage investments. Subject to such regulations and restrictions as may be prescribed by the superintendent of financial services, a savings and loan association may participate in making or acquiring (1) loans of a type that it is authorized to have by paragraph (b) of subdivision two of section three hundred eighty of this chapter, and (2) mortgage investments of any type that it is authorized to have, provided that the participation acquired shall not be subordinate to any other part interest.

§ 380-e. Effect of usury. The knowingly taking, receiving, reserving, or charging by a savings and loan association of interest, as computed pursuant to this article, at a rate greater than such rate of interest as may be authorized by law shall be held and adjudged a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person paying the same or his legal

representatives may recover from the savings and loan association twice the entire amount of the interest thus paid. Nothing in this section shall be deemed to affect the powers of any savings and loan association with respect to loans or investments it is authorized to make.

§ 380-f. Power to make advances of federal funds. A savings and loan association may make advances of federal funds to commercial banks, provided such advances are made on the condition that they be repaid on the next business day following the day on which the advance is made. For purposes of this section the term "federal funds" shall mean funds which a savings and loan association has on deposit at a commercial bank which are exchangeable for funds on deposit at a federal reserve bank; the term "commercial bank" shall mean any bank, trust company, private banker, national banking association, having its principal office in this state; and the term "business day" shall mean any day on which the savings and loan association, the commercial bank and the federal reserve bank where the funds are on deposit are all open for general business.

§ 380-g. Power to engage in line of credit financing of residential real estate. A savings and loan association is authorized to invest an amount, not exceeding the lesser of (a) ten per centum of the sum of its surplus, undivided profits, and reserves or (b) one per centum of its assets, in loans or in interests therein the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate within this state, where (i) the association relies substantially for repayment on the borrower's general credit standing, with or without other security, or (ii) the association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party, and, in either case described in clause (i) or (ii), regardless of whether or not the association takes security.

§ 380-h. Trust powers. 1. The superintendent of financial services is

authorized and empowered to grant permission to a savings and loan association to exercise any or all of the powers specified in sections one hundred, one hundred-a, one hundred-b and one hundred-c of this chapter. In passing upon applications for permission to exercise any such powers, the superintendent of financial services may take into consideration the amount of surplus of the applying association, whether or not such surplus is sufficient under the circumstances of the case, the needs of the community to be served and any other facts and circumstances that seem proper, and may grant or refuse it permission accordingly.

2. Whenever the laws of this state require a trust company acting in a fiduciary capacity to deposit securities with the state authorities for the protection of private or court trusts, a savings and loan association, so acting, is empowered to make similar deposits of securities.

4. The superintendent of financial services is authorized to promulgate such regulations as he or she may deem necessary or proper to implement the provisions of this section and the proper exercise of the powers granted by this section.

§ 380-i. Personal loan departments. Subject to such regulations as the superintendent of financial services may prescribe, a savings and loan association may operate a personal loan department under the same terms and conditions as are provided under subdivisions four and five of section one hundred eight of this chapter.

The superintendent of financial services shall be empowered (a) to prescribe the terms and conditions governing the conduct and operation of personal loan departments including the maximum amount, expressed as a percentage of assets or otherwise, which a savings and loan association may invest pursuant to the provisions of this subdivision or in the aggregate, taking into account such other provisions of law authorizing investments by savings and loan associations and (b) to prescribe such terms and conditions as may be appropriate to effect or

facilitate the tranfer of accounts operated pursuant to the provisions of any other section of this chapter to the personal loan departments authorized to be operated hereunder.

In pursuance of the authority granted hereunder savings and loan associations shall be empowered to issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations, and to act as financing agencies as defined in subdivision nine of section three hundred one and subdivision eighteen of section four hundred one of the personal property law.

§ 380-j. Authorization to acquire and lease personal property. A savings and loan association is authorized to acquire and lease personal property to the same extent as a commercial bank is authorized to engage in such activities under subdivision twelve of section ninety-six of this chapter, subject to those limitations applicable to such activities in the case of banks or trust companies.

§ 380-k. Investment in promissory notes. A savings and loan association may invest in promissory notes and other evidences of indebtedness representing commercial, corporate or business loans to the same extent as a savings bank is authorized to invest in such notes under subdivision eight-c of section two hundred thirty-five of this chapter, subject to those limitations applicable to such investments in the case of a savings bank. For the purposes of this section, the term "net worth" shall have the meaning ascribed to it by subdivision four of section two hundred forty-four of this chapter. In addition, a savings and loan association is authorized to invest in such promissory notes as a savings bank may invest in pursuant to paragraph five of subdivision eight of section two hundred thirty-five of this chapter.

§ 380-l. Excelsior linked deposit program. A savings and loan association may make linked loans, each authorized and approved pursuant to article fifteen of the state finance law and each in an amount equal

to a corresponding linked deposit made pursuant to such article, subject to the limits of section three hundred eighty-k of this article and any other applicable limits or requirements imposed by law or regulation.

§ 380-m. Water pollution control linked deposit program. A savings and loan association may make linked loans, each authorized and approved pursuant to article sixteen of the state finance law and each in an amount equal to a corresponding linked deposit made pursuant to such article, subject to the limits of section three hundred eighty-k of this article and any other applicable limits or requirements imposed by law or regulations.

§ 381. Power to take and hold real estate; restrictions. 1. A savings and loan association may take, hold and convey real property as follows:
(a) A plot whereon there is or may be erected a building suitable for the convenient transaction of its business, from portions of which not required for its own use a revenue may be derived, and a plot whereon parking accommodations are, or are to be, provided, with or without charge, primarily for its customers or employees or both; provided that the aggregate of all investments of any savings and loan association in such plots and buildings or in the bonds and mortgages upon such plots or buildings shall not exceed five per centum of the assets of such association except with the approval of the superintendent.
(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.
(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.
(d) A whole or part interest in a "project" as defined in the New York state urban development corporation act, pursuant to sections six or eight of such act. An investment by an association in a single project shall not exceed one per centum of the assets or ten per centum of the net worth of such association, whichever is less, and the aggregate of all investments of an association in such projects and investments in securities pursuant to subparagraph one-a of paragraph (a) of subdivision twenty-one of section two hundred thirty-five of this

chapter shall not exceed five per centum of the assets or fifty per centum of the net worth of such association, whichever is less. For the purposes of this subdivision, "net worth" of an association shall mean the excess of its assets at book value, less allocated reserves, over known liabilities.

* (e) Improved or unimproved real property (either by purchase, lease, exchange or otherwise), or any interest therein, to erect, construct, rebuild, enlarge, alter, improve, maintain, manage and operate buildings or other improvements of any description thereon, to sell, lease, sublet, mortgage, exchange or otherwise dispose of same and execute, perform and carry out contracts for construction, alteration, improvement, maintenance, management or repair thereof, to make loans in connection therewith, as owner, co-owner or otherwise, subject to such specific or general approvals and limitations as shall be required by regulations promulgated from time to time by the superintendent of financial services pursuant to this paragraph; provided, however, that no activity specified herein shall be undertaken pursuant to the authority contained in this paragraph until the superintendent of financial services shall have issued regulations specifying the limitations and requirements which shall be imposed in connection with the investments and activities referred to herein, including, without limitation, the consideration of such savings and loan association's record in meeting the credit needs of local communities within the meaning of section twenty-eight-b of this chapter.

* NB Expired June 30, 1988

2. All real estate purchased by any such association or taken by it in settlement of debts due it, shall be conveyed to it directly by name or, subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper, may be taken in the name of a duly authorized nominee, and the conveyance immediately recorded or registered in the office of the proper recording officer of the county in which such real estate is located.

§ 382. Power to borrow. Subject to such regulations as the superintendent of financial services may promulgate, a savings and loan

association may borrow money and pledge its assets as security for the repayment thereof if it has been authorized so to do by the vote of a majority of its board of directors.

§ 382-a. Power to act as trustee under self-employed retirement trust and of individual retirement account; investment in savings account. 1. Subject to any regulations and restrictions prescribed by the superintendent of financial services, a savings and loan association shall have power to act as trustee under a retirement plan established pursuant to the provisions of the act of congress entitled "Self-employed Individuals Tax Retirement Act of 1962", and provisions of law contained therein as amended, provided that the provisions of such retirement plan require the funds of such trust to be invested exclusively in deposits in savings and loan associations and federal savings and loan associations whose principal offices are located in this state. In the event that any such retirement plan, which in the judgment of the association, constituted a qualified plan under the provisions of said Self-employed Individuals Tax Retirement Act of 1962, and provisions of law contained therein as amended, and the regulations promulgated thereunder at the time the trust was established and accepted by the association is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may, nevertheless, continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof. No association, in respect to deposits made under this subdivision, shall be required to segregate such deposits from other deposits of such association, provided, however, that the association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subdivision. As used in this subdivision, the term "deposits" shall include shares issued by the association and time deposits held pursuant to section three hundred seventy-eight-a of this chapter.

2. Subject to any regulations and restrictions prescribed by the superintendent of financial services, a savings and loan association

shall have power to act as trustee of an individual retirement account established pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974" provided that the provisions of the written governing instrument creating the trust require the funds of such trust to be invested exclusively in deposits in savings and loan associations and federal savings and loan associations whose principal offices are located in this state. In the event that any such individual retirement account, which in the judgment of the association, constituted a qualified individual retirement account under the provisions of said Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder at the time the trust was established and accepted by the association is subsequently determined not to be such a qualified individual retirement account or subsequently ceases to be such a qualified individual retirement account, in whole or in part, the association may, nevertheless, continue to act as trustee of any deposits theretofore made under such individual retirement account and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof. No association, in respect to deposits made under this subdivision, shall be required to segregate such deposits from other deposits of such association, provided, however, that the association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subdivision. As used in this subdivision, the term "deposits" shall include shares issued by the association and time deposits held pursuant to section three hundred seventy-eight-a of this chapter.

§ 382-b. Power to issue certain obligations. 1. In addition to all other powers granted to it by other provisions of law, a savings and loan association may issue such notes, bonds, debentures, or other obligations or other securities as the superintendent may authorize.

2. Subject to such regulations and restrictions as the superintendent of financial services finds to be necessary and proper and notwithstanding any other provisions of law, a savings and loan association may issue notes, bonds, debentures, or other obligations or

other securities subordinated to deposits in such savings and loan association; provided that, unless the superintendent has given prior approval otherwise, the aggregate principal amount thereof at the time of issuance shall not exceed twenty-five per cent of the net worth of such savings and loan association, exclusive of all such notes, bonds, debentures, or other obligations or other securities. The proceeds or other consideration derived by a savings and loan association from the issuance pursuant to this subdivision of any such notes, bonds, debentures, or other obligations or other securities shall be deemed for purposes of this chapter to constitute a part of the net worth of such savings and loan association. For the purposes of this article, the term "net worth" shall mean the excess of assets at book value, less allocated reserves, over known liabilities, including deposit liabilities.

§ 383. Other powers. Every savings and loan association shall, subject to the restrictions and limitations contained in this chapter, have the following powers: 1. To become a member of the Savings and Loan Bank of the State of New York; to exercise such powers as may be conferred upon member associations of such Savings and Loan Bank; and to perform such duties and obligations as may be lawfully required of such member associations.

2. To become a member of a federal home loan bank; and to have and to exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the federal home loan bank act. Such savings and loan association and its directors and officers shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all provisions of this chapter relating to savings and loan associations.

3. To assume and discharge such obligations to Federal Deposit Insurance Corporation as may be necessary or required for the purpose of maintaining share insurance in such corporation.

4. To receive money for transmission and to transmit such money, and

to sell money orders and travel checks as agent for any corporation, association or joint stock company empowered to sell such instruments through agents in the state of New York.

5. To service mortgages for others, and to render investment advice incidental to the purchase of and investment in mortgages by others, provided, however, that the superintendent of financial services shall have power to prescribe, by specific or general regulation, the extent to which and the conditions upon which such mortgages may be serviced and such investment advice may be rendered.

6. To service mortgages or to perform other services for the Federal National Mortgage Association created under the housing act of nineteen hundred fifty-four, as amended from time to time, and to sell or assign mortgages to such association and in connection therewith to make capital contributions thereto, purchase stock thereof, and do any and all other acts which under the laws and regulations applicable to such sales may be required to enable such sales to be effected.

7. To sue and to be sued in all courts and to participate in actions and proceedings, whether judicial, arbitrative or otherwise, in like cases as natural persons.

8. To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

9. To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

10. To elect or appoint officers, employees and other agents of the savings and loan association, define their duties, fix their compensation, and to indemnify corporate personnel.

11. To have perpetual existence.

12. To execute and deliver such guaranties as may be incidental or usual in the transfer of investment securities.

13. To receive and repay demand deposits subject to those provisions applicable to such deposits, in the case of savings banks under section two hundred thirty-seven of this chapter, including, subject to regulation by the superintendent of financial services, the power to charge for maintaining a demand deposit account or for honoring checks drawn on or accepting deposits made to such an account.

The superintendent of financial services shall have the power to prescribe by regulation (a) the maximum charge which may be imposed in this state by a savings and loan association in connection with a check or other written order drawn upon it on insufficient funds, irrespective of whether the instrument is paid, accepted or returned by the bank, and (b) the maximum charge which may be imposed in this state by a savings and loan association in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee.

14. To have and exercise all other powers necessary or appropriate in conducting the business of a savings and loan association.

15. Subject to such regulations as the superintendent of financial services finds to be necessary and proper, and notwithstanding any other provision of law, to accept federal tax and loan accounts, the balance of which are payable on demand without previous notice of intended withdrawal and to pledge collateral to secure such accounts.

16. Subject to any limitations or other specific provisions contained in this chapter or any other statute of this state or its organization certificate, and as shall be appropriate in conducting the business of the corporation, and only for such activities which are authorized by this chapter for savings and loan associations: to be a promoter, partner, member, associate or manager of other business enterprises or ventures, or to the extent permitted in any other jurisdiction to be an

incorporator of other corporations of any type or kind.

17. To engage in a "savings promotion" in accordance with section nine-v of this chapter and subject to any regulations promulgated by the superintendent. The superintendent shall consult with the state gaming commission before proposing any such regulations or any amendments thereto. Such regulations shall ensure that:

a. no participant in a savings promotion is charged any fee that would constitute, directly or indirectly, consideration for participation in such savings promotion; and

b. no participant in a savings promotion foregoes, directly or indirectly, any interest that would constitute consideration for participation in such savings promotion.

§ 383-a. Rental of safe deposit boxes. Any savings and loan association may rent to its members safe deposit boxes in which to keep personal property and papers of any kind.

§ 384. Entries in books; restrictions; amortization of securities. 1. No savings and loan association shall by any system of accounting or any device of bookkeeping, directly or indirectly, enter any of its assets upon its books in the name of any individual, partnership or unincorporated association or of any other corporation, or under any title or designation that is not truly descriptive thereof, except as authorized by the provisions of this article.

2. The stocks, bonds or other interest-bearing obligations purchased by a savings and loan association shall be entered on its books at the actual cost thereof, and shall not thereafter be carried upon its books at a valuation exceeding their cost as adjusted by amortization for the purpose of bringing them to par at maturity; and where securities purchased at a premium are callable prior to maturity, the rate of amortization thereof shall be increased when necessary to such extent as

shall reduce the amount at which such securities are carried upon the books to the call price at the date or dates upon which a call may be made. No adjustment for amortization shall be required to be made on the books, except when the books are closed for the purpose of computing profits. The superintendent may by regulation vary the requirements of this subdivision to permit the amortization of premiums at the same rate as that required by federal tax statutes or regulations.

3. No savings and loan association, without the written permission of the superintendent, shall enter on its books its real estate and the building or buildings thereon, or its fixtures, vaults, furniture and equipment, at a valuation exceeding the actual cost thereof to such savings and loan association, or carry such real estate, building or buildings, fixtures, vaults, furniture or equipment on its books at a valuation exceeding the actual cost less appropriate allowances for depreciation. No adjustment for depreciation shall be required to be made on the books except when the books are closed for the purpose of computing profits.

4. Real estate acquired by an association other than that acquired for use as a place of business, shall be entered on the books of the association in conformity with the method of accounting for troubled debt restructurings approved by the financial accounting standards board or such other method of accounting as may be authorized or required by rules and regulations of the superintendent.

The provisions of this subdivision shall not, except as the superintendent may otherwise require, apply to any parcel of real estate as to which the savings and loan association has exercised its option to transfer or convey such real estate to the veterans administration or the federal housing commissioner pursuant to insurance or guaranty.

5. Every savings and loan association shall conform its method of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent. Any savings and loan association that refuses or neglects to obey any such order shall be subject to a penalty in an amount as determined pursuant to section

forty-four of this chapter for each day it so refuses or neglects.

§ 385. Surplus account. Every savings and loan association shall accumulate and maintain a surplus account as provided in section three hundred eighty-seven of this article. Such surplus account up to ten per centum of the association's capital shall not be available for any purpose, except with the prior written approval of the superintendent; but any such association may: (a) charge against such surplus account any losses or expenses without such approval only in the event such association has no undivided profits against which such losses or expenses may be charged or (b) may, with the prior written approval of the superintendent, transfer any part of such surplus account to any other account for any purpose. Such account may be created or increased by contributions and by transfers from undivided profits or from net profits.

§ 386. Profits; how and when to be computed. 1. Every savings and loan association shall close its books, for the purpose of computing its profits, at the end of any period for which a dividend is to be paid and in no event less frequently than quarterly. To determine the amount of gross income for any such accounting period the following items may be included:

(a) All income received or properly accrued, provided that no interest shall be accrued upon any interest-bearing asset upon which a default of principal or interest has existed for a period which shall be determined by the superintendent, except for interest-bearing assets secured by collateral the ascertained value of which is at least equal to the amount at which such asset plus all interest accrued thereon is carried on its books.

(b) Amounts added to cost for the purpose of amortizing discounts on securities purchased for less than par, provided that no discount shall be amortized on securities upon which a default exists.

(c) Any profits actually realized from the sale or other disposition of securities, real estate or other property.

(d) Amounts recovered on assets previously charged off, including

amounts allowed by the superintendent on account of assets previously disallowed by him; and other amounts allowed by the board of directors on account of assets previously disallowed by it.

(e) Provided the superintendent shall have approved, and only to the extent of such approval, any increase in the book value of the real estate and building or buildings thereon used by it as its place or places of business.

(f) Such other items as the superintendent, in his discretion, may permit to be included.

2. To determine the amount of net profits for such accounting period the following items shall be deducted from gross income:

(a) All expenses paid or properly accrued, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs.

(b) Interest paid or properly accrued upon time deposits held pursuant to section three hundred seventy-eight-a of this article, interest paid or properly accruing upon deposits referred to in section three hundred seventy-eight-b of this article and debts owing by it.

(c) Amounts deducted from cost for the purpose of amortizing premiums on securities purchased for more than par.

(d) Any losses sustained by it except to the extent that such losses have been charged against the surplus account or valuation reserves. In the computation of such losses there shall be included all deductions from the book value of assets made pursuant to the direction of the board of directors or by reason of the disallowance of assets by the superintendent. The balance thus obtained shall constitute the net profits of such savings and loan association for such period.

§ 387. Credits to surplus account and undivided profits; dividends to shareholders. 1. When the net profits of any savings and loan association have been determined at the close of an accounting period, if its net worth does not equal ten per centum of its capital, such net profits shall be credited to its surplus account in such amount as may be determined by the superintendent of financial services until such net worth equals ten per centum of its capital. For purposes of this

article, the term "net worth" shall mean the excess of assets at book value, less allocated reserves, over known liabilities. The balance of such net profits, together with any amounts remaining from similar balances for previous accounting periods, shall constitute the undivided profits of such savings and loan association at the close of such period. The directors, in addition to the transfers to the surplus account required by this section, may transfer additional amounts to surplus account from undivided profits or continue to carry as undivided profits such sum or sums as they may deem wise. Amounts heretofore credited to a reserve for bad debts pursuant to chapter three hundred nine of the laws of nineteen hundred fifty-two shall be transferred to surplus account.

2. The undivided profits of a savings and loan association at the close of an accounting period shall be available for dividends. The directors may declare such dividends pursuant to the provisions of this paragraph or for any annual, semiannual, quarterly or monthly period closing on the last day of a calendar month or as provided in paragraph (bb) of subdivision four of section three hundred seventy-eight of this chapter. No association shall declare, credit or pay any dividend while its capital is impaired, or at any time except by a vote of the board of directors.

Notwithstanding the foregoing, in the event the gross income, undivided profits, surplus account or net worth of a savings and loan association shall be, or shall be deemed by the superintendent to be, increased as a result of any loan, purchase of assets or guaranty by, or other transaction with, any insuror of the accounts of such savings and loan association, including a transaction subject to subdivision two of section three hundred eighty-two-b of this article, the amount of any such increase in the gross income, undivided profits, surplus account or net worth of such savings and loans association shall, with the prior written approval of the superintendent, be available for dividends.

4. Dividends shall be apportioned upon the dues and dividends credited to members, provided, however, that, except in the case of special savings shares, no dividend shall be required to be computed and paid

upon any dues credited to a member except from the first day of the month immediately following the date of receipt of such dues, and provided further, that no dividend shall be required to be apportioned on shares having a book value of less than fifty dollars or on savings shares issued for special purposes which by their terms are to be withdrawn by the shareholder within one year from the date of their issuance. Any such association may compute dividends upon dues credited to a member from the date of actual receipt of such dues. The by-laws of any such association may provide a schedule of varying rates of dividends for different classes of shares and different types of shares within any class.

5. No savings and loan association shall declare any dividends upon the accumulations on any share for a longer period than that during which such accumulations have been held; provided, however, that dues paid upon shares not later than the tenth day of any month, may have dividends declared thereon from the first day of the month in which such payment was made; and withdrawals of shares during the last three business days of any dividend period or, in the event that one of such last three business days is a Saturday, deposits withdrawn upon one of the last four business days of any dividend period may receive dividends apportioned for the full period.

§ 388. Fines and penalties for failure to make payments on instalment shares. 1. Where dividends on instalment shares are credited by series, a savings and loan association may impose fines upon the holders of instalment shares of a series, their legal representatives or successors in interest, if they neglect to pay dues, interest or premium when due, but such fines shall not exceed one per centum per month of the amount in default for the period during which such dues, interest and premium shall have remained in default, except that a fine at the rate of two per centum per month of the amount in default may be imposed during the first three months of any default.

2. Where dividends on instalment shares are credited individually to shares, a savings and loan association may declare a lower rate of

dividend on instalment shares upon which there has been a default for more than sixty days since the last declaration of dividends, provided that such dividend shall be not less than sixty per centum of the dividend declared on like instalment shares not in default.

3. Where dues on instalment shares are applied directly in reduction of a mortgage loan, a savings and loan association may provide, as one of the terms of the obligation, that interest may be added to the unpaid balance of the obligation on the first day of each month and computed upon the unpaid balance of the obligation due as of the last day of the preceding month.

4. No fine shall be charged against or deducted from the dues actually paid by a member and no fines or penalties other than those provided in this section shall be imposed for failure to meet payments on instalment shares.

§ 389. Matured shares; conversion into shares of another class upon notice. Whenever the dues and dividends credited to instalment or accumulative prepaid shares shall equal their matured value, notice of such maturity shall be given to the holders thereof and the payment of dues thereon shall cease. Such notice shall be mailed to such shareholder at his last known address as it appears on the books of the association and, in the discretion of the board of directors, may contain a further provision that if such shareholder fails to accept payment for such shares, convert such shares into shares of another class or file an application to withdraw such shares within sixty days after the mailing of such notice, the same will be converted into another class of shares specified in such notice. If such additional provision has been included in such notice and the shareholder fails or neglects to accept payment for such shares, convert such shares into shares of another class or file an application to withdraw such shares, within such sixty days, the board of directors may, by resolution, convert such shares into the class of shares specified in such notice. For the purpose of maturing such shares, a special dividend may be credited between regular dividend dates at the same rate at which the

last regular dividend was credited. When shares pledged to the association mature, the value of such shares shall, to the extent of the obligation for which they are pledged, be applied in payment thereof. Any remaining balance of such shares shall be treated as matured shares and any other collateral not required to satisfy such obligation shall be returned.

§ 390. Withdrawal of unpledged shares; provisions for dividends. 1. The accumulations upon shares of any savings and loan association which are not pledged to the association to secure a loan, whether or not such shares are matured, may be withdrawn subject to the provisions of this chapter and of the by-laws and regulations of the association made in accordance therewith. In addition to his rights as a shareholder of an association, a shareholder shall be a creditor of the association to the extent of all dues and dividends credited to him. An association may by regulation adopted by resolution of its board of directors require a written notice of thirty days before paying withdrawals, in which event no withdrawal shall be paid until thirty days after notice of intention to make the withdrawal shall have been filed. It shall on the day such regulation is made effective notify the superintendent by telephone or telegraph that such regulation has been made and shall thereafter number, date and file in the order of actual receipt every notice of intention to make a withdrawal. Except as provided in section three hundred seventy-eight-a of this chapter, no savings and loan association shall hereafter agree with any of its shareholders in advance to waive the said thirty days' notice. Except in the case of special savings shares, if the by-laws so provide, a special dividend may be credited on shares withdrawn between regular dividend dates at the rate of the last dividend, computing from the last dividend period to the first day of the month in which such withdrawal is made.

1-a. A savings and loan association may permit a shareholder to withdraw the accumulations upon his shares of the association which are not pledged to the association to secure a loan, whether or not such shares are matured, through a disbursing savings and loan association that is a member of the federal deposit insurance corporation if the

office of the disbursing association through which payment of such withdrawal is made is located more than fifty miles from the principal dwelling place of such shareholder. The association may authorize payment by the disbursing association only upon receiving a specific telephonic withdrawal request, which may be oral or electronic, from such shareholder, and the amount so paid shall be immediately withdrawn from the shareholder's account at such association. A savings and loan association providing withdrawal services pursuant to this subdivision one-a may, but is not required to: (a) charge a fee to shareholders making such withdrawals, (b) place a limitation upon the amount of such withdrawal requests, and (c) pay a fee to the disbursing association. A savings and loan association may also act as the disbursing association in a similar withdrawal transaction from such accumulations on shares in another association that is a member of the federal deposit insurance corporation, and may collect a fee for its services. This subdivision one-a shall not apply to time deposits received by an association pursuant to section three hundred seventy-eight-a of this chapter.

2. If a member shall not apply for the withdrawal within fifteen days after the expiration of the thirty days' notice of intention no withdrawal shall be payable under such notice or by reason thereof. While any withdrawal application made pursuant to the required notice of intention remains in effect and unpaid, no withdrawal application made pursuant to a notice of intention subsequently filed shall be paid and no loan may be made secured by transfer or pledge of shares, nor shall shares be retired or applied by the association, or by the member toward the payment of fines and obligations due to the association, nor shall dividends be declared or paid.

3. Upon the withdrawal of instalment or accumulative prepaid shares prior to their maturity, or upon the withdrawal of income shares issued for a fixed term prior to the expiration of such fixed term, a portion of the dividends credited to such shares may be retained by the association as its own property, in accordance with a schedule, clearly and fully set forth in the by-laws. Such schedule shall make proper provision with respect to each class of share, and in the case of instalment shares shall take into account the period such shares have

been in force, provided, however, that the portion of such dividends that may be retained by the association upon the withdrawal of a share shall in no case exceed forty per centum of the dividends apportioned and credited upon such share.

4. The board of directors may permit a member to withdraw part of the accumulations on his shares, other than instalment shares issued in series, without reducing the number of shares held by him.

5. Subject to any regulations and restrictions prescribed by the superintendent of financial services, a savings and loan association may accept deposits, including demand deposits, without the issuance of a passbook in connection therewith, and may issue such other evidences of its obligation to repay such deposits as may be appropriate to safeguard the interests of the depositors and of the savings and loan association.

6. In case of conflict between this section and any other provision of law, this section shall control.

§ 392. Retirement of shares; suspension; transfer. 1. The board of directors of any savings and loan association may retire shares which are not pledged to the association by requiring their withdrawal, if the by-laws clearly state the manner in which such withdrawals may be required. The holders of such shares shall be paid the book value of their shares less all lawful obligations.

2. Whenever a member of any savings and loan association shall have failed for six months to pay dues upon any instalment shares owned by him, such association may serve notice upon him to pay such dues within the time stated in such notice, which time shall be not less than thirty days. If such shareholder does not make such payment within the time stated in the notice, the amount which would be due him if his shares were withdrawn shall be determined and such amount transferred and credited to him in a savings share account or a suspense account. If transferred to a suspense account, the rights of such member shall cease except the right to withdraw, subject to the provisions of section three

hundred ninety of this article, the amount thus credited to him and such dividends as may be credited thereon following the date of such transfer. Dividends on amounts in suspense accounts shall be credited at a rate of at least three-fifths of the lowest rate at which dividends are apportioned to any type of instalment shares.

3. No transfer of shares shall be binding upon any savings and loan association until such transfer has been recorded upon its books. The transferee of any share shall take the same subject to all liabilities to the association and all conditions attaching thereto at the time of the transfer. If the shares are in the names of two persons and in the form to be paid to either or the survivor of them, the assignment thereof by one of such persons shall authorize the association to record the assignment upon its books or to accept it as collateral for a share loan made pursuant to subdivision two-a of section three hundred eighty of this article.

§ 393. Repayment of mortgage loans; application of pledged shares. 1. For the purpose of making payment on his mortgage loan a member may at any time, without forfeiture of dividends, transfer from the amount credited upon the shares pledged by him as security, a sum equal to the matured value of one or more instalment shares.

2. Any mortgage loan made by a savings and loan association to a member may be repaid in whole or in part at any time, but the loan contract may expressly provide for a period during which prepayment may not be made without incurring prepayment penalties. When such provision is contained therein, the loan contract must also expressly provide for prepayment penalties or no prepayment penalties may be collected when the loan is prepaid. However, where a loan is secured by mortgage on a one to six family residence, or is extended to finance the purchase of a cooperative under subdivision two-a of section three hundred eighty of this chapter which residence or cooperative is or will be occupied in whole or in part by the member, prepayment penalties may be imposed only during the first twelve months from the date the mortgage or cooperative loan was made and may not exceed:

(a) Interest for a period of three months on the principal so prepaid; or

(b) Interest for the remaining months of the first year on the principal so prepaid if the prepayment is made at any time within one year from the date the loan is made.

The book value of instalment shares pledged as security for any such loan shall be deducted from the amount of the loan in determining the amount of principal upon which such interest may be charged.

3. Whenever any mortgage is foreclosed, the withdrawal value of the shares transferred and pledged to any such association as security for the loan shall be applied toward the payment of the indebtedness of the member and his rights under such shares shall terminate.

4. In event of the voluntary or involuntary liquidation of any association, the holder of shares pledged as security for a mortgage loan pursuant to the provisions of subdivision one of section three hundred eighty of this article shall be entitled to have the payments on such shares and the dividends credited or entitled to be credited thereon applied in reduction of such mortgage loan.

5. No shares pledged as security for a mortgage loan may be withdrawn while the mortgage loan against which they are pledged is outstanding.

§ 394. Joint shares; shares of minors; shares in trust.

3. When shares shall be issued in the name of a minor they shall be held for the exclusive right and benefit of such minor and free from the control or lien of all other persons except creditors, and the withdrawal value thereof shall be paid to the person in whose name the shares are held. A receipt or acquittance from such minor shall be a valid and sufficient release and discharge to the association for all payments made on account of such shares. When shares have been issued to a parent, guardian or voluntary trustee for a minor the association may permit the transfer of such shares to the minor by such parent, guardian

or trustee and in the event of the death of such parent, guardian or trustee the association may transfer and hold such shares for the exclusive right and benefit of such minor, upon presentation of satisfactory evidence of such death and upon the surrender of the certificate, passbook or other proper evidence of the ownership of such shares.

4. No association shall be liable to beneficiaries for moneys paid to their guardians or trustees, unless written notice of limitation upon the right of such guardians or trustees to withdraw such funds has been previously filed with the association. The receipt or acquittance of such guardians or trustees shall be a valid and sufficient release and discharge to the association for all payments made prior to the receipt of written notice of such limitation.

§ 395. Alternative provisions relative to payment of interest to shareholders. Notwithstanding any provision of this chapter to the contrary the superintendent may adopt such rules or regulations as shall permit mutual savings and loan associations to pay interest on share accounts at the option of such association.

§ 396. Change of location; change of designation of principal office; maintenance of branch office. 1. Any savings and loan association may make a written application to the superintendent, such application to be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter, for leave to change its place or one of its places of business to another place in the state or for leave to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office. The application shall state the reasons for such proposed change. Such change may be made upon the written approval of the superintendent. If the superintendent shall grant his or her certificate authorizing the change of location, the association may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein.

2. (a) A savings and loan association may open and occupy one or more branch offices at any location in the state. In addition, a savings and loan association may open and occupy a branch office or branch offices in one or more places located without the state of New York.

(b) Except for the city or village in which its principal office is located, no branch office may hereafter be opened and occupied pursuant to paragraph (a) of this subdivision in any city or village with a population of less than thirty thousand and in which is already located the principal office of a bank, trust company or national banking association, other than a bank holding company, if such bank holding company is a banking institution, or a banking subsidiary of a bank holding company, as such terms "bank holding company", "banking institution" and "banking subsidiary" are defined in section one hundred forty-one of this chapter except that the definition of "bank holding company" is modified to change the phrase "a banking institution" wherever it appears therein to "two or more banking institutions" and the definition of "banking institution" is modified to add a national banking association, the principal office of which institution is located in this state.

(c) Before any branch office shall be opened and occupied pursuant to this subdivision two, the superintendent shall have given his written approval.

(d) The term "village" as used in this section shall mean either an incorporated or an unincorporated village.

3. (a) A savings and loan association may, if the merger or asset acquisition agreement so provides, and if such merger or asset acquisition is permitted by law, maintain as a branch office or branch offices the place or places of business of any savings and loan association, savings bank, federal savings bank, federal savings and loan association, bank, trust company, national bank, or out-of-state bank (as such term is defined in section two hundred twenty-two of this chapter) which it has received into itself pursuant to the provisions of this chapter which were in existence at the time the merger or asset acquisition becomes effective, including any branch office of the savings and loan association, savings bank, or bank or trust company

with which it has merged or from which it has acquired assets, which has been approved pursuant to paragraph (c) of subdivision two of this section or subdivision three of section two hundred forty or subdivision two of section one hundred five of this chapter, even if such branch office is not in operation at the time the merger or asset acquisition becomes effective and may maintain, as its principal office rather than as a branch office, the principal office of such institution with which it has merged or from which it has acquired assets (so long as the principal office is located in this state), in which event the former principal office of the receiving savings and loan association may be maintained as a branch office.

(b) Notwithstanding anything to the contrary in paragraph (a) of this subdivision, any public accommodation office of a savings and loan association, savings bank, or bank or trust company, which has been merged or had assets acquired in an asset acquisition transaction, including any such office which has been approved pursuant to section one hundred ninety-one of this chapter but which is not in operation at the time said merger or asset acquisition becomes effective, may be maintained by the receiving savings and loan association as a public accommodation office only.

3-a. Notwithstanding anything to the contrary in subdivisions two and three of this section, a savings and loan association may, if so provided in an agreement made pursuant to section six hundred one-c of this chapter, maintain as a branch office or offices the place or places of business of any savings bank or savings and loan association which it has acquired pursuant to such agreement.

§ 396-a. Electronic facilities. A savings and loan association may conduct a banking business, at automated teller machines, point-of-sale terminals, and similar facilities subject to regulations which may be promulgated by the superintendent of financial services. Such facilities shall not be deemed to be branches and shall not be subject to any of the provisions of this chapter applicable to branches; provided however that notwithstanding the foregoing, for purposes of paragraph (b) of subdivision two of section three hundred ninety-six of this chapter,

such facilities shall be deemed to be branches, and such facilities shall be subject to the terms and conditions of section three hundred ninety-six, and for purposes of section twenty-eight-b of this chapter, such facilities shall be deemed to be branches.

§ 396-b. Acceptance of United States currency. No savings and loan association shall impose a fee, commission or service charge for accepting for deposit or exchanging for other United States currency any United States currency provided that any coins are properly rolled and have the customer's account number for that savings and loan association displayed on the coin roll, provided further that no more than ten rolls of coins in any denomination are presented for deposit or exchange at any one time.

§ 397. Number, qualifications and disqualifications of directors; oath; quorum; meeting of directors. 1. The affairs of every savings and loan association shall be managed and its corporate powers exercised by a board of directors, in number not less than seven nor more than fifteen, except that in the case of the merger of two or more savings and loan associations or one or more savings banks into a savings and loan association and if the merger agreement so provides, the authorized number of directors of the resulting association may be increased to not more than twenty-four, provided that thereafter the number of directors shall be reduced to fifteen by the elimination of one authorized office for every two vacancies that occur.

2. (a) All directors of a savings and loan association must be over the age of eighteen years and citizens of the United States.

(b) No person shall be eligible to election as a director of any savings and loan association

(1) Unless he is the owner in good faith and in his own right on the books of the association of shares having a book value of not less than two hundred dollars and every person elected a director, who, after such election shall hypothecate, pledge or cease to be the owner in his own right of such qualifying shares, shall thereby vacate his office, and

shall not be eligible for re-election as a director for a period of one year from the date of the next succeeding annual meeting. Except as provided in paragraphs (c) and (d) of this subdivision, every person legally qualified and duly serving as a director at the time this act takes effect, may continue as such director until the expiration of the term for which he was elected or appointed, but shall not be eligible for re-election unless he shall meet the requirement of this subdivision.

(2) If he would, upon his election, become the third salaried full-time employee of the savings and loan association on its board of directors and if such board, with his election, would have twelve or less directors, or if he would, upon his election, become the fourth salaried full-time employee of the savings and loan association on its board of directors and if such board, with his election, would have more than twelve directors; provided, however, that with the written approval of the superintendent, four salaried full-time employees may serve as directors of a savings and loan association resulting from the merger of two or more savings and loan associations or from the merger of one or more savings banks into a savings and loan association if, immediately prior to such merger, each such person was a salaried full-time employee and a director or a trustee of a merging institution.

No director in office on April first, nineteen hundred sixty-eight, shall be ineligible for the office of director by reason of the provisions of subparagraph (2) of paragraph (b) of this subdivision.

(3) If: (a) Such person's spouse is a director or one of the five highest paid salaried officers of the association; (b) Such person or such person's spouse is the grandparent, parent, child, grandchild, brother, sister, aunt, uncle, nephew or neice of a director or one of the five highest paid salaried officers of the association; or (c) A director or one of the five highest paid salaried officers of the association is the spouse of such person's child, grandchild, brother or sister.

No director in office on September first, nineteen hundred seventy-one shall be ineligible for the office of director by reason of the provisions of subparagraph three of paragraph (b) of this subdivision.

(c) The bylaws of a savings and loan association may prescribe a maximum age beyond which no person shall be eligible for election to the board of directors, and may prescribe a mandatory retirement age of seventy-five years or less for directors, subject to the following limitations:

(i) No person shall be eligible for initial election as a director after December thirty-first, nineteen hundred sixty-eight who is seventy years of age or more; and

(ii) No person shall continue to serve as a director after December thirty-first, nineteen hundred seventy-three who is seventy-five years of age or more, and the office of any such director shall become vacant on the last day of the month in which such director reaches his seventy-fifth birthday or on December thirty-first, nineteen hundred seventy-three, whichever is the later.

(d) In the case of a savings and loan association which does not adopt a bylaw prescribing a mandatory retirement age for directors prior to January first, nineteen hundred sixty-nine, or which does not maintain thereafter a bylaw prescribing such a mandatory retirement age, the office of a director of such savings and loan association shall become vacant on the last day of the month in which such director reaches his seventieth birthday, or on December thirty-first, nineteen hundred sixty-eight, whichever is the later.

3. Any director of a savings and loan association who shall default in any contractual payment on any obligation to such association for more than ninety days shall by reason of such default vacate his office as director and shall not be eligible for re-election for a period of one year from the date of the next succeeding annual meeting and until such default is cured.

4. Every director of any savings and loan association, before entering upon his duties as a director, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such association, and that he is the owner in good faith and in his own right, of shares having a book value of not less than two hundred

dollars standing in his name on the books of the association and that the same are not hypothecated, or in any way pledged as security for any loan or debt, and, in case of re-election or re-appointment, that such shares were not hypothecated, or in any way pledged as security for any loan or debt during his previous term. Such oath shall be subscribed by the director making it, certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent.

5. In the absence of a provision in the by-laws providing for the number of directors necessary to constitute a quorum, a majority of the total number of directors which a savings and loan association would have if there were no vacancies shall constitute a quorum for the transaction of business or of any specified item of business. Any reference in this chapter to corporate action to be taken by the board shall mean such action at a meeting of the board. Except as otherwise provided in this chapter, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board.

6. (a) Unless otherwise provided in the by-laws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the by-laws or the board. Special meetings of the board shall be held upon notice to the directors.

(b) The by-laws may prescribe what shall constitute notice of meetings of the board. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board, unless required by the by-laws.

(c) Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

(d) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the by-laws so provide, notice of any adjournment of a meeting of the board to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

7. Any officer elected or appointed by the board may be removed by the board, or his authority suspended by it, with or without cause. Such removal or suspension without cause, however, shall be without prejudice to his contract rights. The election or appointment of an officer shall not be deemed of itself to create contract rights. This subdivision does not affect the powers of the superintendent under section forty-one of this chapter.

8. Upon the petition of any shareholder aggrieved by an election, and upon notice to the persons declared elected thereat, the savings and loan association and such other persons as the court may direct, the supreme court at a special term held within the judicial district where the office of the savings and loan association is located shall forthwith hear the proofs and allegations of the parties, and confirm the election, order a new election, or take such other action as justice may require.

§ 397-a. Report to directors. The board of directors of every savings and loan association shall designate, by resolution duly recorded in the minutes, an officer or officers whose duty it shall be to prepare and submit to each director present at a regular meeting of the board or to each member of an executive committee of not less than five members of such board present at a regular meeting of such committee, a written report containing such information and meeting such requirements as are required in the case of reports submitted to the trustees of savings banks pursuant to section two hundred fifty-two of this chapter and such regulations as the superintendent may promulgate thereunder or hereunder. A copy of such report, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such report, together with a list of the directors present at such meeting, shall be filed with the records of the savings and loan association within one day after such meeting, and shall be presumptive evidence of the matters therein stated. The superintendent, by regulation, may require the preparation and submission of such a report to directors at dates other than those required herein.

§ 398. Filling of vacancies in board of directors; change in number of directors. 1. Vacancies in the board of directors of any savings and loan association not exceeding one-third of the whole number of the board may be filled by vote of a majority of the remaining directors, and the directors so elected may hold office until such vacancies are filled by the members at a special or annual election. When the number of directors fixed by the by-laws of any savings and loan association is nine or more, two vacancies may, with the consent of the superintendent, be left unfilled until the next annual election. All vacancies not otherwise provided for in this section shall be filled by election by the members.

2. The number of directors may be changed within the limits provided in subdivision one of section three hundred ninety-seven of this article by amendment of the by-laws, except where the by-laws provide that the number of directors shall be not less than seven nor more than fifteen and also provide the manner in which the number of directors shall be fixed within the minimum and maximum limits.

3. Each vacancy in the office of director and each reduction in the number of directors shall be reported to the superintendent within ten days after such vacancy occurs or such reduction is effected. Each election of a director shall be likewise reported together with the name, address and occupation of the person so elected.

§ 398-a. Forfeiture of office of director. The office of a director of a savings and loan association shall become vacant whenever he shall have failed to attend the regular meetings of the board of directors and also of any committee of the board of which he is a member, for a period of six successive months, unless excused by the board for such failure by resolution adopted at the first or second regular meeting of the board after expiration of such six months period, and entered upon its minutes. A copy of such resolution shall be transmitted to the superintendent by the savings and loan association within five days

after its adoption. A director who has vacated his office by reason of such failure to attend meetings shall not be eligible for re-election as a director until the expiration of one year from the date of the first regular meeting of the board at which a resolution could have been adopted by it, as herein provided, to excuse such failure.

§ 398-b. Duties of directors and officers.

1. Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which prudent men would exercise under similar circumstances in like positions. In discharging their duties, directors and officers, when acting in good faith, may rely (a) upon financial statements of the savings and loan association represented to them to be correct by the president or the officer of the savings and loan association having charge of the books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such savings and loan association and (b) upon reports required to be submitted to them by any provision of this chapter or prepared in the ordinary course of business by an officer or committee charged with the responsibility therefor. Nothing in this section shall be deemed to require the directors to perform functions vested in any committee, officer or other person pursuant to the provisions of any other section of this chapter.

2. An action may be brought against one or more directors or officers of a savings and loan association to procure a judgment for the following relief:

(a) To compel the defendant to account for his official conduct in the following cases:

(1) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of the savings and loan association's assets committed to his charge.

(2) The acquisition by himself, transfer to others, loss or waste of the savings and loan association's assets due to any neglect of or

failure to perform, or other violation of his duties.

(b) To set aside a conveyance, assignment or transfer of the savings and loan association's assets by one or more directors or officers, contrary to a provision of law, where the transferee knew the purpose of the transfer.

(c) To enjoin such a conveyance, assignment or transfer of the savings and loan association's assets by one or more of the directors or officers where there is good reason to apprehend that it will be made.

3. Subject to section six hundred thirty-one of this chapter, an action may be brought for the relief provided in this section by a savings and loan association or an officer, director or judgment creditor thereof.

4. This section shall not affect any liability otherwise imposed by law upon any director or officer.

§ 398-c. Executive committee and other committees. 1. If the organization certificate or the by-laws so provide, the board of directors, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee consisting of at least five directors and other committees each consisting of two or more directors, officers or other persons, not including alternate members, but not less than may otherwise be required by this chapter nor differing in composition from any requirement of this chapter, and each of which, shall have such authority as may be provided in the resolution or in the organization certificate or by-laws or under this chapter, except that no such committee shall have authority as to the following matters:

(a) The submission to shareholders of any action that needs shareholders' authorization under this chapter;

(b) The filling of vacancies in the board of directors or in any such committee;

(c) The fixing of compensation of the directors for serving on the board or on any committee;

(d) The amendment or repeal of the by-laws, or the adoption of new

by-laws;

(e) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable;

(f) The taking of action which is expressly required by any provision of this chapter to be taken at a meeting of the board or by a specified proportion of the directors.

2. Each such committee shall serve at the pleasure of the board. The designation or appointment of, or making of provision for, any such committee and the delegation thereto of authority shall not alone relieve any director of his duty to the association under any provision of this chapter.

3. Minutes shall be kept of each meeting of each such committee and records shall be kept of all action taken in exercise of the authority or in performance of the function of each such committee. Such minutes and records shall be submitted to the board of directors and shall be filed with the records of the association.

§ 399. Restrictions on directors and officers. 1. No director or officer of any savings and loan association shall receive any salary, fees, expenses or other compensation for soliciting the sale of shares of the association to any person.

2. No officer, director, attorney, agent or employee of any savings and loan association shall discount or, directly or indirectly, purchase from a member of such association a share in such association, whether or not withdrawal application has been filed with respect to such share, except by payment therefor of the book value of such share. For the purposes of this subdivision, the book value of a share shall consist of the dues and dividends credited thereon and dividends declared but withheld subject to payment at maturity.

3. No director or officer of any savings and loan association shall, after June thirtieth, nineteen hundred thirty-nine for himself or as agent or partner of another borrow any of the funds of such association

or become the owner of real property upon which such association holds a mortgage; except that such officer or director may borrow from such association on the security of shares held by him or on the security of real estate owned by him if used and occupied by him as a home for himself or family, or may become the owner of real estate so used and occupied upon which the association holds a mortgage. As used in this subdivision, the terms "real property", "real estate", and "mortgage" shall be deemed to refer to ownership interests in, and security with respect to, a cooperative apartment unit.

4. No director or officer of any savings and loan association shall direct or require a borrower on a mortgage to negotiate any policy of insurance on the mortgaged property through any particular insurance company or companies or through any particular insurance agent or agents and broker or brokers or attempt to divert to any particular insurance company or companies or any particular insurance agent or agents and broker or brokers, the business of borrowers from the savings and loan association, or refuse to accept any insurance policy because it was not negotiated through a particular insurance company or companies or through a particular insurance agent or agents and broker or brokers.

5. (a) No executive officer of a savings and loan association may be an executive officer, director or trustee of another savings and loan association, bank or trust company, savings bank, national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, bank holding company or foreign banking corporation maintaining a branch in this state unless permission therefor has been granted by the superintendent of financial services pursuant to paragraph (b) of this subdivision.

(b) The superintendent shall have the power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer, and by regulation,, to grant permission to an executive officer of a savings and loan association to be an executive officer, director or trustee or both an executive officer and a director or a trustee of another savings and loan association, bank or trust company, savings bank, national bank, federal savings bank or federal savings association, the principal office of which is located in this

state, bank holding company or foreign banking corporation maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent shall have the power to revoke such permission whenever the superintendent finds, after reasonable notice and an opportunity to be heard, that the public interest requires such revocation.

(c) For the purposes of this subdivision, the term "bank holding company" shall be given the same meaning as is contained in section one hundred forty-one of this chapter, and the definition of the term "banking institution" is modified to include a national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, and a foreign banking corporation maintaining a branch in this state.

(d) All other restrictions and limitations imposed by this chapter on executive officers and directors of savings and loan associations shall continue in effect.

§ 399-a. Restrictions on holding of certain offices by executive officers of federal savings banks and federal savings associations. 1. No executive officer of a federal savings bank or federal savings association the principal office of which institution is located in this state may be an executive officer, director or trustee of a savings and loan association, bank or trust company, savings bank, bank holding company or foreign banking corporation maintaining a branch in this state, unless permission therefor has been granted by the superintendent pursuant to subdivision two of this section, provided, however, that an executive officer of a federal savings and loan association located in this state, who on the effective date of this section is an executive officer, director or trustee of a savings and loan association, bank or trust company, savings bank, bank holding company or foreign banking corporation maintaining a branch in this state, may continue to hold such other office without permission from the superintendent, until the expiration of the term of such office or the close of business on the last day of December, nineteen hundred seventy-four, whichever occurs

sooner.

2. The superintendent shall have the power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer, and by regulation to grant permission to an executive officer of a federal savings bank or federal savings association located in this state, to be at the same time an executive officer, director or trustee, or both an executive officer and a director or trustee of a savings and loan association, bank or trust company, savings bank, bank holding company, and foreign banking corporation maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent shall have the power to revoke such permission whenever the superintendent finds, after reasonable notice and an opportunity to be heard, that the public interest requires such revocation.

3. For the purposes of this subdivision, the term "bank holding company" shall be given the same meaning as is contained in section one hundred forty-one of this chapter, and the definition of the term "banking institution" is modified to include a national bank, federal savings bank or federal savings association, the principal office of which institution is located in this state, and a foreign banking corporation maintaining a branch in this state.

4. All other restrictions and limitations imposed by this chapter on executive officers and directors of federal savings and loan associations located in this state, shall continue in effect.

§ 400. Pensions; insurance. Subject to such regulations as the superintendent of financial services may prescribe, a savings and loan association may, in the discretion of a majority of all the directors:

1. Provide pensions to officers and employees pursuant to a nondiscriminatory plan for service rendered to the savings and loan

association or for having become incapacitated while in service to the savings and loan association, including annual supplements to retirees based upon the "current cost of living index figure" for any calendar year based upon the Consumer Price Index as issued by the bureau of labor statistics of the United States department of labor.

2. Provide life insurance for its officers and employees, provided that life insurance is not purchased solely for or on behalf of officers and highly compensated employees.

§ 401. Official communications to be submitted to directors and noted in minutes. Every official communication, as defined in article two of this chapter, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board and noted in the minutes.

§ 402. Amendment of articles of association and by-laws. Any proposed change in the articles of association, certificate of association, organization certificate or the by-laws of any savings and loan association shall be submitted to the superintendent and, upon the superintendent's written approval thereof, shall be posted in a conspicuous place in the office of the association for thirty days. Such proposed changes may thereafter be incorporated in the articles of association, certificate of association, organization certificate or the by-laws of the association by being duly adopted by its directors. A copy of such change shall be filed in the office of the superintendent within thirty days after such adoption.

§ 403. Examination by directors. 1. Once in each calendar year the directors of every savings and loan association by a committee of not less than three of their number, none of whom shall be salaried officers or employees of such association, shall examine fully the records and affairs of such association for the purpose of determining its true financial condition. Such examination shall be made as of a date not

less than six months after the date of the previous such examination.

2. In the conduct of each such examination, inquiry shall be made into the policies of management for the purpose of determining whether such policies are sound and consistent with the requirements of law, and into such other matters as shall be necessary to enable the directors to determine whether adequate protection is afforded to shareholders and depositors.

3. A savings and loan association's compliance with section one hundred twelve of the Federal Deposit Insurance Corporation Act of 1991, as implemented by the provisions of part three hundred sixty-three of the rules and regulations of the Federal Deposit Insurance Corporation, as they may be amended from time to time, shall be deemed to satisfy the examination requirement of this section.

4. The directors may employ such assistance as they deem necessary in making the examinations prescribed by this section. Within thirty days after the completion of such examination, a report thereof, in such form as the superintendent may prescribe and sworn to by the directors making the report, shall be presented to the board of directors of such association at a regular meeting, and placed on file in the office of the association. Within ten days after the presentation of such report to the board of directors a duplicate thereof shall be filed in the office of the superintendent, together with a certificate that such report was presented to the board of directors, in the form prescribed by the superintendent.

§ 404. Reports to the superintendent; penalty for failure to make. 1. On or before the first day in February in each year, every savings and loan association shall make a written report to the superintendent which shall contain a statement of its condition as of the morning of the first day of January in such year. Such report shall contain such information and be in such form as the superintendent may prescribe and shall be subscribed and affirmed as true under the penalties of perjury by the president or a vice-president and another principal officer.

2. Every such association shall also make such other special reports to the superintendent as he may from time to time require, in such form and at such date as may be prescribed by him and such reports shall, if required by him, be subscribed and affirmed as true under the penalties of perjury.

3. If any such association shall fail to make any report required by or pursuant to this section on or before the day designated for the making thereof, or shall fail to include therein any information required by the superintendent to be included, such association shall forfeit to the people of the state an amount as determined pursuant to section forty-four-a of this chapter for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted information, unless the time therefor shall have been extended by the superintendent.

§ 404-a. Photographic reproduction of records. Any photograph, microphotograph or reproduction on film of any of the documents and records of a savings and loan association relating to the members of such savings and loan association and the operation of its business, which such savings and loan association has caused to be made in the conduct of its business, shall be deemed to be the equivalent of the original thereof for all purposes, provided that the original of any such documents and records has been destroyed, that such photograph, microphotograph or reproduction on film shall be of durable material, and that the device used to reproduce such documents and records shall be one which accurately reproduces the original thereof in all details.

§ 405. Annual report to shareholders; delivery and publication. Every savings and loan association shall (1) prepare a complete statement of its financial condition, including a summary of income and expense since its last previous statement, and publish the same annually, such publication to be made in the form and manner determined by the superintendent and in accordance with the requirements of this section,

(2) mail a copy of such financial statement to each shareholder or depositor on application therefor, and (3) make copies of such financial statement available to depositors, shareholders and other persons in a convenient and conspicuous location on the premises of each of its authorized places of business.

§ 406. Charters conformed to this article; obligations and rights unimpaired; saving clause; applicability to stock-form savings and loan associations. 1. Except as provided by regulations promulgated by the superintendent of financial services pursuant to section fourteen-e of this chapter, the powers, rights, duties, privileges and obligations of every savings and loan association shall be governed, controlled, construed, extended, limited and determined by the provisions of this chapter, and the articles of association, certificate of incorporation, by-laws or rules of every such association heretofore made or existing, are hereby modified, altered and amended to conform to the provisions of this chapter, and are declared void where such articles of association, certificate of incorporation, by-laws or rules are inconsistent with the provisions of this chapter; except that the obligations of any existing association, and the obligations to any such association, existing on June thirtieth, nineteen hundred thirty-nine, shall not be in any wise impaired by the provisions of this act. No savings and loan association shall by reason of the provisions of this act be required to dispose of any loan or investment held by it on June thirtieth, nineteen hundred thirty-nine. For the purposes of this section, articles of association and by-laws are not to be deemed obligations of the association and may be changed as prescribed in section four hundred two, anything in the articles of association or by-laws to the contrary notwithstanding.

2. The provisions of this article shall apply to stock-form savings and loan associations except that the superintendent of financial services, consistent with the declaration of policy described in section fourteen-e of this chapter, shall be empowered to deem inapplicable to stock-form savings and loan associations, sections three hundred seventy-five, three hundred seventy-six, three hundred seventy-seven, three hundred seventy-eight, three hundred eighty-five, three hundred

eighty-six, three hundred eighty-seven, three hundred eighty-eight, three hundred eighty-nine, three hundred ninety, three hundred ninety-two, three hundred ninety-seven, three hundred ninety-eight, three hundred ninety-eight-a, three hundred ninety-eight-b, three hundred ninety-eight-c, subdivisions one, two and three of section three hundred ninety-nine, four hundred, four hundred two, four hundred five and four hundred six of this chapter.

§ 407. Exemptions. Savings and loan associations shall be deemed institutions for savings, and such associations and the property of such associations shall be exempt from taxation under any law which shall exempt savings banks or institutions for savings from taxation. The shares held by members of any association and the dues and dividends credited thereon shall be exempt from sale on execution and proceedings supplementary thereto to the amount of six hundred dollars, and the members of any such association shall not be individually liable for the payment of its debts. The shares of savings and loan associations shall not be subject to the stock transfer tax either when issued by the association or when transferred from one member to another.

§ 409. Conversion of a state savings and loan association into a federal savings and loan association. Any savings and loan association may convert itself into a federal savings and loan association. A meeting of the shareholders shall be held upon not less than ten days' written notice to each shareholder, either served personally or mailed to him at his last known address and containing a statement of the time, place and purpose of such meeting. Proof by affidavit of due service of such notice shall be filed in the office of the association before or at the time of such meeting.

At such meeting the shareholders may, by vote in person or by proxy of the holders of (a) at least sixty-six and two-thirds per centum in amount of the book value of all outstanding shares, or (b) at least seventy-five per centum in amount of the book value of the outstanding shares represented at the meeting, authorize the conversion of such

savings and loan association into a federal savings and loan association. A copy of the minutes of such meeting, verified by the presiding officer and by the secretary of the meeting, shall be filed in the office of the superintendent within two days thereafter.

Within three months after the date of such meeting, the association shall take such action, in the manner prescribed or authorized by the laws of the United States as shall make it a federal savings and loan association and shall thereupon file in the office of the superintendent a copy of the charter or authorization issued to it. Upon such filing the association shall cease to be a corporation under the laws of this state, except that its corporate existence shall continue for the purpose of prosecuting or defending suits and of enabling it to wind up its affairs as a state savings and loan association and to dispose of and convey its property. At the time when such conversion becomes effective, all of the property of the state savings and loan association shall immediately by act of law and without any conveyance or transfer become the property of the federal savings and loan association and the federal savings and loan association shall thereupon succeed to all the rights, obligations and relations of the state savings and loan association.

§ 410. Conversion of a federal savings and loan association into a state savings and loan association. 1. Any federal savings and loan association having its place of business in this state may convert itself into a state savings and loan association. A meeting of the shareholders shall be held upon not less than ten days' written notice to each shareholder, either served personally or mailed to him at his last known address and containing a statement of the time, place and purpose of such meeting. Proof by affidavit of due service of such notice shall be filed in the office of the association before or at the time of such meeting.

2. At such meeting the shareholders may, by vote, in person or by proxy, of the holders of (a) at least sixty-six and two-thirds per centum in amount of the book value of all outstanding shares, or (b) at

least seventy-five per centum in amount of the book value of the outstanding shares represented at the meeting, authorize the conversion of such federal savings and loan association into a state savings and loan association. A copy of the minutes of such meeting, verified by the presiding officer and by the secretary of the meeting, shall be filed in the office of the superintendent within thirty days after the date of such meeting.

3. There shall be filed with such copy of the minutes, the organization certificate required by section three hundred seventy-five of this article, executed by a majority of the directors, and proposed by-laws as required by section three hundred seventy-six of this article. The federal savings and loan association shall also submit a written plan of conversion to the superintendent, together with an investigation fee as described pursuant to section eighteen-a of this chapter.

4. Within sixty days after such filing, the federal savings and loan association shall take the action prescribed or authorized by the laws of the United States to effect such conversion and there shall thereupon be filed in the office of the superintendent a copy of any consent or authorization required of such federal savings and loan association pursuant to the laws of the United States to effect such conversion.

5. When the superintendent shall have approved the organization certificate and the proposed by-laws and shall have issued the authorization certificate, provided in article two of this chapter, the association shall cease to be a federal savings and loan association and shall thereupon be converted into a state savings and loan association, but such federal savings and loan association shall be deemed to be continued for the purpose of prosecuting or defending suits and of enabling it to wind up its affairs as a federal savings and loan association, and to dispose of and convey its property.

At the time when such conversion becomes effective all the property of the federal savings and loan association shall immediately by act of law and without any conveyance or transfer become the property of the state

savings and loan association and the state savings and loan association shall succeed to all the rights, obligations and relations of the federal savings and loan association.

6. In the case of a conversion of a federal savings and loan association, at the time such conversion becomes effective all life insurance plans, deferred payment plans, option plans, pension plans, and any similar plans, as well as retirement benefits, death benefits, disability benefits, and any similar benefit programs, for the benefit of officers and employees of such federal savings and loan associations which plans and programs are authorized under the laws of the United States, shall be deemed to qualify under the banking law, notwithstanding any provision of the banking law to the contrary; provided, however, that to the extent any such plan or program is in violation of any such provision of the banking law with respect to savings and loan associations, such plan or program shall be deemed to qualify under the banking law only with respect to those officers and employees who at the time when such conversion becomes effective (i) are or have been officers or employees of the converting federal savings and loan association, and (ii) have acquired a right or interest in such plan or program which has vested in such officers or employees by contractual arrangement in effect not less than six months prior to such conversion or by reason of such officers or employees becoming eligible and qualified under such plan or program. Notwithstanding the foregoing provisions of this subdivision, the superintendent is authorized to withhold his approval of the conversion of a federal savings and loan association if in his opinion the benefits under such plans or programs are unduly excessive.

§ 411. Conversion of a savings and loan association or federal savings and loan association into a savings bank. 1. Any savings and loan association or federal savings and loan association having its place of business in this state may convert itself into a savings bank upon receiving the approval of its shareholders and the superintendent as hereinafter provided. A meeting of the shareholders shall be held upon not less than twenty days' written notice to each shareholder, either

served personally or mailed to him at his last known address and containing a statement of the time, place and purpose of such meeting and the effect of the proposed conversion upon the shareholders' right to vote on matters affecting the management of the resulting savings bank. Proof by affidavit of due service of such notice shall be filed in the office of the association before or at the time of such meeting.

2. At such meeting the shareholders may, by vote, in person or by proxy, of the holders of at least sixty-six and two-thirds per centum in amount of the book value of all outstanding shares represented at the meeting, authorize the conversion of such savings and loan association or federal savings and loan association into a savings bank subject to the approval of the superintendent as hereinafter provided. A copy of the minutes of such meeting, verified by the presiding officer and by the secretary of the meeting, shall be filed in the office of the superintendent within thirty days after the date of such meeting, together with a statement setting forth the reasons why the board of directors believe the conversion would be in the best interests of the savings and loan association or federal savings and loan association and the public, and such other information as the superintendent may require. If the superintendent determines that the proposed conversion would be in the best interests of the savings and loan association or federal savings and loan association and the public, he shall so advise the board of directors of the savings and loan association or federal savings and loan association and deliver to them his written approval of the proposed conversion.

3. Upon receiving the superintendent's written approval of the proposed conversion, there shall be filed with the superintendent, the organization certificate required by section two hundred thirty of this chapter, executed by a majority of the directors, and proposed by-laws as required by section two hundred fifty-one of this chapter.

4. Within sixty days after such filing, or such additional time as the superintendent may authorize in writing, a federal savings and loan association proposing to convert to a savings bank pursuant to this section shall take the action prescribed or authorized by the laws of

the United States to effect such conversion and there shall thereupon be filed in the office of the superintendent a copy of any consent or authorization required of such federal savings and loan association pursuant to the laws of the United States to effect such conversion.

5. When the superintendent shall have approved the organization certificate and the proposed by-laws and shall have issued the authorization certificate, provided in article two of this chapter, the association shall cease to be a savings and loan association or federal savings and loan association, as the case may be, and shall thereupon be converted into a savings bank, but such savings and loan association or federal savings and loan association shall be deemed to be continued for the purpose of prosecuting or defending suits and of enabling it to wind up its affairs as a savings and loan association or federal savings and loan association, and to dispose of and convey its property.

At the time when such conversion becomes effective all the property of the savings and loan association or federal savings and loan association, as the case may be, shall immediately by act of law and without any conveyance or transfer become the property of the savings bank and the savings bank shall succeed to all the offices, rights, obligations and relations of such savings and loan association or federal savings and loan association.

6. In the case of a conversion of a federal savings and loan association, at the time such conversion becomes effective all life insurance plans, deferred payments plans, option plans, pension plans, and any similar plans, as well as retirement benefits, death benefits, disability benefits, and any similar benefit programs, for the benefit of officers and employees of such federal savings and loan associations which plans and programs are authorized under the laws of the United States, shall be deemed to qualify under the banking law notwithstanding any provision of the banking law to the contrary; provided, however, that, to the extent any such plan or program is in violation of any such provision of the banking law with respect to savings banks, such plan or program shall be deemed to qualify under the banking law only with respect to those officers and employees who, at the time when such

conversion becomes effective, (i) are or have been officers or employees of the converting federal savings and loan association, and (ii) have acquired a right or interest in such plan or program which has vested in such officers or employees by contractual arrangement in effect not less than six months prior to such conversion or by reason of such officers or employees becoming eligible and qualified under such plan or program. Notwithstanding the foregoing provisions of this subdivision, the superintendent is authorized to withhold his approval of the conversion of a federal savings and loan association if in his opinion the benefits under such plans or programs are unduly excessive.

§ 412. Conversion of federal savings institutions to state charter. The superintendent is authorized to promulgate such regulations as are necessary to permit the conversion of any federal savings association or federal savings and loan association to state charter where such conversion is not otherwise governed by the provisions of this chapter. Subject to the foregoing, such regulations may provide for the conversion of a federal savings association or federal savings and loan association, whether in mutual or stock form, into a state-chartered savings bank or state-chartered savings and loan association. The federal savings association shall submit a written plan of conversion to the superintendent, together with an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

§ 413. Reciprocal interstate acquisitions. 1. With the prior approval of the superintendent, a New York savings and loan holding company or a subsidiary thereof or a New York savings association may acquire control of an out-of-state savings and loan holding company or an out-of-state savings association, and an out-of-state savings and loan holding company or a subsidiary thereof or an out-of-state savings association may acquire control of a New York savings and loan holding company or a New York savings association subject to regulations to be adopted by the superintendent of financial services. The terms and conditions prescribed by such regulations shall be substantially similar to those contained in section one hundred forty-two-b of this chapter governing

reciprocal interstate acquisitions by bank holding companies.

2. For the purposes of this section:

(a) the term "savings association" shall have the same meaning as in section 10 of an Act of Congress entitled Home Owners Loan Act as amended from time to time;

(b) the term "savings and loan holding company" shall have the same meaning as in section 10 of an Act of Congress entitled Home Owners Loan Act as amended from time to time;

(c) the term "New York savings association" shall mean a savings association whose principal office is located in this state and the term "out-of-state savings association" shall mean a savings association whose principal office is located in a state other than this state or the District of Columbia; and

(d) the term "New York savings and loan holding company" shall mean a savings and loan holding company which controls one or more New York savings associations and the term "out-of-state savings and loan holding company" shall mean a savings and loan holding company other than a New York savings and loan holding company which conducts its principal banking business in a state other than this state or the District of Columbia. The jurisdiction in which an out-of-state savings and loan holding company conducts its principal banking business is that state or the District of Columbia in which the total deposits of such company and its banking subsidiaries are largest.

ARTICLE 10-A

STATE SAVINGS AND LOAN INSURANCE FUND

Section 420. Definitions.

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420-b. Purposes of the fund.

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420-i. Payment of insurance.
420-j. Liquidation of insured savings and loan associations.
420-k. Termination of insurance.
420-l. Savings and loan bank eligible as fiscal agent.

§ 420. Definitions. When used in this article unless the context otherwise requires:

1. "Default" means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured institution for the purpose of liquidation.

2. "Fund" means the state savings and loan insurance fund created by section four hundred twenty-a of this article.

3. "Insured account" means a savings account held by an insured member and which is insured under the provisions of this article.

4. "Insured savings and loan association" means an association whose accounts are insured under this article.

5. "Member" or "insured member" means a savings and loan association whose application for membership in the fund has been accepted and approved; and which has made all payments required by this article; and whose membership has not been terminated.

6. "Reserves" means the aggregate total of capital, advance premiums, assessments and retained earnings of the fund.

§ 420-a. State savings and loan insurance fund. 1. There is hereby created the "state savings and loan insurance fund". The fund shall be a corporate governmental agency constituting a public benefit corporation. It shall have the powers and privileges of a corporation, and under its corporate name all of its business shall be transacted, all funds

invested, all warrants for money drawn and payments made, and all cash and securities and other personal property shall be held.

2. The fund shall be administered by six trustees, four of whom shall be appointed by the governor with the advice and consent of the senate, one shall be elected by the insured members and one shall be elected by the board of directors of the Savings and Loan Bank of the State of New York from their own number. The trustees of the fund first appointed by the governor shall serve for terms ending December thirty-first in nineteen hundred sixty-eight, nineteen hundred sixty-nine, nineteen hundred seventy and nineteen hundred seventy-one, respectively. Persons appointed for full terms as their successors shall serve for four years each commencing as of January first next following the year in which the term of his predecessor expired. The trustee elected by the insured members shall serve for a term ending on December thirty-first, nineteen hundred sixty-nine and the trustee elected by the board of directors of the savings and loan bank of the state of New York shall serve for a term ending on December thirty-first, nineteen hundred seventy-one. Persons elected for full terms as their successors shall serve for four years each commencing as of January first next following the year in which the term of his predecessor expired. In the event of a vacancy occurring in the office of an appointed trustee by death, resignation or otherwise, the governor shall appoint a successor in the same manner as an original appointment to serve for the balance of the unexpired term. If, for the previously stated reasons, a vacancy occurs in the office of an elected trustee, said vacancy shall be filled for the unexpired term by special election.

3. The trustees of the fund shall serve without salary, but each trustee shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties and to a fee of one hundred dollars per day when rendering service as such member, provided that the aggregate amount of such fees payable to any one trustee in any one fiscal year shall not exceed the sum of five thousand dollars.

4. The trustees of the fund may engage in private employment, or in a

profession or business, subject to the limitations contained in sections seventy-three and seventy-four of the public officers law. The fund shall, for the purposes of such sections, be a "state agency", and the trustees thereof shall be "officers" of the agency for the purposes of said sections.

5. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of appointment as a trustee, officer or agent of the fund; provided, however, that a trustee, officer or agent who holds such other public office or employment shall receive no additional compensation, fee or allowance for services rendered pursuant to this article, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

6. The governor may remove any trustee for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel, in his defense, upon not less than ten days notice. If any trustee shall be removed, the governor shall file with the secretary of state a complete statement of charges made against the trustee, and his findings thereon, together with a complete record of the proceedings.

7. The chairman of the board of trustees shall be designated by the governor. He shall preside over all meetings of the trustees and shall have such other duties as the trustees may direct. A vice-chairman who shall preside over all meetings of the fund in the absence of the chairman and who shall have such other duties as the trustees may direct may be designated from time to time by the trustees from among the other trustees.

8. The powers of the fund shall be vested in and exercised by no less than four of the trustees then in office. The fund may delegate to one or more of its trustees, or officers, agents or employees, such powers and duties as the trustees may deem proper, provided, however, that all

contracts involving an estimated expense of ten thousand dollars or more shall be approved prior to execution by no less than four trustees of the fund.

9. The fund shall be subject to an examination by the superintendent of financial services at least once in each calendar year.

10. Within three days, Saturdays, Sundays and holidays excepted, after each meeting of the trustees of the fund, the secretary or other officer of the fund in charge of the minutes of the proceedings of the trustees shall transmit to the superintendent of financial services at his office in Albany three certified copies of the minutes of every meeting of the trustees for his information.

11. The fund shall become operative when the total aggregate of the savings deposits of its members amount to five hundred million dollars or more and shall continue so long as it shall have bonds, insurance or other obligations outstanding and until its existence shall be terminated by law. Upon the termination of the existence of the fund, all its rights and properties shall pass to and be vested in the state.

12. Before becoming operative the fund shall adopt, and obtain the approval of the superintendent, of by-laws for its organization, management and operations. Any amendment of the by-laws shall require the prior approval of the superintendent.

§ 420-b. Purposes of the fund. The fund shall insure the savings accounts of savings and loan associations eligible for insurance as hereinafter provided.

§ 420-c. General powers of the fund. Except as otherwise limited by this article, the fund shall have power:

1. To sue and be sued;

2. To have a seal and alter the same at pleasure;

3. To borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;

4. To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the fund, in obligations of the state or the United States government or obligations the principal and interest of which are guaranteed by the state or the United States government;

5. Subject to the approval of the superintendent of financial services, to establish rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this article;

6. To enter into contracts and leases and to execute all instruments necessary or convenient;

7. To acquire, hold and dispose of real or personal property in the exercise of its powers;

8. To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties, and compensation and to retain or employ auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice, and with the approval of the attorney general of the state of New York, to retain or employ counsel;

9. To conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the fund shall fail or refuse to aid or assist the fund in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the fund is authorized to apply for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such

person, upon due cause shown;

10. In the performance of the fund's duties, to utilize the services of employees of the department of financial services, reimbursing the department of financial services for such services and expenses therein;

11. To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this article.

§ 420-d. Capital stock; advance premiums; other fiscal provisions. 1. The fund shall have a capital stock of one hundred million dollars which shall be divided into shares of one hundred dollars each. Each member savings and loan association whose accounts are insured under this article shall subscribe and pay for such stock in an amount equal to one percentum of its savings accounts at the time of admission to the fund and shall make annual adjustments to maintain such ratio.

2. Each savings and loan association at the time it becomes a member of the fund shall pay an advance premium to the fund in an amount equal to one percentum of the savings and loan association's savings accounts, said premium to be maintained at a one per cent level by annual adjustments thereof until such time as the reserves of the fund are in excess of two and one-half percentum of the aggregate of the savings accounts of its members, whereupon such excess shall be applied at the end of the fiscal year on a pro-rata basis to the reduction of the advance premiums or to the payment of current premiums at the discretion of the trustees.

§ 420-e. Exemption from taxation. It is hereby found, determined and declared that the creation of the fund and the carrying out of its purposes is in all respects for the benefit of the people of the state of New York and for the improvement of their health, welfare and prosperity and is a public purpose, and that the fund will be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and that the fund shall be required

to pay no fees, taxes or assessments, whether state or local, including but not limited to fees, taxes or assessments on real estate, franchise taxes, sales taxes or other excise taxes, upon its activities as an insurer; and that all income received by the fund and that the bonds of the fund and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes and taxes on transfers. This section shall constitute a covenant and agreement with the holders of all bonds issued by the fund.

§ 420-f. Use of fund name prohibited; penalties for violation. No individual, association, partnership, or corporation shall use the words "state savings and loan insurance fund", or any combination of any of these words which would have the effect of leading the public in general to believe there was any connection, actually not existing, between such individual, association, partnership, or corporation and the fund, as the name under which he or it shall hereafter do business. No individual, association, partnership, or corporation shall advertise or otherwise represent falsely by any device whatsoever that his or its accounts are insured or in anywise guaranteed by the fund, or by the state, or by any instrumentality thereof; and no insured member shall advertise or otherwise represent falsely by any device whatsoever the extent to which or the manner in which its accounts are insured by the fund. Every individual, partnership, association, or corporation violating this section shall be guilty of a misdemeanor punishable by a fine of not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both.

§ 420-g. Insurance of accounts and eligibility provisions. 1. It shall be the duty of the fund to insure the accounts of all state savings and loan associations that apply and qualify therefor. Approval of the application shall constitute the savings and loan association a member of the fund.

2. Applications shall be in such form as the fund shall prescribe, and shall contain an agreement (a) to pay the reasonable cost of such

examinations as the fund shall deem necessary in connection with such insurance, and (b) if the insurance is granted, to permit and pay the cost of such examinations as in the judgment of the fund may from time to time be necessary for its protection and the protection of member savings and loan associations, to permit the fund to have access to any information or report with respect to any examination made by any public regulatory authority and to furnish any additional information with respect thereto as the fund may require, and to pay the premium charges for insurance as hereinafter provided.

3. The fund shall reject the application of any applicant if it finds that the applicant has assets insufficient to pay its debts and the amount due its members upon savings accounts or that its financial policies or management are unsafe or unsound; and the fund may reject the application of any applicant if it finds that the character of the management of the applicant or its home financing policy is inconsistent with economical home financing or with the purposes of this article. Upon the approval of any application for insurance the fund shall notify the applicant, and upon the required purchase of the capital stock of the fund and upon the payment of the initial premium charge for such insurance and required advance premiums the fund shall issue to the applicant a certificate stating that it has become an insured institution. In considering applications for such insurance the fund shall give full consideration to all factors in connection with the financial condition of applicants and insured institutions, and shall have power to require such adjustments in their financial statements as the fund finds to be necessary.

4. Any savings and loan association which applies after January first, nineteen hundred sixty-seven for insurance under this article shall pay, in the event its application is approved, an admission fee in such amount as the fund shall determine, taking into consideration the total cost of processing all insurance applications.

§ 420-h. Premiums on insurance. 1. Each savings and loan association whose application for insurance is approved by the fund shall pay

required advance premiums to the fund, as well as a premium charge for such insurance equal to one-twelfth of one per centum of the total amount of all savings accounts of such institution plus any creditor obligations of such institution. Such premiums shall be paid at the time the certificate is issued by the fund under section four hundred twenty-g of this article, and thereafter annually until the reserves of the fund equal two and one-half per centum of all savings accounts of all members; except that under regulations prescribed by the fund such premium charge may be paid semiannually. If at any time such reserves fall below such two and one-half per centum, the payment of such annual premium charge for insurance shall be resumed and shall be continued until the reserves are brought back to such two and one-half per centum. For the purposes of this subdivision, the amount in all accounts of insured members and the amount of creditor obligations of any institution may be determined from adjusted statements made within one year prior to the approval of the application of such savings and loan association for insurance, or in such other manner as the fund may by rules and regulations prescribe.

2. The fund is further authorized to assess against each insured savings and loan association additional premiums for insurance until the amount of such premiums equals the amount of all losses and expenses of the fund; except that the total amount so assessed in any one year against any such savings and loan association shall not exceed one-eighth of one per centum of the total amount of its savings accounts and its creditor obligations.

§ 420-i. Payment of insurance. 1. Each savings and loan association whose application for insurance under this article is approved by the fund shall be entitled to insurance up to the full withdrawal value of the accounts of each of its members and investors or in such amount as shall be established by the board of trustees, but in no event shall the maximum amount of insurance for any savings account be less than fifteen thousand dollars.

2. In the event of a default by any insured savings and loan

association, payment of each insured account in such insured association shall be made by the fund as soon as possible either (1) by cash or (2) by making available to each savings account a transferred savings account in a new insured savings and loan association in the same community or in another insured savings and loan association in an amount equal to the insured savings account; provided however, that the fund, in its discretion, may require proof of claims to be filed before paying the insured accounts, and that in any case where the fund is not satisfied as to the validity of a claim for an insured account, it may require the final determination of a court of competent jurisdiction before paying such claim.

§ 420-j. Liquidation of insured savings and loan associations. 1. In the event that a savings and loan association is in default, the fund may be appointed by the superintendent as conservator or receiver and as such, may be authorized by the superintendent (a) to take over the assets of and operate such association, (b) to take such action as may be necessary to put it in a sound and solvent condition, (c) to negotiate for a merger with another insured savings and loan association, (d) to negotiate the organization of a new savings and loan association to take over its assets, or (e) to proceed to liquidate its assets in an orderly manner, whichever shall appear to the superintendent to be in the public interest. The payment by the fund of an insured account in any such association which is in default shall entitle the fund to the rights of the holder of such insured account, but shall not affect any right which the holder of such account may have in the uninsured portion of his account or any right which he may have to participate in the distribution of the net proceeds remaining from the disposition of the assets of such association.

2. In order to prevent a default in an insured savings and loan association or in order to restore an insured association to normal operation as an insured savings and loan association, the fund is authorized, in its discretion, to make loans to, purchase the assets of, or make a contribution to, an insured savings and loan association or an insured savings and loan association in default; but no contribution

shall be made to any such association in an amount in excess of that which the fund finds to be reasonably necessary to save the expense of liquidating such association.

§ 420-k. Termination of insurance. 1. Whenever in the opinion of the fund any insured savings and loan association has continued unsafe or unsound practices in conducting the business of such savings and loan association, or has knowingly or negligently permitted any of its officers or agents to violate any provision of any law or regulation to which the insured savings and loan association is subject, said fund shall first give to the superintendent a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the savings and loan association. Unless such correction shall be made within one hundred and twenty days or such shorter period of time as the superintendent shall require, the fund, if it shall determine to proceed further, shall give to the savings and loan association not less than thirty days' written notice of intention to terminate the status of the savings and loan association as an insured savings and loan association, and shall fix a time and place for a hearing before the fund or a person designated by the fund. The fund shall make written findings. Unless the savings and loan association shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured savings and loan association. If the fund shall find that any unsafe or unsound practice or violation specified in such notice has been established and has not been corrected within the time above prescribed in which to make such correction, the fund may issue its order terminating the insured status of the association effective on a date subsequent to such finding and to the expiration of the time specified in such notice of intention. The order shall be subject to review under article seventy-eight of the civil practice law and rules. In the event of the termination of such status, insurance of its accounts to the extent that they were insured on the date of such order of termination, less any amounts thereafter withdrawn, repurchased, or redeemed which reduce the insured accounts of an insured member below the amount insured on the date of such order, shall

continue for a period of two years, but no investments or deposits made after the date of such order of termination shall be insured. The fund shall have the right to examine such association from time to time during the two-year period aforesaid. Such insured savings and loan association shall be obligated to pay, within thirty days after any such order of termination, as a final insurance premium, a sum equivalent to twice the last annual insurance premium paid by it pursuant to subdivision one of section four hundred twenty-h of this chapter. In the event of the termination of insurance of accounts as herein provided the savings and loan association which was the insured savings and loan association shall give prompt notice in writing sent to all its account holders that it has ceased to be an insured savings and loan association and it may include in such notice the fact that insured accounts, to the extent not withdrawn, repurchased, or redeemed, remain insured for two years from the date of such termination, but it shall not further represent itself in any manner as an insured association. In the event of failure to give the notice to account holders as herein provided the fund is authorized to give such notice.

2. (a) At any time after five years of membership, but not before, an insured savings and loan association may submit to the fund a certificate of intention to terminate its membership therein. Termination shall become effective on the first day of the sixth month following the submission of the certificate provided that:

(i) The member pay a termination fee equivalent to twice the last annual premium paid by it pursuant to subdivision one of section four hundred twenty-h of this chapter; this fee shall not extend or enlarge insurance coverage.

(ii) The insured savings and loan association sends to each holder of a savings account a notice in writing not later than two months after submission of the certificate; the notice shall be in a form prescribed by the fund and shall set forth the facts of the termination.

(b) The fund may elect to refund to the association its original capital contribution to the fund subject to terms it may prescribe, provided that such refund is made within two years of termination of membership.

§ 420-l. Savings and loan bank eligible as fiscal agent. The savings and loan bank operating pursuant to article ten-B of the banking law may be designated by the fund as its fiscal agent; such bank shall have the power to accept such designation and to do all acts necessary in order to carry out the duties thereby imposed in accordance with any agreement entered into pursuant thereto.

ARTICLE X-B

SAVINGS AND LOAN BANK OF THE STATE OF NEW YORK

Section 432. Incorporation; organization certificate.
433. Proposed by-laws.
434. When corporate existence begins; conditions precedent to commencing business.
435. General powers.
436. Restrictions on powers.
437. Redemption of bonds and notes; procedure in event of default.
438. Surplus account.
439. Membership; liability; transfer of shares.
440. Commissions and payment of expenses.
441. Qualifications and disqualification of directors; oath of directors.
442. Number of directors; filling of vacancies; change of number.
443. Amendment of by-laws.
444. Annual meeting; notice; voting.
445. Preference of credits.
446. Exemptions.

§ 432. Incorporation; organization certificate. When authorized by the superintendent as provided in article two of this chapter, ten or more savings and loan associations, the aggregate resources of which shall not be less than five million dollars, may form the Savings and Loan Bank of the State of New York. Each of such associations shall

subscribe, acknowledge and submit to the superintendent at his office an organization certificate in duplicate which shall specifically state:

1. The name, "Savings and Loan Bank of the State of New York."

2. The place in the state of New York where its business is to be transacted.

3. The number of shares for which each association has subscribed which shall amount in the aggregate to not less than one hundred thousand dollars.

4. The number of directors of such savings and loan bank, which shall not be less than seven nor more than fifteen, and the names of the persons who shall be its directors until the first annual meeting. The certificate shall recite that the directors possess the qualifications specified in section four hundred forty-one of this article.

5. The name and location of the principal office of each savings and loan association subscribing the certificate and the aggregate resources of each such association.

§ 433. Proposed by-laws. The incorporators shall subscribe and acknowledge and submit to the superintendent at his office proposed by-laws in duplicate, which shall prescribe the manner in which the business of such savings and loan bank shall be conducted with reference to the following matters: 1. The date during the month of January of the annual meeting of shareholders; the manner of calling special meetings, and the number of members which shall constitute a quorum.

2. The number, manner of election and qualifications of directors, subject to the provisions of section four hundred forty-one of this article; the method of division into classes for the purpose of electing, as nearly as may be, an equal number of directors each year; the removal or suspension of directors; the filling of vacancies in the board of directors, and the number of directors which shall constitute a

quorum, which shall not be less than five.

3. The meetings, powers and duties of directors; the appointment or election of committees.

4. The officers; the manner of their election; their terms of office, duties and compensation; and the bonds which shall be required of officers.

5. The annual commission that may be charged each member, subject to the limitations of section four hundred forty of this article.

6. The minimum amount of shares necessary to qualify for membership.

7. The minimum amount of shares necessary to qualify for extension of credit.

8. The manner of voting, subject to the limitations of section four hundred forty-four of this article.

9. The transfer of membership, subject to the limitations of section four hundred thirty-nine of this article.

10. The manner in which the by-laws may be altered or amended.

§ 434. When corporate existence begins; conditions precedent to commencing business. When the superintendent shall have endorsed his approval on the organization certificate as provided in article two of this chapter, the corporate existence of the Savings and Loan Bank of the State of New York shall begin and it shall then have power to elect officers and transact such other business as relates to its organization; but such savings and loan bank shall transact no other business until: 1. Subscriptions to its shares aggregating one hundred thousand dollars shall have been paid in cash and an affidavit stating that such subscriptions have been so paid, subscribed and sworn to by its two principal officers, shall have been filed in the clerk's office

of the county of New York, and a certified copy thereof in the office of the superintendent.

2. The superintendent shall have duly issued to it the authorization certificate specified in article two of this chapter.

§ 435. General powers. The savings and loan bank shall, subject to the restrictions and limitations contained in this article and its by-laws, have the following powers: 1. To issue, sell and redeem bonds and notes secured by bonds and first mortgages made to or held by its members and to issue, sell and redeem debenture bonds and notes.

2. To receive money or property from its members and from other associations, corporations and persons with whom it has contracts, engagements or undertakings, in instalments or otherwise; to enter into any contract, engagement or undertaking with such associations, corporations or persons for the withdrawal of such money or property, with any increase thereof, or for the payment to them or to any association, corporation or person of any sum of money, at any time, either fixed or uncertain; to lend money to its members upon the security of their promissory notes with or without collateral.

3. To invest its capital and other funds in investments in which its member savings and loan associations are authorized to invest under article ten of this chapter; and in securities in which investments are authorized to be made by savings banks.

4. To receive by assignment from its members and to deposit in trust with the comptroller of the state of New York to be held by him as security for its and their outstanding obligations any first mortgages on real estate and the bonds secured thereby that are legally receivable by its members; to empower such members as agents of the savings and loan bank, to collect and immediately pay over to the savings and loan bank the dues, interest and other sums payable under the terms, conditions and covenants of the bonds and mortgages or, prior to a default upon any such bond and mortgage so assigned and when adequate

security has been given to the savings and loan bank by any such member, to retain such collections until a payment to the savings and loan bank from such member becomes due; to return to, or permit such member to retain any sums of money so collected in excess of the amount required to meet the obligations of such member.

5. To purchase in its own name, hold and convey real property for the following purposes and no others: (a) A plot whereon there is or may be erected a building suitable for the convenient transaction of its business from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be mortgaged to it in good faith, by way of security for loans made by it or moneys due to it.

(c) Such as shall be conveyed to it for debts previously contracted in the course of its business, and such as it shall purchase at sales under judgments, decrees or mortgages held by it.

6. To designate as depositaries of its funds any bank, trust company, or savings bank, or any national bank located in this state.

7. To sue and to be sued in all courts and to participate in actions and proceedings, whether judicial, arbitrative or otherwise, in like cases as natural persons.

8. To have a corporate seal, and to alter such seal at pleasure and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

9. To elect or appoint officers, employees and other agents of the savings and loan bank, define their duties, fix their compensation, and to indemnify corporate personnel.

10. To have perpetual existence.

11. To have and exercise all other powers necessary or appropriate in conducting business of the savings and loan bank.

§ 436. Restrictions on powers. The savings and loan bank shall not: 1. Do a general deposit business except with its members.

2. Invest more than twenty-five per centum of its surplus account in real estate occupied, or to be occupied, by it as a place of business, without the written approval of the superintendent.

3. Incur any indebtedness, except for the purpose of making loans to its members or purchasing from its members those investments made by them under article ten of this chapter, upon any bonds or notes, secured or unsecured, with a maturity exceeding three years or in an aggregate amount exceeding five times its capital.

4. Incur any indebtedness upon bonds or notes, secured or unsecured, for the purpose of making loans to its members unless the amount of any such bonds or notes which are secured shall not be in excess of eighty per centum of the value of the collateral security pledged therefor to such savings and loan bank; and any such bonds or notes which are unsecured shall not have a maturity in excess of three years.

5. Purchase from its members mortgage loans which were originated less than five years prior to date of such purchase, nor incur indebtedness for the purchase from its members of mortgage loans which were originated five years or more prior to the date of such purchase by the issuance of bonds or notes, secured or unsecured, with a maturity exceeding five years.

§ 437. Redemption of bonds and notes; procedure in event of default. 1. All bonds and notes issued by the savings and loan bank may be called on any interest day at one hundred two and one-half per centum and interest by giving notice of not less than sixty days in a newspaper published in the city of New York or on such notice, in such manner and at such time and price, not to exceed one hundred five per centum and interest, as may be specified in such bonds or notes.

2. In the event of any default for more than ninety days in the payment of the principal of, or for more than ninety days in the payment of any instalment of interest upon, any bond or note issued by the savings and loan bank, the superintendent may, in his discretion, and shall, upon the request in writing of the holders of said obligations in default to the amount of fifty thousand dollars, forthwith take possession of and proceed to liquidate the savings and loan bank. Upon such liquidation he shall be entitled in the name of the savings and loan bank to enforce all of its rights and securities and to collect and realize upon all of its assets, including all mortgages assigned to the savings and loan bank by its several members, and deposited with the comptroller of the state of New York, up to the amounts advanced by the savings and loan bank to the several members thereon. Upon any such liquidation all said obligations then issued and outstanding shall forthwith become due and payable equally and ratably out of all the assets of the savings and loan bank in advance of any other debts thereof not specifically preferred by law.

§ 438. Surplus account. 1. The savings and loan bank shall accumulate from its profits a surplus account by carrying thereto annually a sum equal to one-half of one per centum of its capital, until such surplus account shall be equal to at least fifteen per centum of its capital.

2. The guaranty fund on June thirtieth, nineteen hundred thirty-nine shall be transferred to the surplus account and shall constitute the surplus account at that date.

§ 439. Membership; liability; transfer of shares. 1. Membership in the savings and loan bank shall be limited to savings and loan associations, except, that the directors of the savings and loan bank may, in their discretion, permit federal savings and loan associations located in this state to be or become members of the savings and loan bank. Every member shall pay one hundred dollars for each share of the capital of the savings and loan bank issued to it.

2. Members of the savings and loan bank shall not be individually liable for the payment of its debts.

3. Shares shall not be transferable, except that a member, which is not liable to the savings and loan bank for any direct obligation may transfer its shares therein to another savings and loan association, by and with the consent of the board of directors of the savings and loan bank; or it may retire from membership and receive back such sums as it has paid for its shares, upon giving one year's notice in writing to the savings and loan bank of such intention, provided, however, that no withdrawal shall be permitted by the board of directors, which shall reduce the total amount of the capital of the savings and loan bank below five hundred thousand dollars. The board of directors may, in their discretion, waive such notice, in the event of the liquidation of any member, and pay back such sums as it has paid for its shares even though such payment should result in a reduction of capital below five hundred thousand dollars. Any member liable to the savings and loan bank for any direct obligation which holds shares in excess of the number required by the by-laws of the savings and loan bank, may transfer such excess shares to another savings and loan association, by and with the consent of the board of directors of the savings and loan bank; or it may, by and with the consent of the board of directors of the savings and loan bank, withdraw such excess shares and receive back such sum as it has paid for such excess shares, upon giving one year's notice in writing to the savings and loan bank of such intention, provided, however, that no withdrawal of shares shall be permitted by the board of directors, which shall reduce the total amount of the capital of the savings and loan bank below five hundred thousand dollars.

§ 440. Commissions and payment of expenses. The savings and loan bank may charge each member an annual commission, not to exceed one-half of one per centum, upon the outstanding bonds and notes issued in its behalf, provided, however, that the rate of commission in any year shall be the same on all outstanding obligations in respect to which a commission is charged; or in lieu of charging such commissions the expenses incurred on account of any such obligations may be charged to

the member on whose behalf such obligations are issued.

§ 441. Qualifications and disqualification of directors; oath of directors. 1. At least three-fourths of the directors of the savings and loan bank must reside in the state of New York during their term of office, and all must be citizens of the United States. No person shall be elected a director unless he is the owner in good faith and in his own right on the books of a member savings and loan association of shares having a book value of not less than two hundred dollars and has been nominated by such member savings and loan association for that office; and every person elected to be a director who, after such election, shall hypothecate, pledge or cease to be the owner in his own right of such qualifying shares shall cease to be a director of the savings and loan bank, and his office shall be vacant.

2. Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the savings and loan bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation and that he is the owner in good faith and in his own right on the books of the savings and loan association which nominated him of shares having a book value not less than two hundred dollars, and that the same is not hypothecated, or in any way pledged as security for any loan or debt and, in case of re-election that such shares were not hypothecated or in any way pledged as security for any loan or debt during his previous term. Such oath shall be subscribed by the directors making it, certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent.

§ 442. Number of directors; filling of vacancies; change of number. 1. The number of directors of the savings and loan bank shall be not less than seven nor more than fifteen.

2. All vacancies in the office of director shall be filled by election

by the members except as provided in this section. Vacancies not exceeding one-third of the whole number of the board may be filled by the affirmative vote of a majority of the directors then in office, and the directors so elected may hold office until such vacancies are filled by the members at a special or annual election; or when the number of directors is nine or more, two vacancies may, with the consent of the superintendent, be left unfilled until the next annual election.

3. The number of directors may be changed within the limits provided in subdivision one of this section by amendment of the by-laws.

§ 443. Amendment of by-laws. The by-laws may be altered or amended, from time to time, provided such alterations or amendments shall have first received the written approval of the superintendent and shall thereafter have been duly adopted at a meeting of the directors.

A copy of any such alteration or amendment shall be filed in the office of the superintendent within thirty days after such adoption.

§ 444. Annual meeting; notice; voting. The annual meeting of the shareholders for the election of directors shall be held in January in each year at a place within the state to be determined by the board of directors. Notice of the time and place of holding such election shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the city of New York and by mailing a copy of such notice postage prepaid to each shareholder of the savings and loan bank not less than ten nor more than forty days before the holding of such meeting. Each member shall be entitled to one vote, and to such additional votes not exceeding one vote for every share of the capital standing in its name on the books of the savings and loan bank as the by-laws may prescribe. Such vote or votes may be cast by mail when so provided in the by-laws.

§ 445. Preference of credits. In case of the insolvency or voluntary or involuntary liquidation of any bank, trust company or savings and loan association, its assets shall be applied in the first place ratably and proportionately to the payment in full of any sum or sums of money deposited therewith by the savings and loan bank or due to the savings and loan bank for subscriptions, sinking funds, interest and principal of bonds, or guaranty of mortgages, notes secured or unsecured or any other obligations due to the savings and loan bank, but not to an amount exceeding that authorized to be so deposited or contracted by the provisions of this chapter, and in accordance and on an equality with any other preference provided for in this chapter.

§ 446. Exemptions. The bonds and notes issued by the savings and loan bank and the savings and loan bank itself, together with its capital, accumulations and funds, shall have the same exemption from taxation as other institutions for savings. No law which taxes corporations in any form, or the shares thereof, or the accumulations therein, shall be deemed to include the savings and loan bank or its issues of bonds or notes unless they are specifically named in such law.

ARTICLE X-C

MUTUAL HOLDING COMPANIES

Section 447. Authorization of the formation of mutual holding companies.
447-a. Required approvals.
447-b. Formation of a mutual holding company.
447-c. Mutual holding company powers.
447-d. Conversion of mutual holding company into stock holding company.

§ 447. Authorization of the formation of mutual holding companies. 1. Notwithstanding any other provision of law and in accordance with general regulations which the superintendent of financial services shall promulgate to facilitate such reorganizations, a mutual savings and loan

association may reorganize so as to cause its deposit-taking and one or more other activities to be conducted by a stock savings and loan association subsidiary of a mutual holding company formed for such purpose upon the payment of a fee as prescribed pursuant to section eighteen-a of this chapter.

2. Except to the extent that such provisions are inconsistent with this article, the stock savings and loan association subsidiary of the mutual holding company shall be subject to the same provisions of this chapter as apply to savings and loan associations which have converted to stock form pursuant to sections fourteen-e and nine thousand nineteen of this chapter.

§ 447-a. Required approvals. 1. Approval by the board of directors. A reorganization of a mutual savings and loan association pursuant to this article shall be approved by a majority of the board of directors of the mutual savings and loan association.

2. (a) Approval by the superintendent. A mutual savings and loan association proposing a reorganization pursuant to this article shall provide the superintendent with written notice of such proposed reorganization. Such notice shall include a copy of the plan of reorganization approved by the board of directors pursuant to subdivision one of this section, the proposed organization certificate for the mutual holding company and the stock savings and loan association subsidiary and shall contain such other information as the superintendent shall require. The superintendent shall approve or disapprove the plan of reorganization within sixty days of the submission of such plan together with such other information as the superintendent shall require.

(b) Factors considered. In determining whether to approve the plan of reorganization, the superintendent shall consider:

(i) whether the formation of the mutual holding company would not be detrimental to the interests of the shareholders of the mutual savings and loan association proposing to reorganize as provided in section four hundred forty-seven of this article;

(ii) whether disapproval is necessary to prevent unsafe or unsound banking practices;

(iii) whether the interest of the public will be served by the proposed reorganization;

(iv) whether the financial or management resources of the mutual savings and loan association proposing to reorganize as provided in section four hundred forty-seven of this article warrant disapproval of the proposed plan of reorganization; (v) whether the mutual savings and loan association proposing to reorganize as provided in section four hundred forty-seven of this article fails to furnish any information required under paragraph (a) of this subdivision or furnished information containing any statement which, at the time and in the circumstances under which it was made, was false or misleading with respect to any material fact or omits to state any material fact necessary to make the statements therein not false or misleading.

(c) When the superintendent shall have determined to approve or disapprove the plan of reorganization, the superintendent shall so advise the mutual savings and loan association in writing and shall endorse approval on an organization certificate and cause it to be filed in the office of the superintendent and with the clerk of the county in which the principal office of the mutual savings and loan association is located. Upon the filing of the organization certificate the existence of the mutual holding company shall commence. As used in this article, the term "organization certificate" shall include an amended organization certificate.

3. Approval by shareholders. If approved by the superintendent the mutual savings and loan association shall submit the plan of reorganization to its shareholders for approval at a meeting convened in accordance with general regulations promulgated by the superintendent of financial services for the sole purpose of approving or disapproving such plan. At such meeting:

(a) all shareholders whose aggregate share balance equals at least one hundred dollars as of a record date shall be entitled to approve the plan of reorganization, either in person or by valid proxy;

(b) each shareholder entitled to vote shall be entitled to cast one vote for each full one hundred dollars of shares of such shareholder

shown on the books and records of the mutual savings and loan association as of the record date;

(c) no shareholder shall be entitled to cast any vote for any share balance in amounts of less than one hundred dollars;

(d) no plan of reorganization shall be effective unless approved by the affirmative vote of at least seventy-five per centum of the aggregate dollar amount of the book value of shares represented at such meeting either in person or by valid proxy and entitled to vote thereat.

§ 447-b. Formation of a mutual holding company. 1. The plan of reorganization may authorize the formation of a mutual holding company by:

(a) (i) the organization by the mutual holding company of a stock savings and loan association subsidiary and the transferal to such stock savings and loan association of the substantial part of its assets and liabilities, including all of its deposit liabilities, in accordance with general regulations promulgated by the superintendent of financial services;

(ii) the organization by the mutual savings and loan association of a mutual holding company and the organization by such mutual holding company of a stock savings and loan association subsidiary which merges with the mutual savings and loan association; or

(iii) the reorganization of the mutual savings and loan association under any other method approved pursuant to general or specific regulations promulgated by the superintendent of financial services.

(b) For the purposes of paragraph (a) of this subdivision, such regulations shall permit the stock savings and loan association to issue to persons other than the mutual holding company of which it is a subsidiary an amount of common stock and securities convertible into common stock which in the aggregate does not exceed forty-nine per centum of the issued and outstanding common stock of such stock savings and loan association, provided that if a mutual holding company which owns all of the common stock and securities convertible into common stock of its savings and loan association subsidiary subsequently determines to make such an issuance it shall pay a fee as prescribed pursuant to section eighteen-a of this chapter. Issued and outstanding

securities that are convertible into common stock shall be considered issued and outstanding common stock for the purposes of computing the forty-nine per centum limitation. This paragraph shall not limit the authority of such stock savings and loan association to issue equity or debt securities other than common stock and securities convertible into common stock.

2. In connection with the reorganization of a mutual savings and loan association as provided in section four hundred forty-seven of this article, the mutual holding company may retain or acquire assets of the mutual savings and loan association to the extent that such assets are not then required to be transferred to or retained by the stock savings and loan association in order to satisfy capital or reserve requirements of any applicable state or federal law or regulation.

3. A stock savings and loan association, at least fifty-one per centum but less than one hundred per centum of the outstanding common stock of which is owned by a mutual holding company shall have at least one director, but no more than two-fifths of its directors, who are "unaffiliated directors" who shall represent the interests of the minority shareholders. An "unaffiliated director" is a director who is not (a) an officer or employee of the stock savings and loan association (or any affiliate thereof) or (b) an officer, trustee, director or employee of the mutual holding company. If the organization certificate or bylaws of the stock savings and loan association provide that the board of directors shall be divided into two or more classes, then to the extent possible, each class shall contain the same number of unaffiliated directors as each other class.

§ 447-c. Mutual holding company powers. 1. Upon the formation of a mutual holding company by a mutual savings and loan association:

(a) the mutual holding company shall possess all the rights, powers and privileges, except deposit-taking powers, and shall be subject to all the limitations not inconsistent with this article of a mutual savings and loan association under articles ten and sixteen of this chapter;

(b) the mutual holding company shall be subject to the limitations imposed by the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a);

(c) notwithstanding the provisions of paragraph (b) of this subdivision no mutual holding company shall exercise any rights, powers or privileges pursuant to any provision of federal law applicable to savings and loan holding companies which are not also authorized under article ten of this chapter.

2. Notwithstanding any inconsistent provision of section fourteen-e, six hundred, six hundred one, six hundred one-a or six hundred one-b of this chapter, subject to general regulations promulgated by the superintendent of financial services, a mutual holding company may:

(a) merge with, acquire or purchase the assets of a mutual holding company established pursuant to this article or the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a);

(b) acquire or purchase the assets or stock of a stock savings bank, a stock savings and loan association, a stock federal savings bank or a stock federal savings and loan association;

(c) acquire a mutual savings bank, a mutual savings and loan association, a federal mutual savings bank or a federal mutual savings and loan association through the merger of such institution with a stock subsidiary of such mutual holding company;

(d) engage in any other acquisition or combination specifically permitted by general or special regulations promulgated by the superintendent of financial services; provided, however, that the superintendent of financial services shall have no power to permit any insurance activities prohibited by subdivision three of this section or to expand by interpretation any provision of federal law set forth in the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a).

3. Except to the extent permitted by the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a) and authorized by article ten of this chapter, the powers of the mutual holding company shall not include the

power to directly or indirectly engage in: the sale or underwriting of insurance; the formation or acquisition of an insurance agency or an insurance company, or; the issue, sale, distribution and underwriting of, or to deal in, any security arising out of a contract issued by an insurance company and subject to the supervision of the superintendent of financial services.

§ 447-d. Conversion of mutual holding company into stock holding company. 1. If approved by the superintendent, a mutual holding company may convert to a stock holding company in accordance with general regulations promulgated by the superintendent of financial services.

2. If approved by the superintendent, the mutual holding company shall submit the plan of conversion to its shareholders for approval at a meeting convened for that purpose in accordance with such regulations. The provisions of paragraphs (a), (b), (c) and (d) of subdivision three of section four hundred forty-seven-a of this article shall apply to such meeting. For the purpose of this subdivision, the term "shareholders" shall mean those shareholders as of a record date, of a stock savings and loan association subsidiary of the mutual holding company which:

(a) was organized as a result of the reorganization of a mutual savings and loan association as provided in section four hundred forty-seven of this article; and

(b) has not at any time subsequent to its organization issued more than forty-nine per centum of its issued and outstanding common stock to any persons other than a mutual holding company organized pursuant to this article or the savings and loan holding company provisions of the Home Owners Loan Act (title twelve United States Code Section 1467a).

ARTICLE XI
CREDIT UNIONS

Section 450. Incorporation; organization certificate.
450-a. Designation of low income credit union.
450-b. Designation of student branches.

451. Proposed bylaws.
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452. When corporate existence begins; conditions precedent to commencing business.
453. Corporate credit unions.
454. General powers.
455. Trust powers.
456. Limitations upon powers.
457. Capital.
458-a. Maintenance of reserves.
459. Allowance for loan loss.
460. Dividends to shareholders; conditions precedent.
461. Change of location; establishment of stations; extension or revival of corporate existence.
462. Foreign credit unions.
463. Exemptions and individual liability of shareholders.
464. Manner of withdrawal; expulsion or suspension of members; effect upon liabilities to credit unions.
465. Withdrawal of shares after voting to liquidate; notices to shareholders.
466. Meetings of shareholders; voting.
467. Qualifications and disqualifications of directors and committee members.
468. Oaths of directors, officers and members of committees.
469. Vacancies; change in number of directors.
470. Powers and duties of directors; not entitled to compensation; disqualification of directors.
471. Duty of directors and officers.
472. Special duties of directors.
473. Loan officers, credit committee; duties.
474. Loan reports to directors.
475. Supervisory committee; powers and duties.
476. Officers; powers and duties.
477. Retirement and insurance benefits for officers and employees.
478. Amendment of bylaws; approval of superintendent.
479. Credit union not liable for taxation.

480. Fiscal year.
481. Communications from department of financial services must be submitted to directors and supervisory committee, and noted in the minutes.
482. Reports to superintendent; penalty for failure to make.
483. Penalty for loans to non-members; recovery.
484. Penalty for use of term "credit union".
485. Entries in books; preservation of records.
486. Conversion of a federal credit union into a state credit union.
486-a. Retention of special additional mortgage recording tax exemption for converted federal credit unions.
487. Conversion of a credit union into a federal credit union.
487-a. Conversion of a credit union into a mutual savings bank.

§ 450. Incorporation; organization certificate. When authorized by the superintendent as provided in article two of this chapter, seven or more persons employed or residing in the state of New York may form a corporation to be known as a credit union, which may include a corporate credit union or a credit union. The provisions of this article shall apply to a corporate credit union or a credit union except as otherwise provided. Such persons shall subscribe and acknowledge and submit to the superintendent at his office an organization certificate in duplicate which shall specifically state:

1. The name of the corporation which shall include the words "credit union."

2. The place where its business is to be transacted. If the condition of membership is employment of its members by certain individuals, partnerships or corporations, the place of business of any such individual, partnership or corporation may be stated as the place of business of such credit union.

3. The par value of the shares.

4. The full name, residence and post office address of each of the incorporators. These incorporators may serve as directors until the first annual meeting of shareholders. The organization certificate shall also indicate which of the incorporators will serve as directors until such meeting.

5. Its duration if other than perpetual.

§ 450-a. Designation of low income credit union. 1. A credit union organized under this article may be designated as a low income credit union as defined in subdivision five of this section.

2. A credit union, including a credit union in formation, may make written application to the superintendent to be designated as a low income credit union. If the superintendent shall find, after investigation, that such credit union meets the definition of a low income credit union, as set forth in this section, he or she shall approve such designation.

3. Notwithstanding any other provision of this article, a low income credit union may issue shares, share drafts and share certificates to nonmembers who or which may be natural persons, corporations, partnerships or other legal entities.

4. Except as provided in this section, all provisions of this chapter shall be applicable to low income credit unions.

5. As used in this section, the term "low income credit union" shall mean a credit union in which a majority of the members: (a) make less than eighty percent of the average for all wage earners as established by the bureau of labor statistics of the United States department of labor or have annual household incomes that fall at or below eighty percent of the median household income for the nation as established by the United States census bureau; or (b) are residents of a public housing project who qualify for such residency because of low income; or (c) qualify to receive benefits from any program designed to assist the

economically disadvantaged. The superintendent of financial services may promulgate regulations appropriate to the formation and operation of low income credit unions.

6. A credit union's designation as a low income credit union may be removed by the superintendent if he or she shall find, after investigation, that such credit union no longer meets the definition of a low income credit union as set forth in this section. Upon such a loss of designation, such credit union shall no longer be authorized to exercise the powers set forth in this section but shall remain subject to all of the other provisions of this chapter applicable to credit unions generally.

§ 450-b. Designation of student branches. 1. As used in this section the following terms shall have the following meanings:

(a) "school" shall mean any public or private elementary or secondary school;

(b) "student" shall mean a child enrolled in a school;

(c) "student branch" shall mean the designation provided to the credit union pertaining to the in-school services and financial education offered to students. A student branch shall not be deemed to be a station and shall not be subject to any of the provisions of this article applicable to stations; provided, however, that a credit union shall provide written notice to the superintendent of the establishment of any such student branch.

2. A credit union organized under this article may upon agreement with a school's governing body open and maintain a student branch.

3. Notwithstanding any other provision of this article any student enrolled in the school maintaining a student branch who is not otherwise qualified for membership in the credit union is hereby qualified for a student membership. Said student membership shall expire thirty days after the student's graduation from secondary school, transfer to another school or termination of enrollment. The student branch shall be for the express use of the students and may not be used by faculty,

staff or lineal ancestors or descendants of students. Neither faculty, staff nor lineal ancestors or descendants of student members are eligible for membership in the credit union unless otherwise qualified under this article.

4. The superintendent may promulgate regulations appropriate to the formation and operation of student branches.

§ 451. Proposed bylaws. The incorporators shall subscribe and acknowledge and submit to the superintendent proposed bylaws, in duplicate, which shall prescribe the manner in which the business of the credit union shall be conducted with reference to the following matters:

1. The purposes of the corporation.

2. The qualifications for membership.

Such qualifications for membership shall be established in accordance with the provisions of section four hundred fifty-one-a of this article, except that such section shall not apply to a corporate credit union.

3. The manner of conducting meetings, the method by which members shall be notified of meetings, and the number of members which shall constitute a quorum.

4. The number of directors, which shall be a number not less than five nor more than fifteen.

5. The term of office of directors.

6. The number of directors necessary to constitute a quorum.

7. The time, place and manner of holding the annual and any special meetings of the members of the credit union.

8. The officers to be elected from among the board of directors; their

titles, duties and terms of office.

9. Whether one or more loan officers or, in the alternative, a credit committee shall have the responsibility of passing upon the applications of members for loans and the powers and duties of the loan officer or credit committee and the number of members, not less than three, of which the credit committee shall be composed, their term of office, and manner of election or appointment.

10. The powers, duties, term of office and manner of election or appointment of the supervisory committee and the number of members, not less than three, of which it shall be composed.

11. The conditions upon which shares may be issued, paid for, transferred and withdrawn.

12. The fines, if any, which shall be charged for failure punctually to meet obligations to the corporation.

13. The manner in which dividends shall be determined and paid to members.

14. The manner in which the funds of the corporation shall be employed.

15. The conditions upon which loans may be made and repaid.

16. The maximum rate of interest that may be charged upon loans.

17. The method of receipting for money paid on account of shares or loans.

§ 451-a. Qualifications for membership. 1. Subject to approval of the superintendent, the membership of a credit union shall consist of persons within the credit union's field of membership who have been duly admitted members.

Subject to the approval of the superintendent, a credit union's field of membership may include one or more of the following categories:

(a) Persons:

(1) within the same occupation or from multiple groups each representing a different occupation;

(2) within the same association or from multiple groups each representing a different association;

(3) who reside, work, worship or attend school within a well-defined identifiable neighborhood, community or rural district and who, in the judgment of the superintendent, have such a community of interest as will ensure proper administration. For purposes of this section a "well-defined identifiable neighborhood, community or rural district" may consist of one or more adjacent precincts, districts, cities or counties; or

(4) within a combination of these three categories described in this subdivision; or

(b) Organizations located within a well-defined identifiable neighborhood, community or rural district, as determined in accordance with subparagraph three of paragraph (a) of this subdivision and which, in the judgment of the superintendent, have such a community of interest as will ensure proper administration; or

(c) Family members of such persons described in paragraph (a) of this subdivision. For the purposes of this paragraph, "family member" means a person related by blood, marriage or living in the same household with a person within the field of membership and their lineal ancestors and descendants including persons so related by adoption, siblings, stepparents, stepchildren and stepsiblings; and "household" means persons living in the same residence and maintaining a single economic unit; or

(d) Any employee of the credit union; or

(e) Any member who leaves the field of membership and who has not withdrawn or been expelled may retain membership; or

(f) Any incorporated or unincorporated organization composed principally of persons eligible to membership in the credit union and that organization's employees.

2. Any person who is eligible for membership by reason of the fact that he or she is an employee of a common employer or of a credit union shall not become ineligible, after the termination of such employment, as long as he or she receives a pension or annuity from, or under, a plan or other arrangement established by such common employer or credit union.

3. Subject to approval of the superintendent, a credit union may extend membership to persons and organizations in an underserved local community, neighborhood or rural district where such area is considered an "investment area" as defined in the federal Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(16)).

4. In considering an application pursuant to subdivision one of this section, the superintendent shall consider the credit union's record and history of serving underserved areas, as well as low and moderate-income individuals within the communities it currently services, if any, and its commitments to serve underserved areas, as well as low and moderate-income individuals in the communities to be served. Furthermore, in considering such application, the superintendent may impose such limitation, such as geographical limitations, as the superintendent determines to be appropriate in his or her sole discretion.

§ 452. When corporate existence begins; conditions precedent to commencing business. When the superintendent shall have endorsed his approval on the organization certificate, as provided in article two of this chapter, the corporate existence of the credit union shall begin, and it shall then have power to elect officers and to transact such other business as relates to its organization. But it shall transact no other business until the superintendent shall have duly issued to it the authorization certificate specified in article two of this chapter.

§ 453. Corporate credit unions. 1. A corporate credit union may be incorporated under this section and shall be subject to all provisions

of this article not inconsistent with this section.

2. Membership in a corporate credit union shall be institutional and shall be limited to: credit unions organized under this article, the Federal Credit Union Act or any other credit union act, and organizations or associations owned by or composed of credit unions and corporations and associations which primarily service credit unions.

3. The board of directors of each credit union, organization, association or corporation becoming a member of a corporate credit union shall designate one person to be a voting representative in the corporate credit union. Such person shall be eligible to hold office in the corporate credit union as if such person were a member of the corporate credit union.

4. A corporate credit union is a credit union whose members consist primarily of other credit unions and whose purposes are to:

(a) accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;

(b) act as an intermediary for credit union funds between members and other corporate credit unions;

(c) obtain liquid funds from other credit union organizations, financial intermediaries and other sources;

(d) foster and promote in cooperation with other state, regional and national corporate credit unions and credit union organizations or associations the economic security, growth and development of member credit unions; and

(e) perform such other financial services of benefit to its members which are authorized by the superintendent.

5. A corporate credit union shall enjoy the powers and privileges of any other credit union incorporated under this chapter in addition to those powers enumerated in this article, notwithstanding any limitation or restrictions found elsewhere in this article. The superintendent of financial services may promulgate such regulations concerning the establishment and operations of corporate credit unions as in its discretion are necessary and proper. Subject to such regulations, a

corporate credit union may:

(a) accept shares or deposits in any form from its members, other state, regional or national corporate credit unions, and credit union organizations or associations;

(b) make loans to its members and other credit unions and other state, regional, or national corporate credit unions, organizations and associations of credit unions;

(c) establish lines of credit for members and participate with other credit unions in making loans to its members under the terms and conditions determined by the board of directors;

(d) invest in the shares of or make deposits in credit unions;

(e) buy and sell any form of marketable debt obligations of domestic or foreign corporations or of federal, state or local government units;

(f) borrow money, accept demand deposits and issue notes or debentures;

(g) acquire or sell the assets and assume the liabilities of a member; and

(h) enter into agreements with credit unions to discount or purchase loans made pursuant to government-guaranteed loan programs, real estate loans made by members or any obligations of the United States or any agency thereof held by members.

6. A corporate credit union shall be exempt from the reserve requirements of section four hundred fifty-eight-a of this article, but shall be required to accumulate and maintain reserves in accordance with the requirements of the National Credit Union Administration.

§ 454. General powers. In addition to the powers conferred by the provisions of this chapter, a credit union shall, subject to the restrictions and limitations contained in this article, in its bylaws, and in any regulations promulgated by the superintendent, or in any regulations of the superintendent of financial services as may be specifically authorized under this section, have the following powers:

1. To issue and receive payments on, shares, share drafts, and share certificates, subject to such terms, rates, and conditions as are

established by its board of directors, from its members and from other credit unions, both state and federally chartered.

A member may designate any person or persons to own shares or share certificates with him or her in joint tenancy with the right of survivorship, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he or she is within the field of membership and is a qualified member.

2. To act as trustee under a retirement plan established pursuant to the provisions of the act of congress entitled "Self-employed Individuals Tax Retirement Act of 1962," and provisions of law contained therein, as amended; provided that the provisions of such retirement plan require the funds of such trust to be invested exclusively in share accounts of insured state and federally chartered credit unions. In the event that any such retirement plan, which, in the judgment of the credit union, constituted a qualified plan under the provisions of said self-employed individuals tax retirement act of nineteen hundred sixty-two, and provisions of law contained therein, as amended, and the regulations promulgated thereunder at the time the trust was established and accepted by the credit union, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the credit union may, nevertheless, continue to act as trustee of any shares theretofore made under such plan and to dispose of the same in accordance with the directions of the shareholders and the beneficiaries thereof. No credit union, in respect to shares purchased under this subdivision, shall be required to segregate such shares from other shares of such credit union; provided, however, that the credit union shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subdivision.

3. To act as trustee of an individual retirement account established pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974," and provisions of law contained therein, as amended; provided that the provisions of the written governing instrument creating the trust require the funds of such trust

to be invested exclusively in share accounts of insured state and federally chartered credit unions. In the event that any such individual retirement account, which, in the judgment of the credit union, constituted a qualified individual retirement account under the provisions of said employee retirement income security act of 1974, and provisions of law contained therein, as amended, and the regulations promulgated thereunder at the time the trust was established and accepted by the credit union, is subsequently determined not to be such a qualified individual retirement account or subsequently ceases to be such a qualified individual retirement account, in whole or in part, the credit union may, nevertheless, continue to act as trustee of any shares theretofore purchased under such individual retirement account and to dispose of the same in accordance with the directions of the shareholder and the beneficiaries thereof. No credit union, in respect to shares purchased under this subdivision, shall be required to segregate such shares from other shares of such credit union; provided, however, that the credit union shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subdivision.

4. To charge an entrance fee to any person who has applied for and been elected to membership.

5. To charge a reasonable fee for the transfer of its shares.

6. (a) To lend money to its members at the rate or rates agreed to by the credit union and the borrower upon such terms and conditions as are established by its board of directors and subject to such regulations and restrictions as the superintendent of financial services finds necessary and proper.

(b) The knowingly taking, receiving, reserving, or charging a greater rate of interest than permitted by law shall be held and adjudged a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person paying the same or his legal representatives may recover twice the entire amount of the interest thus paid from the credit union.

(c) (i) No credit union may make any member business loan that would

result in a total amount of such loans outstanding at that credit union at any one time equal to more than the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under 12 U.S.C. 1790d(c)(1)(A) for a credit union to be well capitalized.

(ii) Subparagraph (i) of this paragraph does not apply in the case of: (A) a credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, as determined by the superintendent; or (B) a credit union that serves predominantly low-income members, as defined by the superintendent, or which is a community development financial institution as defined in 12 U.S.C. 4702; or (C) a credit union excepted from the requirements of such subparagraph (i) by the superintendent where such credit union is seeking an exception from any federal limits on member business loans to the same extent as permitted to federally-insured state credit unions pursuant to the Federal Credit Union Act and regulations related thereto, provided that such credit union demonstrates to the satisfaction of the superintendent that such exception would be consistent with the declaration of policy as set forth in section ten of this chapter.

(iii) For purposes of this paragraph the term "member business loan" and the term "net worth" shall have the same meaning as such terms are defined in 12 U.S.C. 1757a.

7. (a) To issue credit cards, debit cards, and similar devices to allow members to make purchases and to access their loans, lines of credit, shares and deposits;

(b) To collect, receive and disburse funds in connection with the issuance of negotiable checks, money orders, travelers checks and other payment instruments to members, and to charge a fee for such services;

(c) To rent safe deposit boxes to members; and

(d) To provide any related financial services to members which are not expressly authorized pursuant to this article, including but not limited to electronic funds transfers and correspondent services; provided, however, that any credit union which seeks to offer any such related financial services which it has not offered prior to June twentieth, two thousand three shall, not less than sixty days prior to offering such

services, notify the superintendent in writing of its intention to offer such services. If the superintendent does not object in writing to the offering of such services within sixty days after the receipt of the notice, the credit union may offer such services to its members.

8. To deposit any moneys received by it, and not lent to members, in one or more state or federally chartered banking organizations or branches of foreign banking corporations which are insured by the Federal Deposit Insurance Corporation, by the National Credit Union Share Insurance Fund, or by another agency of the United States government.

9. To borrow money subject to such regulations and restrictions as the superintendent of financial services finds necessary and proper from any source in an aggregate amount not exceeding fifty percent of assets without the written approval of the superintendent.

10. To impose financing charges and late charges in the event of late payment or default on loans and recover reasonable costs and expenses, including collection costs and reasonable attorneys' fees incurred both before and after judgment.

11. To suspend or expel members, as provided in section four hundred sixty-four of this article.

12. To impress and enforce a lien upon the shares, share accounts, share certificates, deposits, dividends, and accumulation of interest on the shares, accounts, certificates, and deposits of any member to the extent of any sums owed the credit union by said member and any loans made to him or her directly or indirectly or on which he or she is surety, guarantor, or endorser.

13. To cancel the shares of any member who withdraws or is expelled and apply the withdrawal value thereof to the liquidation of such member's indebtedness to the corporation.

14. Subject to the limitations contained in subdivision seven of

section four hundred fifty-six of this article, to hold shares in and make loans to other credit unions, whether state or federally chartered.

15. To conduct its business at automated teller machines, point-of-sale terminals, shared service centers, and similar facilities subject to regulations which may be promulgated by the superintendent of financial services. Such facilities shall not be deemed to be stations and shall not be subject to any of the provisions of this chapter applicable to stations.

16. To issue shares to and accept deposits from a member in the name of a minor. Such shares and deposits shall be held for the minor's exclusive right and benefit and free from control or lien of all other persons, except creditors. The withdrawal value of such shares or deposits shall be paid to the person in whose name such shares or deposits are held. A receipt or acquittance of a minor shall be valid and sufficient release and discharge to such credit union for all payments made on account of such shares or deposits.

17. To issue shares to and accept deposits from a member, which are held in the name of a member in trust for a beneficiary or in the name of a non-member in trust for a beneficiary who is a member. No beneficiary, unless a member in his or her own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. Payment of part or all of such a trust account to the party in whose name the account is held shall, to the extent of such payment, discharge the liability of the credit union to that party and to the beneficiary, and the credit union shall be under no obligation to see to the application of such payment. In the event of the death of the party who owns a trust account, if the credit union has been given no other written notice of the existence or terms of any trust and has not received a court order as to disposition of the account, the account's funds and any dividends or interest thereon shall be paid to the beneficiary.

18. (a) To invest its funds in: (i) Those securities authorized as permissible investments for savings banks by subdivisions one, two,

three, four, twelve, paragraph (a) of subdivision twelve-a, and subdivisions fifteen, seventeen, twenty-seven and twenty-eight-a of section two hundred thirty-five of this chapter and such other investments as the superintendent deems permissible.

(ii) Advances of federal funds as authorized for savings banks by subdivision twelve-b of section two hundred thirty-five of this chapter.

(iii) Common trust units of a credit union investment pool organized for the purchase of:

(A) obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby;

(B) obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in section 846 of Title 31 of the United States Code as a wholly owned government corporation, or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association, or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of Title 12 of the United States Code, or in obligations or other instruments or securities of the Student Loan Marketing Association;

(C) participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; provided that such investment pool has been approved by the superintendent; or

(D) securities, obligations or other instruments of, or issued by, any agency of the United States.

(iv) Where the assets of a credit union are in excess of three million dollars, such credit union is further authorized to invest its funds in the securities enumerated in subdivisions thirteen and fourteen of section two hundred thirty-five of this chapter, subject in each case to those limitations applicable to such investment in the case of savings banks.

(b) All such securities, except those purchased in a common trust unit pursuant to subparagraph (iii) of paragraph (a) of this subdivision, must be registered in the name of the credit union; provided that where any such securities are non-registerable, except those purchased in a common trust investment pool, as hereinbefore provided, they shall be placed in the custody of a bank, trust company, national bank, or state or federal corporate credit union in the name of the credit union, and shall be retained by such bank, trust company, national bank, or state or federal corporate credit union until such securities are liquidated at maturity or sold, in either of which events the proceeds of such securities shall be deposited in the name of the credit union in any institution specified in subdivision eight of this section.

(c) Notwithstanding the provisions of this subdivision, a credit union may invest the lesser of ten percent of its capital or net worth, but at least ten thousand dollars, in the shares of investment companies; provided that the portfolio of such investment company consists solely of securities in which credit unions are permitted to invest directly. The term "investment companies" means open-end and close-end investment companies and unit investment trusts as these terms are used in an Act of Congress entitled "Investment Company Act of 1940."

19. Subject to regulations and restrictions of the superintendent of financial services, a credit union may invest its funds in and make loans to credit union organizations; provided that such loans or investments shall be approved by the board of directors. No such loan or investment shall be made by a credit union pursuant to this subdivision if the amount of such loan or investment exceeds three per centum of the total sum due to the members on shares and deposits. For the purpose of this subdivision, a credit union organization is any organization established primarily to serve the needs of its member state and federal credit unions, and whose business relates to the daily operations of the credit unions it serves.

20. To purchase, sell, service, pledge or discount, or otherwise receive or dispose of, eligible obligations to the same extent as authorized pursuant to Title 12 U.S.C. section 1757(13) and any regulations promulgated thereunder, as such laws or regulations may be

amended from time to time.

21. To purchase, hold, lease and convey a plot whereon there is or may be erected a building suitable for the transaction of its business, from portions of which not required for its own use a revenue may be derived, and a plot whereon parking accommodations are or are to be provided, with or without charge, primarily for its members or employees or both; provided that the net aggregate of all investments of any credit union in such plots and building shall be limited to six per centum of the capital and retained earnings of such credit union, except with the approval of the superintendent.

22. To enter into contracts.

23. To sue and to be sued in all courts and to participate in actions and proceedings, whether judicial, arbitrative, or otherwise, in like cases as natural persons.

24. To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

25. To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic, or similar purposes, and, in time of war or other national emergency, in aid thereof.

26. To elect or appoint officers, employees, and other agents of the credit union, define their duties, fix the compensation of employees and other agents, and to indemnify credit union officials, committee members, and employees.

27. To have perpetual existence.

28. To honor requests for withdrawals of member accounts, whether shares or deposits, in any manner approved by the credit union's board of directors, including, without limitation because of enumeration,

requests in person, by telephone, by mail, by negotiable or non-negotiable order, by electronic communication, or otherwise. The board of directors may, at any time, require members to give, in writing, not more than sixty days' notice of intention to withdraw the whole or any part of the amounts paid in by them, except that this requirement shall not apply to amounts in a share draft or checking account. In the event that any credit union shall require that notice be given before such amounts may be withdrawn, it shall, before or upon the day such requirement is made effective, notify the superintendent by telephone, other electronic means or in writing that such requirement has been made.

29. To, either on an individual or participation basis, establish or maintain an accounting service center, the functions, facilities, and operations of which are limited to providing data processing services. As used in this subdivision, the term "data processing services" means the maintenance of bookkeeping, accounting, or other records related to the purposes and functions of a credit union, primarily by mechanical or electronic methods, and the furnishing of reports and information derived from such records. Participation in the accounting service center may be by means of a partnership or other non-corporate arrangement between or among the participating entities or by participation in an accounting service center corporation organized for the sole purpose of providing data processing services. A credit union's individual or proportionate ownership of the accounting service center shall not exceed two percent of its members' shareholdings.

30. To acquire and lease personal property, and to hold, assign, pledge, sell or otherwise dispose of such personal property, to the same extent as authorized under subdivision twelve of section ninety-six of this chapter, subject to such limitations and conditions as the superintendent of financial services may from time to time prescribe by general regulation.

31. To hold membership in other credit unions organized under this article or under federal law or any other credit union act, and in associations and organizations controlled by or fostering the interests

of credit unions, including a central liquidity facility organized under state or federal law.

32. To execute and deliver for its members such guarantees as may be incidental or usual in the transfer of investment securities.

33. Notwithstanding any other provision of this article to the contrary, to participate in the minority - and women-owned business development and lending program, as established in section 16-c of section 1 of chapter 174 of the laws of 1968, constituting the urban development corporation act, to the extent that such program allows participation by credit unions.

33-a. To accept moneys deposited by the commissioner of taxation and finance or the comptroller as linked deposits and make linked loans pursuant to article fifteen of the state finance law and to pledge assets or furnish other security satisfactory in form and amount to the depositor, for repayment of such moneys.

34. To have and exercise all other powers that are necessary or appropriate to enable it to carry out its purpose.

35. To participate in loans to credit union members jointly with other credit unions, credit union organizations, or other banking organizations pursuant to written policies established by the board of directors; provided that a credit union which originates a loan for which participation arrangements are made shall retain an interest in at least ten percent of the face amount of the loan. The member of the originating credit union benefiting from the proceeds of the loan need not be within the field of membership of the other credit unions participating in the loan.

36. To invest its funds in a collateralized mortgage obligation/real estate mortgage investment conduit. A credit union may invest in a fixed or variable rate collateralized mortgage obligation/real estate mortgage investment conduit, subject to the same extent and under the same conditions as federal credit unions are authorized to so invest,

pursuant to the Federal Credit Union Act (12 U.S.C 1757(15)(B)) and any regulations related thereto, as amended.

37. To engage in a "savings promotion" in accordance with section nine-v of this chapter and subject to any regulations promulgated by the superintendent. The superintendent shall consult with the state gaming commission before proposing any such regulations or any amendments thereto. Such regulations shall ensure that:

a. no participant in a savings promotion is charged any fee that would constitute, directly or indirectly, consideration for participation in such savings promotion; and

b. no participant in a savings promotion foregoes, directly or indirectly, any interest that would constitute consideration for participation in such savings promotion.

§ 455. Trust powers. 1. The superintendent of financial services is authorized and empowered to grant permission to a credit union to exercise any or all of the powers specified in sections one hundred, one hundred-a, one hundred-b and one hundred-c of this chapter. In passing upon applications for permission to exercise any such powers, the superintendent of financial services may take into consideration the amount of net worth of the applying credit union, whether or not such net worth is sufficient under the circumstances of the case, the needs of the community to be served and any other facts and circumstances that seem proper, and may grant or refuse it permission accordingly.

2. Whenever the laws of this state require a trust company acting in a fiduciary capacity to deposit securities with the state authorities for the protection of private or court trusts, a credit union, so acting, is required and empowered to make similar deposits of securities.

3. The superintendent of financial services is authorized to promulgate such regulations as he or she may deem necessary or proper to implement the provisions of this section and the proper exercise of the

powers granted by this section.

§ 456. Limitations upon powers. No credit union shall:

1. Pay any commission or compensation for securing members or for the sale of its shares; except that such restrictions shall not prohibit a credit union from issuing or selling shares to other state or federal credit unions through deposit brokers, subject to any regulations prescribed by the superintendent, nor pay any compensation to directors or committee members except that directors and committee members may be reimbursed for reasonable and proper costs incurred while carrying out the responsibilities of their positions. Such reimbursement shall be determined by the board of directors to be appropriate in carrying out the official business of the credit union and shall be in accordance with written policies and procedures, including documentation requirements, established by the board of directors.

2. Make any loan to any member, if, upon the making of that loan, the member would be indebted to the credit union upon loans made to, or guaranteed or endorsed by, such member in an aggregate amount which would exceed ten per centum of the capital and undivided profits of the credit union.

3. Impose a fine, in case of failure of a member to make payments on shares, exceeding two per centum per month or fraction of a month on amounts due.

4. Permit any director, officer, employee, member of the credit committee or supervisory committee to borrow directly or indirectly or become surety for any loan or advance made by such credit union where such loan or advance or aggregate loans or advances exceed twenty thousand dollars, unless the loan or advance is fully secured in accordance with criteria established by the board of directors or unless the loan or advance is approved by a majority of the entire board of directors. Such approval must be given in writing. Complete minutes of such meeting shall be kept which shall include the names of all

directors present. The rate of interest or discount charged on any such loan to a director, officer or member of the credit committee or supervisory committee shall not be less than the rate of interest or discount charged for loans of like character in the ordinary course of business.

5. Issue any shares except as provided in subdivision one of section four hundred fifty-four of this article, and unless there is printed upon the certificate or other evidence of such shares the words "Transferable only to qualified members."

6. Retain physical possession of a passbook or other evidence of membership of any member except that the supervisory committee may retain such passbook or other evidence of membership for a period not to exceed ten days for the purpose of auditing the records of the credit union.

7. Except in the case of a state or federal corporate credit union, make any loan or other extension of credit to, or investment in the shares of, any other credit union other than a state or federal corporate credit union in an amount the aggregate of which shall exceed twenty-five per centum of its assets or twenty-five per centum of the assets of such other credit union; provided, however, that the superintendent may approve a credit union's request to invest a higher per centum of its assets in any other credit union; nor shall a credit union issue or sell one or more shares to another credit union if, by such issuance or sale, the aggregate of its shares held by other credit unions will thereby exceed thirty per centum of its own assets; provided, however, that the superintendent may approve a credit union's request to issue or sell shares which aggregate a higher per centum of its assets to other credit unions. Extension of credit to or investment in the shares of another credit union or the issuance or sale of shares to another credit union, under this subdivision, shall include credit unions chartered by the federal government or federally insured credit unions chartered by a state.

In the case of a corporate credit union, no loan shall be made to a

member credit union in an amount in excess of twenty percent of the share capital of the corporate credit union.

8. Permit any member to withdraw any shares pledged as security for any loan on which such member is liable as maker, endorser, guarantor or surety except upon the prior written approval of a majority of the credit committee or the loan officer. In any case, the amount of shares in excess of the liability of such member as maker, endorser, guarantor or surety, may be withdrawn without the approval of the credit committee or the loan officer.

9. Make a loan to a member upon the security of a mortgage which is not a first lien, unless such loan is in compliance with the regulations of the superintendent of financial services. Such regulations may include such restrictions as the superintendent of financial services finds necessary and proper, including without limitation, a restriction as to the percentage of total assets which may be invested in such loans, a restriction on the loan-to-appraisal value of property securing such loan, a restriction on the maximum amount to be loaned to each member, and a limitation on such loans based upon share capital, as determined by the superintendent of financial services.

§ 457. Capital. The capital of a credit union shall consist of the payments and dividends credited to shareholders on their shares.

§ 458-a. Maintenance of reserves. A credit union shall contribute to and maintain such net worth reserve categories as the superintendent shall, by regulation, prescribe. Such regulations shall provide for a system of maintaining net worth reserves that is comparable to that of Title 12 U.S.C. section 1790(d) and any regulations promulgated by the National Credit Union Administration thereunder, except as otherwise deemed necessary by the superintendent in accordance with the declaration of policy set forth in section ten of this chapter.

§ 459. Allowance for loan loss. An allowance for loan loss account shall be established and maintained in an amount that represents the current estimated loss on loans. The allowance for loan loss account requirement shall be computed and adjusted, through the provision for loan loss account, prior to the payment of dividends.

The calculation of this account shall be in accordance with the rules established by the National Credit Union Administration.

§ 460. Dividends to shareholders; conditions precedent. 1. The board of directors of any credit union may declare a dividend from the credit union's undivided profits calculated as provided in this article for any period determined by the board of directors.

2. Earnings from all sources for the period for which a dividend is to be paid, except as provided in section four hundred fifty-eight of this article, may be credited to the profit and loss account of the credit union and the following items shall be charged against such account in the determination of the amount available for dividends to shareholders:

(a) All expenses paid or incurred by the credit union in the management of its affairs, the collection of its debts or the transaction of its business.

(b) The interest paid or accrued on debts owed by the credit union.

(c) All losses incurred on loans in excess of the allowance for loan loss account.

(d) Any interest collected in advance shall be considered unearned at the end of the fiscal period, and shall be set aside in an account called "unearned interest".

The credit balance of the profit and loss account as thus determined shall constitute the undivided profits of the credit union at the close of such period, and shall be applicable to the payment of dividends except as provided in subdivision three of this section.

3. No dividend shall be credited or paid unless the credit union has:

(a) Made good any existing impairment of its capital; and

(b) Carried to its allowance for loan loss account such part of its

earnings as is required by section four hundred fifty-nine of this article.

4. Dividends may be paid on shares and share certificates at various rates with due consideration of the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

5. When any dividend shall be declared in excess of the amount available for dividends as determined in accordance with the provisions of this section, the directors voting for such dividend may be held jointly and severally liable to the credit union for the amount of the excess so declared.

§ 461. Change of location; establishment of stations; extension or revival of corporate existence. 1. Any credit union may make a written application to the superintendent for leave to change its place of business to another place within the state of New York. The application shall state the reasons for such proposed change, and shall be accompanied by a copy of a resolution authorizing the making of the application, certified by a principal officer of the credit union to have been adopted by a vote of a majority of its entire board of directors at a meeting of such board, duly convened and held. Such change may be made upon the written approval of the superintendent. If the superintendent shall grant his certificate authorizing the change of location, as provided in article two of this chapter, the credit union may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein.

2. Subject to such regulations as the superintendent may adopt, any credit union, may open and maintain within or without the state, in any locality in which a substantial portion of its actual potential membership is employed or residing, one or more stations for the conduct of its business provided that before any such station or stations shall be opened or maintained or removed to a new location:

(a) Its board of directors shall submit to the superintendent a written application setting forth the reasons therefor and the proposed

location of such station or stations.

(b) The superintendent shall have given his written approval thereto.

3. Every application submitted under either subdivision one or two of this section shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

4. By votes cast by a majority of the shareholders of record entitled to vote at a meeting called for the purpose, a credit union, not having perpetual existence, may extend its duration, or, if it ceased to exist because of the expiration of the duration specified in its organization certificate, may revive its existence. Such resolution shall be transmitted to the superintendent, who shall issue, under his hand and the official seal of the department, in triplicate, a certificate setting forth the duration of the credit union as extended, which certificates shall be transmitted and filed in the same manner as authorization certificates.

§ 462. Foreign credit unions. Subject to such regulations as the superintendent may adopt, any credit union located in a state other than this state may open and maintain in this state, in any locality in which a substantial portion of its actual or potential membership is employed or residing, one or more stations for the conduct of its business provided that before any such station or stations shall be opened or maintained or removed to a new location:

1. Its board of directors shall submit to the superintendent a written application setting forth the reasons therefor and the proposed location of such station or stations. The application for each such station shall be accompanied by a fee as prescribed pursuant to section eighteen-a of this chapter.

2. The superintendent shall have given his written approval thereto.

§ 463. Exemptions and individual liability of shareholders. The

transfer of the shares of any credit union shall not be taxable under the provisions of article twelve of the tax law.

The shareholders of a credit union shall not be individually liable for the payment of the credit union's debts.

§ 464. Manner of withdrawal; expulsion or suspension of members; effect upon liabilities to credit unions. 1. A member desiring to withdraw from a credit union shall file a written notice of his or her intention to withdraw. However, a member who fails to complete payment of one share within six months of his or her admission to membership, or within six months from an increase in the par value of shares, or a member who reduces his or her share balance below the par value of one share and does not increase the balance to at least the par value of one share within six months of the reduction will be considered to have withdrawn from membership in the credit union.

2. The board of directors, pursuant to a written policy approved by such board, may expel or suspend any member who has not carried out his or her engagements with the credit union, or who has been convicted of a criminal offense, or who neglects or refuses to comply with the provisions of this article, or of the bylaws, or who habitually neglects to pay his or her debts, or who becomes insolvent or bankrupt, or who is physically or verbally abusive to credit union members or staff. Such written policy shall include the conditions and procedures under which a member may be expelled or may be suspended, in whole or in part, regarding member participation in services and other rights and benefits of membership; provided, however, that a member who has been suspended may continue to maintain a share account and may continue to vote at annual and special meetings.

(a) Except as provided in paragraph (b) of this subdivision, a member shall not be expelled or suspended unless he or she has been informed in writing of the charges against him or her and has been provided the opportunity to be heard within thirty days of the date of the mailing or delivery of such written notice.

(b) In the case of a member who has been physically abusive or who has

made threats of physical harm or violence, such member may be suspended or expelled from the date of the mailing or delivery of a written notice of such action and the reasons for the suspension or expulsion. As part of such notice, the member shall be advised of the opportunity to request reinstatement and to be heard within thirty days of the date of the mailing or delivery of such notice.

3. Any member of a credit union who withdraws or is suspended or expelled shall not be relieved of any liability to the corporation. The amounts paid in on shares or deposited by such members, together with any dividends credited to their shares and any interest which has accrued on their deposits, shall be repaid to them in the order of their withdrawal, suspension or expulsion, as funds become available therefor, but the credit union may deduct from such payments any sums due it from such members.

§ 465. Withdrawal of shares after voting to liquidate; notices to shareholders. After the shareholders of a credit union have duly voted that the credit union be closed and such business wound up and voluntarily liquidated, and prior to the entry of an order of the supreme court declaring the business of such credit union closed, any shareholder withdrawing any or all of his shares shall be given written notice by the credit union at the time of such withdrawal on the withdrawal notice, that it has been duly voted to close the corporation, wind up its business and voluntarily liquidate, that application may be made to the supreme court for a closing order pursuant to subdivision four of section six hundred five of this chapter, and that by receiving payment for the shares surrendered, he will not be entitled to any part of the surplus which may remain upon final liquidation and which would have been credited upon such shares had the same remained until the time that the closing order was obtained. If the notice is not given as aforesaid, the shareholder shall be entitled to share in the surplus, as if he had not made the withdrawal.

§ 466. Meetings of shareholders; voting. 1. At all meetings of

shareholders of every credit union each shareholder shall have one vote irrespective of the number of shares which he holds; provided, however, after a credit union has been in existence for a period of more than one year, only a person who shall have been a shareholder of such credit union for ninety days prior to the date of any such meeting shall be entitled to vote. Every member entitled to vote at a meeting of members of the credit union may authorize another person or persons to act for him by proxy at such meeting or, if the bylaws so provide, may vote by mail in accordance with the provisions of the bylaws. Every proxy must be signed by the member or his attorney-in-fact. No proxy shall be valid except for the meeting specified therein and adjournments thereof. Every proxy shall be revocable at the pleasure of the member executing it. The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the officer of the credit union responsible for maintaining the list of members. A shareholder may vote by proxy at a meeting called to vote upon voluntary dissolution. The bylaws may prohibit or further limit proxies for members and their duration. No officer, director, supervisory committee member, credit committee member, loan officer, clerk, teller or bookkeeper of the credit union shall act as such proxy. No director, supervisory committee member, credit committee member, or officer of a credit union shall be eligible to act as an inspector of an election of directors, supervisory committee members and credit committee members, at any meeting of members of the credit union.

2. Complete minutes of all shareholders' meetings shall be kept which shall include a record of the exact number of members present together with a count of votes cast for the election of all directors and committee members.

3. Upon the petition of any shareholder aggrieved by an election, and upon notice to the persons declared elected, the credit union and such other persons as the court may direct, the supreme court at a special term held within the judicial district where the office of the credit union is located shall forthwith hear the proofs and allegations of the

parties, and confirm the election, order a new election or take such other action as justice may require.

§ 467. Qualifications and disqualifications of directors and committee members. Every director and committee member of a credit union shall be the owner of at least one share subscribed for by him or standing in his name on the books of the credit union; and every person elected to be a director or committee member, who, after his election, shall hypothecate, pledge or cease to be the owner of his qualifying share or shares, except as permitted by subdivision four of section four hundred fifty-six of this article, shall cure the disqualification within thirty days or thereby vacate his office, and not be eligible for re-election as a director or committee member for a period of one year from the date of the next succeeding annual meeting. The restrictions herein of requiring directors and committee members to be the owner of at least one share shall not apply to a corporate credit union.

§ 468. Oaths of directors, officers and members of committees. Each director, officer and member of a committee when first appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the credit union, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner of at least one share subscribed for by him or standing in his name on the books of the credit union and that the same is not hypothecated, or in any way pledged as security for any loan or debt, except as permitted by subdivision four of section four hundred fifty-six of this chapter. The affirmation of share ownership need not be given by any director, officer and member of a committee of a corporate credit union. Such oath shall be subscribed by the directors, officers and members of committees making it and certified by any officer authorized by law to administer oaths, and immediately transmitted to the superintendent.

§ 469. Vacancies; change in number of directors. 1. Vacancies in the board of directors, supervisory committee, or the credit committee, occasioned by resignations, deaths or other causes shall be reported by each credit union to the superintendent within ten days after the event; and the credit union shall likewise report the filling of each such vacancy with the name, address and occupation of the person elected and the name of the person whose place he is to fill.

2. The number of directors may be changed within the limits provided in subdivision four of section four hundred fifty-one of this article by amendment of the bylaws.

§ 470. Powers and duties of directors; not entitled to compensation; disqualification of directors. 1. The board of directors of every credit union shall have the general management of the affairs, funds and records of the corporation. No member of the board of directors shall receive any compensation for his services as a member of the board. Whenever the directors shall deem any loan unsafe they may, in their discretion, require additional security to be given by the borrower, and if such security is not furnished as required by them, they may declare the loan due and take action to collect the same. Complete minutes of all meetings of directors shall be kept which shall include the names of the directors present.

2. No person shall be eligible for election as a director of a credit union if such person's spouse is a director or one of the five highest paid salaried officers of the credit union, if such person or such person's spouse is the grandparent, parent, child, grandchild, brother, sister, uncle, nephew, or niece of a director or one of the five highest paid salaried officers of the credit union, or if a director or one of the five highest paid salaried officers of the credit union is the spouse of such person's child, grandchild, brother or sister.

No director in office on July seventeenth, nineteen hundred eighty-six shall be ineligible for the office of director by reason of the provisions of this subdivision.

§ 471. Duty of directors and officers. 1. Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which a prudent person would exercise under similar circumstances in like positions. In discharging their duties, directors and officers, when acting in good faith, may rely (a) upon financial statements of the credit union represented to them to be correct by the executive officer or the officer of the credit union having charge of the books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such credit union, and (b) upon reports required to be submitted to them by any provision of this chapter or prepared in the ordinary course of business by an officer or committee charged with the responsibility therefor. Nothing in this section shall be deemed to require the directors to perform functions vested in any committee, officer or other person pursuant to the provisions of any other section of this chapter.

2. An action may be brought against one or more directors or officers of a credit union to procure a judgment for the following relief:

(a) To compel the defendant to account for his official conduct in the following cases:

(i) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of the credit union's assets committed to his charge.

(ii) The acquisition by himself, transfer to others, loss or waste of the credit union's assets due to any neglect of or failure to perform, or other violation of his duties.

(b) To set aside a conveyance, assignment or transfer of the credit union's assets by one or more directors or officers, contrary to a provision of law, where the transferee knew the purpose of the transfer.

(c) To enjoin such a conveyance, assignment or transfer of the credit union's assets by one or more of the directors or officers where there is good reason to apprehend that it will be made.

3. Subject to section six hundred thirty-one of this chapter, an action may be brought for the relief provided in this section by a credit union or an officer, director or judgment creditor thereof.

4. This section shall not affect any liability otherwise imposed by law upon any director or officer.

§ 472. Special duties of directors. Unless the bylaws shall expressly reserve any or all of the following duties to the shareholders, it shall be the special duty of the directors:

1. To act upon applications for membership and to expel members; provided that the board of directors may appoint a membership committee consisting of not less than two directors, which committee may act upon applications for membership and approve persons for membership under such conditions as the board may prescribe; except that such committee so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the board may require.

2. To fix the amount of surety bond required of each officer having the control or custody of funds.

3. To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.

4. To fix the maximum number and classes of shares, share drafts and share certificates which may be held by, and the maximum amount which may be lent to, any member, subject in each case, however, to the restrictions contained in section four hundred fifty-six of this article.

5. To declare dividends and authorize an interest refund to all members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during the

dividend period. The amount of interest refund to the members shall be in proportion to the amount of interest paid by them during the dividend period as determined by the application of a uniform percentage. The board may authorize an interest refund for a dividend period only during a month in which, under the bylaws, it may declare a dividend for such period, except that if, under the bylaws, a credit union has for the calendar year dividend periods more frequently than annually and an interest refund was omitted for one or more of such dividend periods, the board, during the time permitted for the declaration of the current dividend, may authorize an interest refund for the current dividend period and for any one or more of the omitted dividend periods. However, the board shall not authorize an interest refund for any dividend period with respect to which it has not declared a dividend. An interest refund shall be recorded on the books of the credit union as a reduction of interest income.

6. To recommend amendments to the bylaws.

7. To fill vacancies in the board of directors or the credit or supervisory committees as provided for in the bylaws.

8. To choose a chairman and recording officer of the credit committee from among the members thereof at the annual organization meeting of the board of directors of the credit union.

9. To direct the deposit or investment of funds, except loans to members.

10. To perform such other duties as the bylaws may prescribe.

§ 473. Loan officers, credit committee; duties. Whenever the term "credit committee" is used in this article, it shall solely be applicable to those credit unions whose bylaws provide for such committee. The credit committee of every credit union shall meet as often as necessary, after due notice has been given to each member, for the purpose of passing upon applications of members for loans. No loan

shall be made unless approved by a loan officer or by a majority of the members of the credit committee; except the credit committee or a loan officer may approve in advance upon application by a member, an extension of credit, and loans may be granted to such members within the limits of such extension of credit. The loan officers or the credit committee shall be responsible for reviewing and affirming all extensions of credit and any extension of credit shall expire if the member becomes more than ninety days delinquent in his obligations to the credit union. If the credit union has shares in excess of fifty thousand dollars, the credit committee may appoint one or more loan officers and delegate to him, her or them the power to approve loans within the limits fixed by the board of directors. If the credit committee appoints one or more loan officers, not more than one loan officer shall be a member of the credit committee and each loan officer shall report to the credit committee a record of each loan approved or disapproved by him, her or them within seven days after filing of the loan application. All applications not approved by a loan officer shall be acted upon by the credit committee. If there is no credit committee, a member shall have the right, upon written request, of review by the board of directors of a loan application which has been denied.

In no case shall a loan officer or a member of the credit committee serve as a member of the supervisory committee. No officer who is authorized to sign checks shall act as a loan officer. If a credit union has less than five hundred thousand dollars in assets, its board of directors may act as its credit committee. The credit committee of every credit union shall keep full and complete minutes of all the business transacted at each of its meetings. Such minutes shall include the names of those present at such meetings.

§ 474. Loan reports to directors. 1. The credit committee shall prepare and submit written reports to the board of directors of all loans approved or disapproved. If there is no credit committee, the board of directors shall designate, by resolution, a loan officer or officers whose duty it shall be to prepare and submit such written reports to the board.

2. These written reports shall be submitted to the board of directors at every regular monthly meeting of the board. Such written reports shall include a detailed description of any collateral securing these loans.

3. The superintendent may promulgate regulations relating to the provisions of these loan reports.

§ 475. Supervisory committee; powers and duties. 1. The supervisory committee shall have power:

(a) To suspend at any time by unanimous vote, at a meeting called for that purpose, any member of the credit committee or any member of the board of directors or any officer.

(b) By a majority vote to call a meeting of the shareholders to consider any violation of this article or the bylaws, or any practices of the credit union which, in the opinion of the committee, are unsafe or unauthorized.

2. It shall be the duty of the supervisory committee:

(a) To inspect the securities, cash and accounts of the credit union and supervise the acts of its board of directors, officers and credit committee.

(b) Within fourteen days after the suspension of any member of the credit committee or any member of the board of directors or any officer, to cause notice of a special meeting to be given to the shareholders to take any action regarding such suspension as may be deemed necessary.

(c) To fill vacancies in the supervisory committee until the next annual meeting of the shareholders; provided, if such committee is appointed by the directors, it shall be the duty of the board to fill any such vacancies in this committee.

(d) Once each fiscal year, at the close of any quarter and not less than six months after the date of the previous such audit, to make an audit of the books and records of the credit union for the period following the most recent audit; to examine fully its business and affairs and into such other matters as the superintendent may require;

upon the completion of such audit and examination to make full report thereof in writing, and sworn to by each member of the supervisory committee, to the board of directors at their next regular meeting after the completion of such audit and examination, to cause such report to be filed in the office of the credit union and to give notice to each member of the board of directors that such report has been filed, to cause a duplicate of such report to be filed in the office of the superintendent within ten days after the next regular meeting of the board of directors, and which report to the board of directors shall include a statement of the assets and liabilities, receipts and disbursements of the credit union based upon such audit and examination and to cause such report to be read at the annual meeting of shareholders and filed with the records of the credit union; and to keep full and complete minutes of all business transacted at each of its meetings. In no case shall a member of the supervisory committee serve as a loan officer or as a member of the credit committee or as a member of the board of directors. Such supervisory committee may employ such assistance in making such examination that they may deem necessary, and, if the superintendent shall require, the said supervisory committee shall employ the assistance of independent auditors.

3. Any or all members of the supervisory committee may be removed for cause by vote of the shareholders at a regular or special meeting thereof, provided, however, that a written copy of the charges made against each such member shall have been served upon him personally and mailed to each shareholder and to the superintendent at least two weeks before such meeting.

§ 476. Officers; powers and duties. The powers and duties of the officers of any credit union shall be such as are prescribed in the bylaws.

§ 477. Retirement and insurance benefits for officers and employees. 1. Subject to such regulations as the superintendent of financial services may prescribe, a credit union may, in the discretion of a

majority of all the board of directors, provide to officers and employees retirement benefits, deferred compensation programs and other employee benefit plans.

2. A credit union investing to fund a retirement benefit, deferred compensation program or other benefit plan for its officers and employees shall not be subject to or limited by the investment provisions set forth in subdivision eighteen of section four hundred fifty-four of this article so long as the investment is directly related to the benefit plan, and any obligation or potential obligation thereunder, and the credit union holds the investment for as long as it provides such benefit plan or has any actual or potential obligation thereunder.

§ 478. Amendment of bylaws; approval of superintendent. 1. The bylaws of a credit union may be changed or amended by a vote of a majority of the total number of directors which a credit union would have if there were no vacancies present at any meeting; provided the proposed change or amendment shall have first had the approval of the superintendent, except as provided in subdivision two of this section; and provided further, that notice of such meeting, with notice of the proposed change or amendment, shall have been given to each director as prescribed in the bylaws and provided, further, that any amendment, or change in a bylaw affecting the manner or method by which a shareholders' meeting may be convened, the voting rights of the shareholders, or a decrease in the number of directors of the credit union shall also require the approval of a majority of the shareholders present at a meeting of the shareholders. A copy of any change or amendment thus adopted shall be filed in the office of the superintendent within thirty days after its adoption.

2. Notwithstanding the provisions of subdivision one of this section, a credit union may change or amend its bylaws to add a group of less than three thousand members upon receiving a notice of no objection from the superintendent. Within ten business days of receiving such proposed change or amendment, the superintendent shall either send a notice of no

objection, notify the credit union that the proposed change or amendment is denied, or notify the credit union that additional review is necessary; provided, however, that if additional review is necessary, the superintendent shall notify the credit union of his or her final decision within no more than twenty-five business days of receiving such proposed change or amendment.

3. Any credit union deeming itself aggrieved by the refusal of the superintendent to give his or her approval to a proposed change or amendment may apply to any justice of the supreme court of the district wherein the credit union is located, upon notice to the superintendent, for a review of such decision. Such justice shall review the decision of the superintendent and may overrule or set aside the action of the superintendent and approve such change or amendment. An approval thus obtained shall enable such credit union to make the change or amendment as approved.

§ 479. Credit union not liable for taxation. Any credit union subject to the provisions of this article shall be deemed an institution for savings within the meaning of the law which exempts such institutions from taxation. No law which taxes corporations in any form, or the shares thereof or the accumulations therein, shall apply to corporations doing business in accordance with the provisions of this article, unless such corporations are specifically named in said law.

§ 480. Fiscal year. The fiscal year of every credit union shall end at the close of business on the thirty-first day of December.

§ 481. Communications from department of financial services must be submitted to directors and supervisory committee, and noted in the minutes. Every official communication as defined in article two of this chapter directed to a credit union shall be submitted to both the board of directors and the supervisory committee at the next meeting of each such board or committee and duly noted in the minutes of the meeting of

such board or committee.

§ 482. Reports to superintendent; penalty for failure to make. 1. Credit unions shall forward to the superintendent all reports required by the National Credit Union Administration.

2. Every credit union shall also make such other special reports to the superintendent at such times as he may require, which reports shall be in the form and filed on the date prescribed by the superintendent.

3. If any credit union shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any information required by the superintendent to be included, such credit union shall forfeit to the people of the state an amount as determined pursuant to section forty-four-a of this chapter for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted information, unless the time therefor shall have been extended by the superintendent.

§ 483. Penalty for loans to non-members; recovery. Any officer, director or member of a committee of a credit union who knowingly permits a loan to be made or participates in a loan to a non-member of the corporation shall be guilty of a misdemeanor and shall be primarily liable to the corporation for the amount thus illegally loaned, and the illegality of such a loan shall be no defense in any action by the corporation to recover the amount lent.

§ 484. Penalty for use of term "credit union". The use by any person, partnership, association or corporation, other than those authorized as provided in this article, or by any federal law, and other than any statewide association of credit unions operating in this state, of any name or title which contains the two words "credit" and "union" shall be a misdemeanor.

§ 485. Entries in books; preservation of records. 1. No credit union shall by any system of accounting or any device of bookkeeping, directly or indirectly, enter any of its assets or liabilities upon its books in the name of any person, or under any title or designation that is not truly descriptive thereof.

2. Every credit union shall preserve all of its records of original and final entry, including cancelled checks, withdrawal slips and deposit tickets, for a period of at least six years from the date of making same or from the date of the last entry thereon; provided, however, that preservation of photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section.

§ 486. Conversion of a federal credit union into a state credit union. Any federal credit union having its place of business in this state may convert itself into a state credit union. A meeting of the shareholders shall be held upon not less than ten days' written notice to each shareholder, either served personally or mailed to him or her at his or her last known address and containing a statement of the time, place and purpose of such meeting, provided that if the laws of the United States prescribe a different period of time or manner of communicating notice to each shareholder, then a meeting of the shareholders shall be held in conformity with such laws. Proof by affidavit of due service of such notice shall be filed in the office of the credit union before or at the time of such meeting.

At such meeting, a majority of the shareholders represented at the meeting may, by an affirmative vote, in person or by proxy, authorize the conversion of such federal credit union into a state-chartered credit union, provided that in the event the laws of the United States require a different affirmative vote, such vote shall apply in lieu of the affirmative vote required hereby. A copy of the minutes of such meeting, certified by the presiding officer and by the secretary of the meeting, shall be filed in the office of the superintendent within

thirty days after the date of such meeting.

There shall be filed with such copy of the minutes the organization certificate required by section four hundred fifty of this article, executed by a majority of the directors, and proposed bylaws as required by section four hundred fifty-one of this article. The federal credit union shall also submit a written plan of conversion to the superintendent, together with an investigation fee as described pursuant to section eighteen-a of this chapter.

Within sixty days after such filing, or such later date as the superintendent in his discretion may determine, the federal credit union shall take the action prescribed or authorized by the laws of the United States to effect such conversion and there shall thereupon be filed in the office of the superintendent a copy of any consent or authorization required of such federal credit union pursuant to the laws of the United States and the state to effect such conversion.

When the superintendent shall have approved the organization certificate and the proposed bylaws and shall have issued the authorization certificate, as provided in article two of this chapter, the credit union shall cease to be a federal credit union and shall thereupon be converted into a state credit union, but such federal credit union shall be deemed to be continued for the purpose of prosecuting or defending suits and of enabling it to wind up its affairs as a federal credit union and to dispose of and convey its property.

At the time when such conversion becomes effective, all the property of the federal credit union shall immediately by act of law and without any conveyance or transfer become the property of the state-chartered credit union and the state-chartered credit union shall succeed to all the rights, obligations and relations of the federal credit union.

§ 486-a. Retention of special additional mortgage recording tax exemption for converted federal credit unions. Mortgages made by a credit union that is issued an authorization certificate on or after

January first, two thousand nine pursuant to section four hundred eighty-six of this article shall be exempt from the special additional mortgage tax imposed pursuant to paragraph (a) of subdivision one-a of section two hundred fifty-three of the tax law.

§ 487. Conversion of a credit union into a federal credit union. Any credit union may convert itself into a federal credit union. A meeting of the shareholders of the credit union shall be held upon not less than ten days' written notice to each shareholder, either served personally or mailed to him or her at his or her last known address and containing a statement of the time, place and purpose of such meeting. Proof by affidavit of due service of such notice shall be filed in the office of the credit union before or at the time of such meeting.

At such meeting, a majority of the shareholders represented at the meeting may, by an affirmative vote in person or by proxy, authorize the conversion of such credit union into a federal credit union. A copy of the minutes of such meeting, certified by the presiding officer and by the secretary of the meeting, shall be filed in the office of the superintendent within two days thereafter.

Within sixty days after the date of such meeting, or such later date as the superintendent in his discretion may determine, the credit union shall take such action, in the manner prescribed or authorized by the laws of the United States, as shall make it a federal credit union and shall thereupon file in the office of the superintendent a copy of the charter or authorization issued to it. Upon such filing the credit union shall cease to be a corporation under the laws of this state, except that its corporate existence shall continue for the purpose of prosecuting or defending suits and of enabling it to wind up its affairs as a state credit union and to dispose of and convey its property. At the time when such conversion becomes effective, all of the property of the state credit union shall immediately by act of law and without any conveyance or transfer become the property of the federal credit union and the federal credit union shall thereupon succeed to all the rights, obligations and relations of the state credit union.

§ 487-a. Conversion of a credit union into a mutual savings bank. 1. Any credit union having its place of business in this state may convert to a mutual savings bank, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks.

2. A proposal for a conversion described in this section shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the credit union. Approval of the proposal for conversion shall be by the affirmative vote of a majority of the members of the credit union who vote on the proposal.

3. A credit union that proposes to convert to a mutual savings bank under this section shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert. Such notice must adequately describe the purpose and subject matter of the vote to be taken at the meeting or by submission of a written ballot. Such notice shall be submitted:

a. ninety days before the date of the member vote on the conversion;

b. sixty days before the date of the member vote on the conversion; and

c. thirty days before the date of the member vote on the conversion. The notice submitted thirty days before the date of the member vote on the conversion shall contain a written ballot, and shall clearly inform the member that the member may vote at the meeting or by submitting the written ballot. Such notice also shall state the date, time and place of the meeting.

4. The superintendent shall require a credit union that proposes to convert to a mutual savings bank under this section to submit a notice to the superintendent of its intent to convert during the ninety-day

period preceding the date of the completion of the conversion, accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

5. No director or senior management official of a credit union may receive any economic benefit in connection with a conversion of the credit union as described in this section, other than:

a. director fees; and

b. compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

c. For purposes of this subdivision, the term "senior management official" means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the appropriate federal banking agency pursuant to section 32(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1831i(f).

6. The member vote concerning charter conversion under this section shall be verified by the superintendent. If the superintendent disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the superintendent.

7. Upon completion of a conversion described in this section, the credit union shall no longer be subject to any of the provisions of this article.

When the superintendent shall have approved the organization certificate and the proposed bylaws and shall have issued the authorization certificate, as provided in article six of this chapter, the credit union shall cease to be a credit union and shall thereupon be converted into a mutual savings bank; provided, however, that such credit union shall be deemed to be continued for the purpose of prosecuting or defending suits and of enabling it to wind up its affairs

as a credit union and to dispose of and convey its property.

At the time when such conversion becomes effective, all the property of the credit union shall immediately by act of law and without any conveyance or transfer become the property of the mutual savings bank and the mutual savings bank shall succeed to all the rights, obligations and relations of the credit union.

ARTICLE 11-A

CREDIT UNION INSURANCE FUND

Section 490-a. Creation of fund.
490-b. Management of fund.
490-c. Execution and filing of agreement.
490-d. Provisions of agreement.
490-e. Powers and duties of trustee or trustees.
490-f. Powers of superintendent to obtain payment from fund.
490-g. Payment of liquidating dividends on uninsured shares.
490-h. Exemption of fund from taxation.
490-i. Liability for payment of contributions.
490-j. Powers of credit unions with respect to agreement.

§ 490-a. Creation of fund. Any fifty or more credit unions organized under the provisions of this chapter whose share liabilities aggregate not less than fifty per centum of the total share liabilities of all credit unions so organized may enter into an agreement, subject to the approval of the superintendent, to create a fund and from time to time make contributions thereto in accordance with the terms of such agreement, for the purpose of insuring the shares of such credit unions as shall become parties to such agreement; provided, however, that the shares so insured of any one holder in any one credit union shall not exceed two thousand dollars. Such an agreement once entered into may be continued, notwithstanding the fact that any number of associations may cease to be parties thereto.

§ 490-b. Management of fund. The fund shall be collected, held, administered and disbursed by a corporate trustee or a board of trustees composed of individuals who are directors or members of a supervisory committee of credit unions. The appointment of a corporate trustee or a board of trustees, as the case may be, shall be subject to the approval of the superintendent. In the event there be a board of individual trustees, a majority of them at any time in office, shall constitute a quorum and the vote of a majority present at any meeting, provided a quorum is present, shall be determinative.

§ 490-c. Execution and filing of agreement. The agreement when approved by the superintendent and executed by the credit unions desiring to become parties thereto shall be filed in the office of the superintendent and shall thereupon become effective. The agreement may be executed in any number of counterparts.

§ 490-d. Provisions of agreement. The agreement shall provide for the following: (a) The designation of a corporate trustee or a board of trustees to administer the fund and procedure for the resignation or removal of any such trustee or trustees and for the selection of a substitute trustee or trustees;

(b) The amount of the initial contribution to the fund, which shall be made by all parties to the agreement ratably in proportion to their respective share and deposit liabilities, and which shall be not less than one-fourth of one per centum of the total share and deposit liabilities, of each such party;

(c) The manner of making subsequent calls for contributions, which shall be made ratably upon all parties to the agreement in proportion to their respective share and deposit liabilities, except that the superintendent, where he deems it necessary and advisable, may exempt any such party or parties from any such call in whole or in part;

(d) Procedure for amendment of such agreement and its termination and liquidation of the fund;

(e) The powers to be vested in the corporate trustee or board of trustees, as the case may be, and the manner in which such powers shall

be exercised;

(f) The distribution of any earnings realized from the fund which distribution shall be made only with the written consent of the superintendent;

(g) The method of determining from time to time the amount of the share and deposit liabilities of the respective parties to the agreement;

(h) The requirements to be complied with by a party to the agreement desiring to withdraw therefrom prior to its termination, provided the contributions to the fund theretofore made by such withdrawing party shall not be returned but shall remain the property of the fund.

§ 490-e. Powers and duties of trustee or trustees. It shall be the duty of the corporate trustee or the board of trustees, as the case may be, to collect the initial contribution to the fund, to call for, and to collect by legal proceedings if necessary, such subsequent contributions as become payable under the terms of the agreement, and to administer the fund so created in accordance with the terms of the agreement. Such part of the fund as is not required to be kept on hand or in bank for the purpose of meeting and satisfying demands made by the superintendent pursuant to the next succeeding section, may be invested in obligations of the United States and of the state of New York, and of any county or municipality of the state of New York.

§ 490-f. Powers of superintendent to obtain payment from fund. In any case where the superintendent has taken possession of any party to the agreement and has been engaged in the liquidation thereof for one year, he may demand of the trustee or trustees payment to him from the fund of such sum as shall be necessary to enable him to pay a dividend on account of insured shares which taken together with any dividends previously paid on account thereof will equal fifty per centum of the established insured claim of shareholders. At the end of two years from the date upon which the superintendent took possession of any such party to the agreement he may demand of the trustee or trustees payment to him from the fund of such additional sum as shall be necessary to enable him

to pay a dividend on account of insured shares which taken together with dividends previously paid on account thereof shall equal seventy-five per centum of such established insured claims of shareholders. At the end of three years from the date upon which the superintendent took possession of any party to the agreement he may demand of the trustee or trustees payment to him from the fund of such additional sum as shall be necessary to enable him to pay the unpaid balance of such established insured claims of shareholders. Any payments demanded by the superintendent shall be paid to him from the fund by the trustee or trustees within thirty days of the date of such demand. Any sum realized by the superintendent from the liquidation of any party to the agreement after shareholders have been paid in full, shall be paid by him to the trustee or trustees of the fund to the extent of the aggregate of the sums paid by the trustee or trustees to the superintendent under the provisions of this section.

§ 490-g. Payment of liquidating dividends on uninsured shares. In the event of liquidation by the superintendent of any credit union which is a party to the agreement, he shall pay on account of its uninsured share liabilities and deposit liabilities, dividends in the same manner and amount as he would pay on account thereof if none of the share liabilities of such credit union were insured.

§ 490-h. Exemption of fund from taxation. The fund provided for by this article and the income thereof shall be exempt from all taxation now or hereafter imposed by the state of New York or by any county, municipality or local authority or subdivision.

§ 490-i. Liability for payment of contributions. Any credit union which is a party to the agreement provided for by this article shall be liable for the payment of any contribution called for by the trustee or trustees pursuant to such agreement in the same manner as it would be liable for the payment of a debt otherwise contracted.

§ 490-j. Powers of credit unions with respect to agreement. Any credit union organized under the provisions of this chapter shall have the power to become a party to the agreement provided for by this article, and to take all actions authorized or required by the terms of such agreement and to pay all contributions provided for therein. Any such contributions paid into the fund by any party to such agreement may be carried on its books by such party as an asset to the extent authorized by the superintendent.

ARTICLE 11-B
SALES FINANCE COMPANIES

Section 491. Definitions.
492. License.
492-a. Changes in control.
493. Action by superintendent on application.
494. License form; posting; limitations.
495. Revocation, suspension or surrender of licenses.
496. Judicial review.
497. Investigations and examinations.
498. Complaints.
498-b. Regulations and rulings.
499. Violations and penalties.
501. Repeal of inconsistent acts.
502. Severability.

§ 491. Definitions. In this article, unless the context or subject matter otherwise requires:

1. "Goods" means all chattels personal, but not including money and things in action.

2. "Motor vehicle" or "vehicle" means any device propelled or drawn by any power other than muscular power, upon or by which any person or property is or may be transported or drawn upon a public highway, road

or street. Unless otherwise specified, "motor vehicle" or "vehicle" also means a "mobile home" or "manufactured home". "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.

3. "Instalment buyer" or "buyer" or "retail buyer" means a person who buys goods from a retail seller and who executes a retail instalment contract in connection therewith.

4. "Instalment seller" or "seller" or "retail seller" means a person who sells goods to a retail buyer under or subject to a retail instalment contract.

5. "Retail instalment sale" or "sale" means a sale, other than for a commercial or business use or for the purpose of resale, of goods by a retail seller to a retail buyer for a time sale price payable in two or more instalments, payment of which is secured by a retail instalment contract.

6. "Retail instalment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property or a security interest in or a lien upon the goods, which are the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a contract whereby a security interest in favor of the seller is created or retained and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially

equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or for no other or for a nominal consideration has the option of becoming, the owner of the goods upon full compliance with the terms of the contract.

6-a. "Retail instalment obligation" or "obligation" means an agreement, entered into in this state, pursuant to which the buyer promises to pay, in instalments, the time sale price or prices of goods and/or services, or any part thereof. The term does not include (a) a retail instalment contract, (b) a retail instalment credit agreement or (c) an obligation which is intended to be and is ultimately insured or guaranteed under title three of the act of Congress entitled "Servicemen's Readjustment Act of 1944".

6-b. "Retail instalment credit agreement" or "credit agreement" means an agreement entered into in this state, pursuant to which the buyer promises to pay, in instalments, his outstanding indebtedness from time to time to a retail seller, not evidenced by a retail instalment contract or obligation, for one or more items of goods or services, whenever purchased or obtained, which provides for a service charge and under which instalment payments apply to his outstanding indebtedness from time to time.

7. "Sales finance company" means a person engaged, in whole or in part, directly or indirectly, in the business of purchasing or otherwise acquiring retail instalment contracts, obligations or credit agreements made by and between other parties, or any interest therein. The term includes a retail seller of motor vehicles engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers, which have aggregate unpaid time balances of twenty-five thousand dollars or more at any one time, exclusive of contracts repurchased from a sales finance company or financing agency, under an agreement to repurchase in case of default entered into as an incident to the bona fide sale thereof to a sales finance company or financing agency. The term does not include the pledgee of an aggregate number of contracts to secure a bona fide loan thereon. The term includes a person engaged, in whole or in part, directly or indirectly, in the business of

entering into retail instalment credit agreements with retail buyers pursuant to subdivision eleven of section four hundred thirteen of the personal property law.

8. "Superintendent" means the superintendent of financial services.

9. "Person" means an individual, partnership, corporation, association or other group, however organized.

10. Words in the singular include the plural and vice versa.

§ 492. License. 1. No person, except a bank, savings bank, savings and loan association, trust company, private banker, credit union, investment company organized under article twelve of this chapter and authorized to accept deposits, national bank, federal savings association, federal credit union, or out-of-state state bank, as such term is defined in subdivision two of section two hundred twenty-two of this chapter, or lender licensed pursuant to article nine of this chapter, shall engage in the business of a sales finance company in this state without a license therefor obtained from the superintendent, as provided in this article.

1-a. Subdivision one of this section does not apply to corporations subject to the insurance law and corporations and private bankers subject to the banking law in exercising the powers granted to them by chapter eight hundred ninety-seven of the laws of nineteen hundred thirty-four as heretofore or hereafter enacted.

2. Application for a license required under this article shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the following:

(a) The exact name of the applicant and date of incorporation, if incorporated;

(b) The complete address where the business is to be conducted, showing the street and number, if any, the office building and room number, if any, and the municipality and county;

(c) If the applicant has one or more branches, subsidiaries or affiliates operating in this state, the complete address of each such place of business; and

(d) The name and resident address of the owner or partners of the applicant or, if a corporation or association, of the directors, trustees and principal officers, and of any stockholder owning twenty per centum or more of its stock; and

(e) Such other pertinent information as the superintendent may require.

3. Where an applicant operates several places of business, separate applications for license shall be made for each such place of business.

4. At the time of filing an application for license, the applicant shall pay to the superintendent an investigation fee.

The investigation fee shall be as prescribed pursuant to section eighteen-a of this chapter, except that, when an applicant files applications for licenses for three or more places of business at the same time, the total investigation fee for all the applications shall be three times the amount as prescribed pursuant to section eighteen-a of this chapter.

§ 492-a. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall approve or disapprove the proposed change

of control of a licensee in accordance with the provisions of subdivision one of section four hundred ninety-three of this article. The superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the superintendent.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. As used in this section: (a) the term "person" includes an individual, partnership, corporation, association or any other organization, and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The

superintendent may in his discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

§ 493. Action by superintendent on application. 1. Upon the filing of an application for a sales finance company's license, and the payment of the fees for license and investigation, the superintendent

(a) May refuse to issue the license if he finds that the applicant, or any person who at the time of filing such application is an owner, director, officer, member, partner, employee, agent, or spouse of the applicant, has duly suffered a revocation of license under this article, or has been found guilty of a violation of any of the provisions of this article, or of any other law regulating retail instalment sales contracts, obligations or credit agreements, or has been responsible for any act or omission in consequence of which a license issued under this article to any person was duly revoked. The superintendent may likewise refuse to issue the license if he shall find that the experience, character and general fitness of the applicant are not such as to command the confidence of the community and to warrant the belief that the business will be conducted honestly and fairly within the purposes and intent of this article. For the purpose of this subdivision, the applicant shall be deemed to include all the members of the applicant if it is a partnership or unincorporated association, and all the stockholders, officers and directors of the applicant if it is a corporation; or

(b) Shall issue and deliver to the applicant a license to engage in business as a sales finance company in accordance with the provisions of this article at the location specified in said application.

2. The superintendent shall approve or deny every original application for a license hereunder within ninety days from the filing thereof with the said fees.

3. If the superintendent refuses to issue a license, he

(a) Shall notify the applicant of the denial, return the sum paid by the applicant as a license fee, but retain the investigation fee to cover the costs of investigating the applicant; and

(b) Within twenty days thereafter shall file a written decision and findings containing the reasons supporting the denial, and shall forthwith serve a copy thereof upon the applicant.

4. Each license issued hereunder shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in this article.

5. Only one place of business may be maintained under each license, but more than one license may be issued to the same licensee pursuant to this article.

6. No county, city, or other political subdivision of this state may require a licensee under this article to obtain a local license or pay a local fee for the privilege of engaging therein in the business of a sales finance company.

7. Any sales finance company in business on the date this act takes effect may continue in operation but must obtain a license within six months from said date in accordance with the provisions of this article.

§ 494. License form; posting; limitations. 1. Each license issued under this article shall state the address at which the licensed business is to be conducted and shall state fully the name of the licensee and, if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation and the address of its principal place of business. Such license shall be kept conspicuously posted in the licensee's specified place of business and shall not be transferable or assignable.

2. Whenever any licensee hereunder changes its place of business to another location, it shall give immediate written notice thereof to the

superintendent, who shall without charge attach to the license or endorse on it in writing a record of the change and the date thereof, which shall be authority for the operation of the business under such license at such new location.

3. No person, except a licensee, may make any representation, directly or indirectly, orally or in writing, that he is licensed under this article, and a licensee may make such a representation only in connection with the licensee's business as a sales finance company and in accordance with any rules and regulations of the superintendent.

§ 495. Revocation, suspension or surrender of licenses. 1. The superintendent may suspend or revoke any license issued under this article, if he shall find that:

(a) the licensee, knowingly or without the exercise of due care to prevent such violation, has violated any provision of this article, the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, or of any other law regulating instalment sales agreements, or has failed to comply with any demand, or requirement, lawfully made by the superintendent under and within the authority of this article; or

(b) there has been any material misstatement or failure to give a true reply to a question in the application for the license; or

(c) the licensee has defrauded any retail buyer to the buyer's damage; or wilfully failed to perform any written agreement with any retail buyer; or

(d) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the superintendent of financial services in refusing to issue such license originally.

(e) in the case of a licensee other than a natural person.

(1) any officer, director, trustee, or partner of such licensee has been guilty of any act or omission which would be cause for revoking or suspending a license of such party as an individual; or

(2) any other agent or employee of such licensee has been guilty of such act or omission and the licensee has approved or had knowledge

thereof or of acts or omission of like character and after such approval or knowledge has retained the benefit, proceeds, profit, or advantage of such act or omission or otherwise ratified it.

2. No license shall be suspended or revoked except after a hearing thereon. The superintendent shall give the licensee at least ten days' written notice of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. Any order suspending or revoking such license shall recite the grounds upon which it is based and shall not be effective until ten days after written notice thereof has been sent by registered mail to the licensee at such principal place of business.

3. The superintendent in his discretion may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist; but if he finds that grounds for revocation or suspension are of general application to all places of business, or to more than one place of business, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or those licenses to which the grounds for revocation or suspension apply, as the case may be.

4. Any licensee may surrender any license by delivering to the superintendent written notice that such license is thereby surrendered, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

5. No suspension, revocation or surrender of any license shall impair or affect the obligation of any instalment contract, obligation or credit agreement lawfully acquired previously thereto by the licensee.

6. The superintendent shall establish rules as to the form of hearings, findings, and orders which shall be reasonable and in the public interest.

7. The superintendent may, on good cause shown, or where there is a substantial risk of public harm, suspend any license issued pursuant to

this article for a period not exceeding thirty days, pending investigation. "Good cause", as used in this subdivision, shall exist only when the licensee has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this article.

§ 496. Judicial review. The refusal, suspension or revocation of a license by the superintendent shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules.

§ 497. Investigations and examinations. 1. The superintendent shall have the power to make such investigations as he shall deem necessary to determine whether any licensee or any other person has violated any of the provisions of this article or any other law relating to retail instalment sales, contracts, obligations or credit agreements, and to the extent necessary for this purpose, he may require the attendance of and examine any person under oath, and shall have the power to compel the production of all relevant books, records, accounts, and documents.

2. The superintendent shall have the power to make such examinations of the books, records, accounts and documents used in the business of any licensee as he shall deem necessary to determine whether such licensee has violated any of the provisions of this article or any other law relating to retail instalment sales, contracts, obligations or credit agreements.

3. The expenses incurred in making any examination pursuant to subdivision two of this section four hundred ninety-seven shall be assessed against and paid by the licensee so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such

assessment, the licensee shall become liable for and shall pay such assessment to the superintendent.

4. All reports of examinations and investigations, and all correspondence and memoranda concerning or arising out of such examinations or investigations, including any duly authenticated copy or copies thereof in the possession of any licensee or the department of financial services, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event he may publish or authorize the publication of a copy of any such report or other material referred to in this subdivision four, or any part thereof, in such manner, as he may deem proper.

§ 498. Complaints. 1. Any buyer having reason to believe that this article, or any other law regulating retail instalment sales, contracts, obligations or credit agreements, has been violated by any person may file with the superintendent a written complaint setting forth the details of such alleged violation. Upon receipt of such complaint, the superintendent, or any person duly designated by him, may inspect the pertinent books, records, letters and contracts of any licensee, and of any retail seller or other person involved, relating to such specific written complaint.

2. The superintendent or any person duly designated by him, shall have the power to hold hearings upon such complaints and to determine the time and place in this state, reasonably convenient to the parties involved, where they shall be held.

3. The superintendent shall make findings on any complaint on which a hearing has been held. The investigation, notice and hearing shall be in accordance with the provisions of this article and one copy of the findings shall be given to each such person involved in the complaint.

4. No licensee or other person shall be subject to examination or

investigation by the superintendent except as provided in this article. The superintendent shall have only such powers as are expressly delegated to him by this article.

§ 498-b. Regulations and rulings. The superintendent of financial services is hereby authorized and empowered to make such general rules and regulations, and such specific rulings, demands and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this article.

§ 499. Violations and penalties. Any person who violates or participates in the violation of any provision of this article, or who knowingly makes any incorrect statement of a material fact in any application, report or statement filed pursuant to this article, or who knowingly omits to state any material fact necessary to give the superintendent any information lawfully required by him or refuses to permit any lawful investigation or examination, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned for not more than six months or both, in the discretion of the court.

§ 501. Repeal of inconsistent acts. All acts and parts of acts inconsistent with this article are hereby repealed to the extent of such inconsistency.

§ 502. Severability. If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the remainder of this article or the application of such provision to other persons or other circumstances.

* ARTICLE 12

507. Limited liability investment companies.

508. General powers.
509. Restrictions on powers of investment companies.
510. Restrictions as to entries in books.
511. Change of location; change of designation of principal office.
512. Communications from department of financial services must be submitted to directors and noted in minutes.
513. Reports to superintendent.
514. Liability of investment company for assessments by superintendent.
515. Preservation of records of investment company.
516. Restrictions on officers, directors and other employees.
517. How net earnings credited for dividend purposes, credits to surplus fund and to undivided profits, dividends to stockholders.
518. Payment of claims by investment companies where adverse claim is asserted; effect of claims or advices originating in, and statutes, rules or regulations purporting to be in force in occupied territory.
519. Acquisition of control of investment companies.
520. Savings clause.

* NB Article heading & schedule of sections omitted in original enactment

§ 507. Limited liability investment companies. 1. Investment companies which (a) do not accept or maintain credit balances or deposits in the United States, (b) do not engage in any business activity in the United States except as an incident to their international or foreign business or operations, and (c) conduct business in compliance with the provisions of this chapter, may be formed and operated as limited liability investment companies. Such limited liability investment companies shall be formed in accordance with, shall operate in compliance with, and shall meet all of the requirements of the limited liability company law and this chapter, except that to the extent any provision of the limited liability company law shall be inconsistent with the provisions of this chapter, the provisions of this chapter

shall govern; provided, however, that limited liability investment companies shall not have perpetual existence.

2. Notwithstanding any other provision of this chapter, a limited liability investment company shall dissolve and its affairs shall be wound up upon the occurrence of any event specified in section seven hundred one of the limited liability company law. Upon such a dissolution, the provisions of this chapter shall govern the winding up of the affairs of the limited liability investment company and the distribution of its assets. Further, upon such a dissolution, if the members of a limited liability investment company wish to continue the existence of the company and meet the requirements of section seven hundred one of the limited liability company law, they shall apply for and may receive the approval of the superintendent for a new articles of organization and new authorization certificate.

3. For a period of one year following the effective date of this section, investment companies which have been formed and are operating pursuant to this article and article fifteen of this chapter on the effective date of this section, and which meet the requirements of subdivision one of this section, may convert into limited liability investment companies provided they meet all of the other requirements of this chapter as if they were newly formed companies and subject to the approval of the superintendent of financial services.

4. The superintendent is hereby authorized and empowered to make such general rules and regulations as may be necessary and proper to effectuate the provisions of this chapter relating to the formation and operation of limited liability investment companies.

§ 508. General powers. In addition to the powers conferred by article fifteen of this chapter, an investment company may, subject to the restrictions and limitations contained in this article, have the following powers:

1. (a) To borrow and lend money, with or without real or personal

security; as principal or agent, to purchase, discount, acquire, invest in, sell and dispose of bills of exchange, drafts, notes, acceptances and other choses in action and obligations for the payment of money; and, as principal or agent, to purchase, acquire, invest in, service, sell and dispose of, and make loans upon the security of, bonds and mortgages on real property situated in this state or outside this state.

(b) Pursuant to paragraph (a) of this subdivision, an investment company may lend money at a rate or rates, and upon such terms and conditions, as agreed to by such investment company and borrower.

2. To accept bills of exchange or drafts drawn upon it payable on demand or on time not exceeding one year from the date of acceptance; to issue letters of credit authorizing the holders thereof to draw upon it or its correspondents at sight or on time; and to buy and sell coin, bullion and exchange.

3. With the approval of the superintendent of financial services, and subject to such conditions as the superintendent of financial services shall impose,

(a) To act as financial agent of the United States government and as depositary of public money of the United States (including, without being limited to, revenues and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its officers, agents, or employees); and to perform all such reasonable duties as depositary of such public money and as financial agent of the United States government as may be required of it; and to pledge assets or furnish other security, satisfactory in form and amount to the secretary of the treasury of the United States, for the safekeeping and prompt payment of such public money deposited with it and for the faithful performance of its duties as financial agent of the United States government.

(b) To engage in the business of receiving deposits outside this state.

(c) To receive money for transmission and to transmit the same from the United States to any foreign country and from any foreign country to the United States.

4. To establish branches pursuant to the provisions of article two of this chapter; provided, however, that an investment company to which the provisions of subdivision two of section thirty-six of this chapter are inapplicable may establish branches, without applying and obtaining authorization therefor under the provisions of article two of this chapter, but such investment company shall not open any such branch until it shall have notified the superintendent in writing of the place where such branch is to be located.

5. To purchase, acquire, invest in and hold all or any of the stocks of any corporation, domestic or foreign, and to sell and dispose of all or any such stocks owned by it.

6. To exercise, subject to such regulations as may be issued from time to time by the superintendent, through any branch office opened and occupied outside the states of the United States and the District of Columbia with the approval of the superintendent as provided in article two of this chapter, such further powers as may be usual, in connection with the transaction of the business permitted by this article, in the place where such branch office shall transact business; provided that no such branch office shall engage in the general business of producing, distributing, buying or selling goods, wares, or merchandise.

The grant of powers to investment companies by or pursuant to this section shall not be deemed to limit or restrict any other corporations, heretofore or hereafter organized, in the exercise of their lawful powers.

§ 509. Restrictions on powers of investment companies. An investment company shall not:

1. Exercise within this state the powers conferred by subdivision two of section five hundred eight of this chapter, unless it shall have a paid-up capital stock of at least two million dollars.

2. Deposit any of its funds with any other moneyed corporation unless

such other corporation has been designated as such depositary by a vote of a majority of the directors of the investment company, exclusive of any director who is an officer, director or trustee of the depositary so designated; provided, however, that this limitation shall not apply to the deposit of funds by an investment company with another moneyed corporation, which owns all or a majority of the capital stock of such investment company.

3. Be the holder of any shares of its own capital stock unless such stock shall have been taken to prevent loss upon a debt previously contracted in good faith, and stock so acquired shall, within six months from the time of its acquisition, be sold or disposed of at public or private sale; nor shall it, either directly or indirectly, make any discount to any person for the purpose of enabling him to pay for or hold shares of its stock either subscribed for or purchased by him. Any investment company making any such discount shall forfeit to the people of the state twice the amount of such discount.

4. Except as provided in section five hundred eight of this article, engage in the business of receiving deposits; provided, however, that nothing contained in this article shall prevent an investment company from maintaining for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers, but the superintendent of financial services shall have power to prescribe, by specific or general regulation, the extent to which, and the conditions upon which, such credit balances may be established, maintained and paid out.

§ 510. Restrictions as to entries in books. 1. No investment company shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association or corporation, or under any title or designation that is not truly descriptive thereof.

2. Every investment company shall conform its methods of keeping its

books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to the provisions of article two of this chapter. Any investment company that refuses or neglects to obey such order shall be subject to a penalty in an amount as determined pursuant to section forty-four of this chapter for each day it so refuses or neglects.

§ 511. Change of location; change of designation of principal office. Any investment company may make a written application to the superintendent, such application to be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter, for leave to change its place or one of its places of business to another place or for leave to change the designation of its principal office to a branch office and to change the designation of one of its branch offices to its principal office. The application shall state the reasons for such proposed change, and shall be accompanied by a copy of a resolution authorizing the making of the application, certified by a principal officer of the investment company to have been adopted by vote of a majority of its entire board of directors. If the proposed place of business is within the limits of the village, borough or city, if in a city not divided into boroughs, in which the place of business sought to be changed is located, such change may be made upon the written approval of the superintendent; if beyond such limits, notice of intention to make such application, signed by a principal officer of the corporation, shall be published once a week for two successive weeks in a newspaper to be designated by the superintendent for the purpose, in accordance with the provisions of article two of this chapter. If the superintendent shall grant his or her certificate authorizing the change of location, as provided in article two of this chapter, the investment company may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein.

Anything contained in this chapter to the contrary notwithstanding, an investment company to which the provisions of subdivision two of section thirty-six of this chapter are inapplicable may change the location of its place or one of its places of business to another place or may

change the designation of its principal office to a branch office and change the designation of one of its branch offices to its principal office, without applying or obtaining authorization therefor under the provisions of this section or article two of this chapter, but no such change shall be made by an investment company until it shall have notified the superintendent in writing of the new location or of the change of designation of its principal office.

If the newly designated principal office be in a different county than the county in which the principal office is located immediately prior to the change, the superintendent shall file in the office of the clerk of each such county a certificate stating that such change has been made by the investment company.

§ 512. Communications from department of financial services must be submitted to directors and noted in minutes. Every official communication as defined in article two of this chapter directed to an investment company or to any officer thereof shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

§ 513. Reports to superintendent. On or before the first day of April in each year, every investment company shall make a written report to the superintendent of financial services which shall contain a statement of its condition on the morning of the first day of January in said year and shall be in the form and contain the matters prescribed by the superintendent. The superintendent may, however, in his discretion accept from an investment company which has branches in a foreign country or countries, a report containing a statement of its condition as of a date not later than the first day of January and not earlier than the first day of November in the preceding year. Every such report shall be subscribed and affirmed as true under the penalties of perjury, according to the best of their knowledge and belief, by the two principal officers of the investment company at the time of such subscription, and shall state that the usual business of the investment

company has been transacted at the location or locations required by this article and not elsewhere.

Every such investment company shall also make such other special reports to the superintendent as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be subscribed and affirmed as true under the penalties of perjury.

§ 514. Liability of investment company for assessments by superintendent. When the superintendent, pursuant to the powers conferred on him by article two of this chapter, shall have levied any assessment upon any investment company and shall have duly notified such investment company of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such investment company to the superintendent.

§ 515. Preservation of records of investment company. Every investment company shall preserve all its records of final entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon; provided, however, that preservation of photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section.

§ 516. Restrictions on officers, directors and other employees. No officer, director, clerk or other employee of any investment company, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he shall know to have been offered for discount to such corporation, and to have been refused. Every person violating the provisions of this subdivision, shall, for each offense, forfeit to the people of the state twice the amount of the loan which he shall have made.

No executive officer or director of any investment company shall borrow, directly or indirectly, from such investment company any sum of money if the transaction would not be permissible pursuant to subdivision eight of section one hundred three of this chapter in the case of an executive officer or director, as the case may be, of a bank or trust company.

Vacancies in the board of directors occasioned by resignations, deaths or other cause shall be reported by each investment company to the superintendent within ten days after the event; and the investment company shall likewise report each election by the board to fill such vacancy with the name, address and occupation of the person elected and the name of the person whose place he fills.

§ 517. How net earnings credited for dividend purposes, credits to surplus fund and to undivided profits, dividends to stockholders. When the net earnings of an investment company having preferred shares issued and outstanding have been determined at the close of a dividend period, if the surplus fund does not equal twenty per centum of the investment company's capital, one-tenth of such net earnings shall be credited to the surplus fund, or so much thereof, less than one-tenth, as will make such fund equal twenty per centum of such capital. The balance of such net earnings, or the entire amount thereof if such fund equals such twenty per centum, may be credited to the investment company's profit and loss account; or, if its expenses and losses for such dividend period exceed its gross earnings, such excess shall be charged to its profit and loss account. The credit balance of such account shall constitute the undivided profits at the close of such dividend period, which undivided profits shall be available for dividends.

The directors of any investment company may annually, semi-annually or quarterly, but not more frequently, declare such dividends as they shall judge expedient from such undivided profits; provided, however, that the directors of any such company may declare a dividend in the last month of the fiscal year of such company, in lieu of any other semi-annual or

quarterly declaration in the same fiscal year. No investment company shall declare any dividends to its stockholders until it shall have made good any existing impairment of its capital and any existing encroachment on its reserves required to be maintained against deposits.

§ 518. Payment of claims by investment companies where adverse claim is asserted; effect of claims or advices originating in, and statutes, rules or regulations purporting to be in force in occupied territory. 1. Notice to any investment company of an adverse claim to a credit standing on its books to the account of any person, or of an adverse claim to securities or other property held for the account of any person, shall not be effectual to cause said investment company to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said investment company from a court of competent jurisdiction in the United States in a cause therein instituted by him wherein the person to whose account the credit stands, or for whose account the securities or other property are held, or his executor or administrator is made a party and served with summons, or shall execute to said investment company, in form and with sureties acceptable to it a bond, indemnifying said investment company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of or delivery pursuant to such adverse claim or the dishonor of the order of the person to whose account the credit stands on the books of said investment company or for whose account the securities or other property are held by said investment company.

2. (a) An investment company need not recognize or give any effect to (1) any claim to a credit standing on its books to the account of, or any claim to securities or other property held by it for the account of, any corporation, firm or association in occupied territory or (2) any advice, statute, rule or regulation purporting to cancel or to give notice of the cancellation of the authority of any person at the time appearing on the books of such investment company as authorized to withdraw or otherwise dispose of cash, securities or other property of such corporation, firm or association, unless such investment company is

required so to do by appropriate process procured against it in a court of competent jurisdiction in the United States in a cause therein instituted by or in the name of such corporation, firm or association, or unless the person making such claim or giving such advice or invoking such statute, rule or regulation, as the case may be, shall execute to such investment company, in form and with sureties acceptable to it, a bond indemnifying it from any and all liability, loss, damage, costs and expenses for and on account of recognizing or giving any effect to such claim, advice, statute, rule or regulation.

(b) For the purposes of this subdivision (1) the term "occupied territory" shall mean territory occupied by a dominant authority asserting governmental, military or police powers of any kind in such territory, but not recognized by the United States as the de jure government of such territory, and (2) the term "corporation, firm or association in occupied territory" shall mean a corporation, firm or association which has, or at any time has had, a place of business in territory which has at any time been occupied territory.

(c) The foregoing provisions of this subdivision shall be effective only in cases where (1) such claim or advice purports or appears to have been sent from or is reasonably believed to have been sent pursuant to orders originating in, such occupied territory during the period of occupation, or (2) such statute, rule or regulation appears to have emanated from such dominant authority and purports to be or to have been in force in such occupied territory during the period of occupation.

(d) The foregoing provisions of this subdivision shall apply to claims, advices, statutes, rules or regulations made, given or invoked either prior to, or on or subsequent to the effective date of this act.

3. An investment company need not recognize or give any effect to a claim of authority to order the payment or delivery of any funds or other property standing on its books to the credit of, or held by it for the account of, any person, corporation, unincorporated association or partnership, which claim conflicts with a claim of authority of which the investment company had prior notice, unless the person or persons asserting such subsequent claim shall procure a restraining order, injunction or other appropriate process against said investment company from a court of competent jurisdiction in the United States, or, in lieu

thereof, at the option of said investment company, shall execute to said investment company, in form and with sureties acceptable to it, a bond, indemnifying it for any and all liability, loss, damage, costs and expenses for or on account of any payment or delivery of such property by it pursuant to such subsequent claim of authority on for or on account of the dishonor of any draft or other order of any person or persons asserting the claim of authority of which such investment company already had notice at the time the subsequent conflicting claim of authority is asserted by the person or persons furnishing such bond.

§ 519. Acquisition of control of investment companies. 1. Subject to such regulations as the superintendent may prescribe, prior to the acquisition of control of an investment company by means of the acquisition of the capital stock or equity interests in such investment company or in any company which directly or indirectly controls such investment company, the acquiring company shall make written application to the superintendent for permission to acquire such control. Such application shall be in such form and shall contain such information as the superintendent may require and such applicant, at the time of making such application, shall pay to the superintendent an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

The superintendent shall disapprove the proposed exercise of control of an investment company if, after notice to and an opportunity to be heard by the applicant and such investment company, he finds the acquisition of control therein contrary to law or determines that disapproval is reasonably necessary to protect the interests of the people of this state. In making such determination, the superintendent shall only consider (a) whether the character, responsibility and general fitness of the company which seeks to control such investment company are such as to command confidence and warrant belief that the business of such investment company will be honestly and efficiently conducted in a manner consistent with the public interest, the interests of depositors and creditors of such investment company, and (b) whether the exercise of control may impair the safe and sound conduct of the business of such investment company, the conservation of its assets or

public confidence in its business. Unless the superintendent shall have denied such application in writing within ninety days of the filing thereof, or shall have advised the applicant in writing before the expiration of ninety days of his determination to extend such period an additional sixty days, such application shall be deemed approved.

As used in this subdivision one, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by means of the ownership of the voting stock or equity interests of such person or of one or more persons controlling such person, by means of a contractual arrangement, or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock of any investment company or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock of such investment company, but no person shall be deemed to control an investment company solely by reason of his being an officer or director of such investment company. The superintendent may in his discretion, upon the application of an investment company or any company which, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such investment company, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such investment company for purposes of this section.

The provisions of this subdivision shall not apply to (1) a company which has submitted a plan of acquisition to the superintendent pursuant to subdivision two of this section or (2) any action taken pursuant to article thirteen of this chapter.

2. Any company, whether or not it is in control of the business of an investment company as provided in subdivision one of this section, which desires to acquire all, or substantially all of the capital stock of an investment company shall, together with such investment company, submit in duplicate to the superintendent a written plan of acquisition of such stock together with such other information as the superintendent may

determine. Such plan shall be in form satisfactory to the superintendent, shall specify each investment company the stock of which is to be acquired by the company and shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect, including the manner of exchanging the shares of the investment company for shares or other securities or cash of the company. Any such plan may provide for the payment of cash in lieu of the issuance of fractional shares of the company.

At the time of submission to the superintendent of the written plan of acquisition of stock, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent.

There shall be submitted, in duplicate, to the superintendent with the plan of acquisition of stock, a certificate of the president or secretary of the company, certifying that such plan has been approved by the board of directors or other governing body of his company by a majority vote of all the members thereof, and a certificate of the president, secretary or cashier of the investment company, the acquisition of all the capital stock of which is provided for, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in the county in which such corporation has its principal place of business and that such plan has been approved at such meeting by the vote of the stockholders owning at least two-thirds in amount of the stock of such corporation.

The superintendent shall approve or disapprove of a proposed plan of acquisition within one hundred twenty days after the submission of such plan of acquisition to him, and in determining whether or not to approve any such plan the superintendent shall take into consideration the declaration of policy contained in section ten of this chapter. If the

superintendent shall approve such plan of acquisition, the superintendent shall file the plan, together with such certificates and the original of the approval of the superintendent, in the office of the superintendent. Upon such filing in the office of the superintendent the plan, and the acquisitions provided for therein, shall become effective, unless a later date is specified in the plan, in which event the plan and such acquisitions shall become effective upon such later date.

Any stockholder of any such corporation, entitled to vote on such plan of acquisition, who does not assent thereto shall, subject to and by complying with section six thousand twenty-two of this chapter, have the right to receive payment of the fair value of his shares and the other rights and benefits provided by such section.

The provisions of this subdivision shall not apply to any action taken pursuant to article thirteen of this chapter.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe in writing, the provisions of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of an investment company. Thereafter, such legal representative shall comply with the provisions of subdivision one of this section. The provisions of subdivision one of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative," for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. For purposes of this section the term "company" shall be given the same meaning as is contained in its definition in section one hundred forty-one of this chapter.

5. Notwithstanding the provisions of subdivision three of section two-a of this chapter, when applying this section to limited liability investment companies, the term "capital stock" shall mean the equity interest of a member as set forth in the company's articles of organization or, in the absence of such a provision, the equity interest represented by a member's right to a proportionate share of the profits of the company.

§ 520. Savings clause. Nothing in this article contained shall be deemed to require the reincorporation of any corporation heretofore organized under the provisions of article seven of chapter three hundred and sixty-nine of the laws of nineteen hundred fourteen, entitled "An act in relation to banking corporations, and individuals, partnerships, unincorporated associations and corporations under the supervision of the banking department," constituting chapter two of the consolidated laws, or under the provisions of said article seven of said chapter two of the consolidated laws, or under the provisions of said article seven of said chapter as amended, nor to alter or affect any rights, privileges, powers, benefits, or immunities granted to such corporations by the provisions of any law of this state. Such corporations shall have all of the rights, privileges, powers, benefits and immunities provided by any laws of this state with the same effect as if such corporations were referred to in such laws as organized under this article; and no further amendment to any such laws shall be required to give such corporations such rights, privileges, powers, benefits and immunities. Except as in this article otherwise provided such corporations shall be subject to all of the obligations and duties of investment companies organized under the provisions of this article, and such corporations shall have all of the rights, privileges, powers, benefits and immunities by this article granted to such companies.

ARTICLE XII-A
MUTUAL TRUST INVESTMENT COMPANIES

Section 550. Incorporation; organization certificate.

551. Investment powers.
552. Accountability.
553. Investment by fiduciaries in shares.

§ 550. Incorporation; organization certificate. When authorized by the superintendent as provided in article two of this chapter, five or more persons may form a corporation to be known as a mutual trust investment company. Such persons shall subscribe and acknowledge and submit to the superintendent at the superintendent's office an organization certificate in duplicate which shall specifically state:

1. The name by which the mutual trust investment company is to be known and the investment purpose of its formation under the following section five hundred fifty-one.

2. The place where its principal office is to be located.

3. The amount of its capital stock and the number of shares into which such capital stock shall be divided.

4. The full name, residence and post-office address of each of the incorporators and the number of shares subscribed for by each.

5. The term of its existence, which may be perpetual.

6. The number of its directors, which shall not be less than five and the names and addresses of the persons who shall be its directors until the first annual meeting of stockholders.

Such certificate may provide for the manner in which the stock of the corporation may be transferred and for the number of directors necessary to constitute a quorum.

When the superintendent shall have endorsed his approval on the organization certificate as provided in article two of this chapter, the corporate existence shall begin.

§ 551. Investment powers. A mutual trust investment company may invest in such investments as the company may select in its discretion.

The amount of stock of any corporation which may be held by any mutual trust investment company shall not exceed five per centum of the number of shares of stock of such corporation outstanding at the time of investment by such mutual trust investment company.

§ 552. Accountability. A mutual trust investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stocks or shares and shall not be liable for accepting funds from a fiduciary in violation of the restrictions in any will, deed or other instrument in the absence of actual knowledge of such violation, and shall be accountable only to the fiduciaries who are the owners of its stocks or shares.

§ 553. Investment by fiduciaries in shares. Unless the instrument or the order, decree or judgment under which moneys are held in a fiduciary capacity prohibits such investment, an eligible fiduciary or fiduciaries may invest and reinvest moneys so held in shares of stock of one or more mutual trust investment companies as it may determine.

The net aggregate amount of moneys of any estate, trust or fund invested in shares of a mutual trust investment company shall not at any time exceed the maximum amount permitted by such rules and regulations as may be promulgated by the superintendent of financial services.

"An eligible fiduciary or fiduciaries" shall be deemed to mean a trust company or a national banking association having its principal office within the state of New York and acting either as sole fiduciary or with one or more co-fiduciaries.

ARTICLE XII-B

INSURANCE PREMIUM FINANCE AGENCIES

Section 554. Definitions.
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559. Grounds for revocation of license; procedure.
560. Investigations and examinations.
561. Regulations and rulings.
563. Violations and penalties.
565. Licensee's books and records; reports.
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§ 554. Definitions. In this article, unless the context otherwise requires:

1. "Authorized insurer" and "insurance contract" have the respective meanings assigned to them by the insurance law.

2. "Bank" means a bank, trust company, private banker, savings bank, savings and loan association, credit union, investment company organized under article twelve of this chapter and authorized to accept deposits, national bank, federal savings association, federal credit union, or out-of-state state bank, as such term is defined in subdivision two of section two hundred twenty-two of this chapter, having a principal, branch or trust office in this state.

3. "Insurance agent" and "insurance broker" mean, respectively, an insurance agent or insurance broker duly licensed as such under the insurance law.

4. "Insured" means a person who enters into a premium finance agreement with a premium finance agency or makes and delivers a premium finance agreement to, or to the order of, an insurance agent or broker, whether or not he is insured under an insurance contract, premiums for which are advanced or to be advanced under the premium finance agreement.

5. "Lending institution" means a bank or a lender licensed pursuant to article nine of this chapter.

6. "Person" means an individual, corporation, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

7. "Premium finance agency" means:

(a) a person engaged, in whole or in part, in the business of entering into premium finance agreements with insureds, including a bank if so engaged; or

(b) a person engaged, in whole or in part, in the business of acquiring premium finance agreements from insurance agents or brokers or other premium finance agencies, including a bank if so engaged and an insurance agent or broker who is licensed as a premium finance agency and who holds premium finance agreements made and delivered by insureds to him or his order.

8. "Premium finance agreement" means a promissory note or other written agreement by which an insured promises or agrees to pay to, or to the order of, either a premium finance agency or an insurance agent or broker the amount advanced or to be advanced under the agreement to an authorized insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a service charge as authorized and limited by law. If the premium finance agreement is payable to, or to the order of, an insurance agent or broker not licensed as a premium finance agency, payments under the agreement must be payable at the office of a premium finance agency named in the agreement, to whom the agreement is by its terms to be and is subsequently assigned. The term "premium finance agreement" does not include a retail instalment credit agreement which complies with the provisions of paragraph (b) of subdivision eleven of section four hundred thirteen of the personal property law.

9. "Superintendent" means the superintendent of financial services.

§ 555. License. 1. No person except a lending institution or an authorized insurer shall engage in the business of a premium finance agency without a license therefor obtained from the superintendent, as provided in this article.

2. Application for license required under this article shall be in writing, and in the form prescribed by the superintendent.

3. When an applicant has more than one office, separate applications for license shall be made for each such office.

4. At the time of filing an application for a license, the applicant shall pay to the superintendent an investigation fee. The investigation fee shall be as prescribed pursuant to section eighteen-a of this chapter, except that, when an applicant files applications for licenses for three or more offices at the same time, the total investigation fee for all the applications shall be three times the amount prescribed pursuant to section eighteen-a of this chapter.

§ 555-a. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of subdivision one of section five hundred fifty-six of this article. The superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the superintendent.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the

provisions of such court appointment.

4. As used in this section: (a) the term "person" includes an individual, partnership, corporation, association or any other organization, and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The superintendent may in his discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

§ 556. Action by superintendent on application. 1. Within ninety days after the filing of an application for a license accompanied by payment of the fees for license and investigation, the superintendent shall issue the license, or the superintendent may refuse to issue the license if he shall find that the financial responsibility, experience, character and general fitness of the applicant or any person associated with the applicant are not such as to command the confidence of the community and to warrant the belief that the business will be conducted honestly, fairly and efficiently within the purposes and intent of this article. For the purpose of this subdivision, the applicant shall be deemed to include all the members of the applicant if it is a partnership or unincorporated association, and all the stockholders, officers and directors of the applicant if it is a corporation. Such license to engage in business in accordance with the provisions of this

article at the location specified in the application shall be executed in triplicate by the superintendent and he shall transmit one copy thereof to the applicant, file a copy in the office of the department of financial services, and file a copy in the office of the clerk of the county in which is located the place designated in such license.

2. If the superintendent refuses to issue a license, he shall notify the applicant of the denial, return to the applicant the sum paid as a license fee, but retain the investigation fee to cover the costs of investigating the applicant.

3. Each license issued hereunder shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in this article.

4. Only one office may be maintained under each license, but more than one license may be issued to the same licensee pursuant to this article.

5. Any person engaged in the business of a premium finance agency on the date this act takes effect may continue in operation in accordance with the provisions of this article but must obtain a license for each office at which he engages in the business of a premium finance agency by January first, nineteen hundred sixty-one.

§ 557. License provisions and posting. Such license shall state the name and address of the licensee, and if the licensee be a co-partnership or association, the names of the members thereof, and if a corporation the date and place of its incorporation. Such license shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

§ 558. Change of location. Before any licensee changes any office of his to another location, he shall give written notice thereof to the superintendent, who shall without charge issue an endorsement indicating the change and the date thereof, which endorsement shall be attached to

the license for such office and be authority for the operation of the business under such license at such new location.

§ 559. Grounds for revocation of license; procedure. 1. The superintendent may forthwith revoke or suspend any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or any sum of money lawfully demanded, or to comply with any demand, ruling, or requirement of the superintendent lawfully made pursuant to and within the authority of this article;

(b) The licensee has violated any provision of this article, the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended or any rule or regulation lawfully made by the superintendent under and within the authority of this article;

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the superintendent in refusing originally to issue such license.

2. The superintendent may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to such licensee or such number of licenses as such grounds apply to, as the case may be.

3. Any licensee may surrender any license by delivering to the superintendent written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

4. No revocation or suspension or surrender of any license shall impair or affect the obligation of an insured under any lawful premium finance agreement previously acquired or held by the licensee.

5. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this article, but the superintendent shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the superintendent in refusing originally to issue such license under this article.

6. Whenever the superintendent shall revoke or suspend a license issued pursuant to this article, he shall forthwith execute in triplicate a written order to that effect. The superintendent shall file one copy of such order in the office of the department, file another in the office of the clerk of the county in which is located the place designated in such license and forthwith serve the third copy upon the licensee, which order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such special proceeding for review as authorized by this section must be commenced within thirty days from the date of such order of suspension or revocation.

7. The superintendent may, on good cause shown, or where there is a substantial risk of public harm, suspend any license issued pursuant to this article for a period not exceeding thirty days, pending investigation. "Good cause", as used in this subdivision, shall exist only when the licensee has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this article.

§ 560. Investigations and examinations. 1. The superintendent shall have the power to make such investigations as he shall deem necessary to determine whether any licensee or any other person has violated any of the provisions of this article, or whether any licensee has conducted himself in such manner as would justify the revocation of his license,

and to the extent necessary therefor, he may require the attendance of and examine any person under oath, and shall have the power to compel the production of all relevant books, records, accounts, and documents.

2. The superintendent shall have the power to make such examinations of the books, records, accounts and documents used in the business of any licensee as he shall deem necessary to determine whether any such licensee has violated any of the provisions of this article.

3. The expenses incurred in making any examination pursuant to subdivision two of this section five hundred sixty shall be assessed against and paid by the licensee so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the superintendent.

4. All reports of examinations and investigations, and all correspondence and memoranda concerning or arising out of such examinations or investigations, including any duly authenticated copy or copies thereof in the possession of any licensee or the department of financial services, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event he may publish or authorize the publication of a copy of any such report or other material referred to in this subdivision four, or any part thereof, in such manner as he may deem proper.

§ 561. Regulations and rulings. The superintendent is hereby authorized and empowered to make such general rules and regulations, conduct hearings and make such specific rulings, orders, demands and findings as may be necessary for the proper conduct of the business

authorized and licensed under and for the enforcement of this article.

§ 563. Violations and penalties. 1. Any person, including any member, officer, director or employee of a licensee, who violates or participates in the violation of any provision of this article, or who knowingly makes any incorrect statement of a material fact in any application, report or statement filed pursuant to this article, or who knowingly omits to state any material fact necessary to give the superintendent any information lawfully required by him or refuses to permit any lawful investigation or examination, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned for not more than six months or both, in the discretion of the court.

2. A premium finance agency's knowingly taking or receiving from or charging an insured a greater charge than authorized in this article shall be held and adjudged a forfeiture of all charges which the premium finance agreement carries with it or which have been agreed to be paid thereon, and if a greater charge has been paid by an insured, the person paying the same or his legal representative may recover from the premium finance agency twice the entire amount of the charges thus paid if action is brought within two years from the time of such payment.

3. No licensee shall make, directly or indirectly, orally or in writing, or by any method, practice or device, a representation that he is licensed under the banking law except that a licensee may make a representation that he is licensed as a premium finance agency under the banking law and is licensed to finance insurance premiums.

§ 565. Licensee's books and records; reports. 1. The licensee shall keep and use in his business such books, accounts and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts and records, including

cards used in a card system, if any, for at least six years after making the final entry in respect to any premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this requirement.

2. Each licensee shall annually on or before the first day of February file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state under the authority of this article. Upon good cause shown by a licensee, the superintendent may extend the time for filing such report for a period not in excess of sixty days. Such report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and be in the form prescribed by the superintendent who may make and publish annually an analysis and recapitulation of such reports. In addition to such annual reports, the superintendent may require of licensees such additional regular or special reports as he may deem necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

§ 566. Insurance agents and brokers; acquisition by premium finance agencies of premium finance agreements. 1. An insurance agent or broker may be licensed as a premium finance agency in accordance with this article.

2. Notwithstanding any contrary provisions of the personal property law, banking law or other law:

(a) No premium finance agency, and no employee of such an agency shall pay, allow or offer to pay or allow in any manner whatsoever to an insurance agent or broker or any employee of an insurance agent or broker, or to any other person, either as an inducement to the financing of any insurance policy with the premium finance agency or after any such policy has been financed, any rebate whatsoever, either from the

service charge for financing specified in the premium finance agreement or otherwise, or shall give or offer to give any valuable consideration or inducement of any kind directly or indirectly, other than an article of merchandise not exceeding one dollar in value which shall have thereon the advertisement of the premium finance agency, but a premium finance agency may purchase or otherwise acquire a premium finance agreement, provided that it conforms to this article in all respects, from an insurance agent or broker or another premium finance agency with recourse against the agent, broker or agency on such terms and conditions as may be mutually agreed upon; and

(b) No filing of the assignment or notice thereof to the insured shall be necessary to the validity of the written assignment of a premium finance agreement as against creditors or subsequent purchasers, pledgees or encumbrances of the assignor.

§ 567. Form and content of premium finance agreements. 1. A premium finance agreement shall be in writing and dated on the date of its signature by the insured; the printed portion thereof shall be in at least eight point type.

2. It shall contain the entire agreement of the parties with respect to the insurance contract, the premiums for which are advanced or to be advanced under it, and:

(a) At its top, the words PREMIUM FINANCE AGREEMENT in at least ten point bold type; and

(b) A notice in at least eight point bold type, reading as follows: NOTICE: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement. 3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.

3. A premium finance agreement shall:

(a) Contain the name and place of business of the insurance agent or broker, if any, negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by him,

the name and place of business of the premium finance agency which is to hold or acquire the agreement and to which instalment or other payments are to be made, a description of the insurance contract, the premiums for which are advanced or to be advanced under the agreement, and the amount of the premiums for such insurance contract; and

(b) Set forth the items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

4. No premium finance agreement shall be signed by an insured when it contains any blank space to be filled in after it has been signed; however, if any insurance contract, the premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of its signature by the insured and it so provides, the name of the authorized insurer by whom such insurance contract is issued and the policy number and the due date of the first instalment may be left blank and later inserted in the original of the agreement after it has been signed by the insured.

§ 568. Limitation on service and other charges. 1. A premium finance agency shall not, except as otherwise provided by law, impose, take, receive from, reserve or charge an insured greater charges than are permitted by this article.

2. A premium finance agency, including an insurance agent or broker licensed as such, may, in a premium finance agreement, contract for, and if so contracted for, the holder of the agreement may charge, receive and collect a service charge, for financing or arranging the financing of premiums under the agreement, computed as provided in subdivision four.

3. An insurance agent or broker not licensed as a premium finance agency may, in a premium finance agreement which is payable to the agent or broker or his order at the office of a premium finance agency and which is endorsed or otherwise transferred or assigned to such a premium finance agency, contract for and, if so contracted for, the premium

finance agency holding the agreement may charge, receive and collect charges for financing or arranging the financing of premiums under the agreement, computed as provided in subdivision four.

4. (a) The service charge provided for in this section shall be computed on the principal balance of the premium finance agreement from the inception date of the insurance contract, the premiums for which are advanced or to be advanced under the agreement, or from the due date of such premiums, disregarding any period of grace or credit allowed for payment thereof, to and including the date when the final instalment of the premium finance agreement is payable, at not exceeding fourteen dollars per one hundred dollars per annum, plus an additional charge of ten dollars per premium finance agreement, which additional charge need not be refunded upon cancellation or prepayment, provided, however, that no insurance agent or broker or premium finance agency shall induce an insured to become obligated under more than one premium finance agreement for the purpose of obtaining more than one additional charge.

(b) In computing the service charge permitted by this subdivision, if the premium finance agreement is executed later than thirty days after the inception date, there shall be deducted from the amount of such service charge an amount which bears the same proportion to such service charge, as (i) the number of days from the thirtieth day after the inception date until the day of execution of the premium finance agreement, bears to (ii) the number of days from the inception date to the date when the final instalment of the premium finance agreement is payable. No deduction shall be required under this paragraph, however, if the amount thereof is less than one dollar. For purposes of this paragraph the term "inception date" shall mean the inception date of the insurance contract being financed, or the due date of the premium being financed (disregarding any period of grace or credit allowed for payment thereof), which ever shall be earlier.

(c) Such service charge shall be computed on the principal balance of a premium finance agreement payable in successive monthly instalments substantially equal in amount for a period of one year. On a premium finance agreement providing for instalments extending for a period less than or greater than one year, the service charge shall be computed proportionately.

(d) When a premium finance agreement provides for unequal or irregular instalments, the service charge shall be computed at the effective rate provided for in paragraph (a), having due regard for the schedule of instalments.

(e) The foregoing charges shall be inclusive of all charges incident to the premium finance agreement and for the extension of credit provided for therein.

(f) The foregoing paragraphs of this subdivision four apply if the premiums under only one insurance contract are advanced or to be advanced under a premium finance agreement; if premiums under more than one insurance contract are advanced or are to be advanced under a premium finance agreement, the service charge shall be computed as if the premiums under each insurance contract were advanced or to be advanced under separate premium finance agreements.

§ 569. Delinquency, collection and cancellation charges; attorney's fees. 1. A premium finance agreement may provide for the payment by the insured of a delinquency and collection charge on each instalment in default for a period of not less than five days in an amount of one dollar to a maximum not in excess of five per centum of such instalment, provided however, that when any personal, household or domestic insurance contract are listed in the agreement the charge shall not exceed five dollars and, provided that only one such delinquency and collection charge may be collected on any such instalment regardless of the period during which it remains in default and, if the default results in the cancellation of any personal, household or domestic insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency and collection charge imposed in respect to the instalment in default and five dollars.

2. A premium finance agreement may also provide for the payment of attorney's fees not exceeding twenty per centum of the amount due and payable under the agreement if it is referred for collection to an attorney not a salaried employee of the premium finance agency holding the agreement.

3. Notwithstanding the provisions of this section, a premium finance agency shall not take or receive from or charge an insured any cancellation charge or attorney's fees unless, within ten days after default in the payment of any instalment of a premium finance agreement, the agency has mailed a notice of the default to the insured at his address as shown on the agreement and to any insurance agent or broker named therein at his place of business as shown therein.

§ 570. Restrictions on premium finance agreements. 1. No premium finance agreement shall contain any provision by which:

(a) In the absence of default of the insured, the premium finance agency holding the agreement may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(b) A power of attorney is given to confess judgment in this state; or

(c) The insured relieves the insurance agent or broker or the premium finance agency holding the agreement from liability for any legal rights or remedies that the insured may otherwise have against the insurance agent or broker.

2. No person may use a premium finance agreement in a manner designed to evade any requirement of article seventy-eight of the insurance law.

3. Every person or premium finance agency that enters into a premium finance agreement, as such terms are defined pursuant to article twelve-B of this chapter, shall file in the office of the superintendent of financial services, on or before the first day of March, a statement, to be known as its annual statement, verified by the oath of at least two of its principal officers, showing its condition at the end of the preceding calendar year. The statement shall be in such form and shall contain such other matters as the superintendent of financial services shall prescribe. In addition to any other requirements, the annual statement shall specify the total number, aggregate face amount and life settlement proceeds of, policies settled during the immediately preceding calendar year, together with a breakdown of the information by

policy issue year.

§ 571. Delivery of copy of premium finance agreement. Before the due date of the first instalment payable under a premium finance agreement, the insurance agent or broker or the premium finance agency holding the agreement shall deliver to the insured, or mail to him at his address as shown in the agreement, a copy thereof or, if the agreement contained any blank space when it was signed by the insured and such blank space was subsequently filled in in accordance with subdivision four of section five hundred sixty-seven, a copy of the agreement, as so filled in.

§ 572. Notice of assignment; payments. Unless the insured has notice of actual or intended assignment of a premium finance agreement, payment thereunder by him to the last known holder of the agreement shall be binding upon all subsequent holders or assignees.

§ 573. Statement of account; receipts. 1. At any time after its execution, but not later than one year after the last payment thereunder, a premium finance agency holding a premium finance agreement shall, upon written request of the insured, give or mail to him a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied once each year without charge; if any additional statement is requested the premium finance agency shall supply such statement at a charge not exceeding one dollar for each additional statement so supplied. An insured shall be given a receipt for a payment when made in cash.

2. After the payment of all sums for which an insured is obligated under a premium finance agreement, and upon his written demand, the premium finance agency holding the agreement shall deliver, or mail to the insured at his last known address such one or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all interests in or rights to the insurance

contracts, the premiums for which are advanced or are to be advanced under the agreement.

§ 574. Credit upon anticipation of payments. 1. Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final instalment of the balance thereof and, if he does so and the agreement included an amount for service charge, shall receive and be entitled to receive for such anticipation a refund credit thereon.

2. The amount of any such refund credit shall represent at least as great a proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of instalments in the agreement. Such refund shall be computed in the service charge exclusive of the additional charge. Where the amount of the refund credit for anticipation of payment is less than one dollar, no refund need be made.

§ 575. Refinancing. A premium finance agency may, upon agreement with the insured, extend the scheduled due date or defer the scheduled payment of all or of any part of any instalment or instalments payable thereunder. The agreement for such extension or deferment must be in writing and signed by the parties thereto. The premium finance agency may charge and contract for the payment of an extension or deferral charge by the insured and collect and receive the same, but such charge may not exceed an amount equal to one per centum per month simple interest on the amount of the instalment or instalments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred instalment or instalments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such instalment or instalments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any

case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar.

§ 576. Cancellation of insurance contract upon default. 1. When a premium finance agreement contains a power of attorney or other authority enabling the premium finance agency to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless such cancellation is effectuated in accordance with the following provisions:

(a) Not less than ten days written notice shall be mailed to the insured at his last known address as shown on the records of the premium finance agency, of the intent of the premium finance agency to cancel the insurance contract unless the default is cured within such ten day period and that at least three days for mailing such notice is added to the ten day notice. A copy of the notice of intent to cancel shall also be mailed to the insurance agent or broker.

(b) Service of the notice of intent to cancel or notice of cancellation by mail shall be effective provided that the notices are mailed to the insured's last known address as shown on the records of the premium finance agency. The records of the premium finance agency shall be presumptive evidence as to the correctness of such address.

(c) If the insurance contract or contracts provide motor vehicle liability insurance, every such notice of cancellation shall include in type or print, of which the face shall not be smaller than twelve point, a statement that proof of financial security is required to be maintained continuously throughout the registration period and a notice prescribed by the commissioner of motor vehicles indicating the punitive effects of failure to maintain continuous proof of financial security and actions which may be taken by the insured to avoid punitive effects.

(d) After the notice in paragraph (a) above has expired, the premium finance agency may thereafter, in the name of the insured, cancel such insurance contract by mailing to the insurer a notice of cancellation stating when thereafter the policy shall be cancelled, and the insurance contract shall be cancelled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract. A copy of the notice of cancellation shall also

be mailed to the insured.

(e) All statutory, regulatory and contractual restrictions providing that the insured may not cancel his insurance contract unless he or the insurer first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier or an individual or a person designated to receive such notice for said governmental agency, insurance carrier or individual, shall apply where cancellation is effected under the provisions of this section. The insurer shall in accordance with said prescribed notice where it is required to give such notice in behalf of itself or the insured give notice to such governmental agency, person or individual and it shall determine and calculate the effective date of cancellation from the day it receives the copy of the notice of cancellation from the premium finance agency; provided (1) where the aforementioned prescribed notice requires that more than ten days' notice be given, the prescribed time for such notice shall control as to the effective date of cancellation, and (2) where less than ten days' notice is required by the aforementioned prescribed notice the effective date of cancellation shall not be prior to the date contained in the copy of the cancellation notice sent by the premium finance agency.

Notwithstanding that certain provisions of section ninety-three-c of the vehicle and traffic law as added by chapter six hundred fifty-five of the laws of nineteen hundred fifty-six and its successor statute, section three hundred thirteen of the vehicle and traffic law, as enacted by chapter seven hundred seventy-five of the laws of nineteen hundred fifty-nine are consistent with certain of the provisions of this article, those sections shall not be applicable to concellation of insurance by a premium finance agency under the provisions of this article.

(f) The insurer or insurers within a reasonable time not to exceed sixty days after the effective date of cancellation, shall return whatever gross unearned premiums are due under the insurance contract or contracts on a pro rata basis to the premium finance agency for the benefit of the insured or insureds. However, upon such cancellation the insurer or insurers shall be entitled to retain a minimum earned premium on the policy of ten percent of the gross premium or sixty dollars,

whichever is greater.

(g) Upon the cancellation of motor vehicle liability insurance by a premium finance agency, unless a notice of such cancellation is not required by the vehicle and traffic law or by the regulations of the commissioner of motor vehicles, a notice of such cancellation under the provisions of this article, shall be filed by the insurer or insurers with the commissioner of motor vehicles not later than thirty days following the effective date of such cancellation where such a filing is required pursuant to section ninety-three-c of the vehicle and traffic law, as added by chapter six hundred fifty-five of the laws of nineteen hundred fifty-six or its successor statute, section three hundred thirteen of the vehicle and traffic law as enacted by chapter seven hundred seventy-five of the laws of nineteen hundred fifty-nine.

2. The provisions of subdivision one relating to cancellation by a premium finance agency of an insurance contract and the return by an insurer of unearned premiums to the premium finance agency also apply to the surrender by a premium finance agency of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the premium finance agency, except that the insurer may require the surrender of the insurance contract.

3. In this section, unless the context otherwise requires:

(a) "Premium finance agency" includes (1) a lending institution making a loan for the purpose of financing insurance premiums in accordance with the applicable provisions of other laws authorizing and regulating the making of loans by the lending institution, and (2) a bank, or a sales finance company licensed under article eleven-b of this chapter;

(b) "Premium finance agreement" includes (1) a promissory note or other written agreement or obligation evidencing or securing such a loan by a lending institution, and (2) a retail instalment contract or obligation held by a bank, or a sales finance company so licensed; and

(c) "Insured" includes (1) each borrower or other obligor under or upon a promissory note or other written agreement or obligation evidencing or securing such a loan by a lending institution, and (2) each buyer under a retail instalment contract or obligation held by a bank, or a sales finance company so licensed.

§ 577. Interpretation of article. This article does not affect: (1) the inclusion of amounts for insurance in retail instalment contracts or obligations in accordance with the motor vehicle retail instalment sales act or the retail instalment sales act; (2) the inclusion of amounts for insurance in retail lease agreements in accordance with the motor vehicle retail leasing act; or (3) the making of loans for the purpose of financing insurance premiums:

(a) By any person at a rate of interest not greater than the rate prescribed by the superintendent of financial services pursuant to section fourteen-a of this chapter, or, if no rate has been so prescribed, six per centum per annum; or

(b) By a lending institution in accordance with the applicable provisions of other laws authorizing and regulating the making of loans by the lending institution.

§ 577-a. Premium finance agreements. 1. Any amount advanced by a premium finance agency, with regard to any insurance policy issued pursuant to any plan established under article fifty-three of the insurance law shall be paid either by check or draft made payable to the insurance company, or, if the company is not known, by check or draft made payable to the entity which pursuant to the plan established under article fifty-three of the insurance law designates which insurer shall insure or service the risk. The check or draft shall not be made payable to the insurance agent or broker.

2. Where insurance coverage is procured through a wholesale producer for insurance policies financed with a premium finance agency, other than policies subject to subdivision one of this section:

(a) Prior to or contemporaneously with the advancement of any funds to an insurance retail producer who has procured an insurance policy through a wholesale producer, the retail producer shall provide the premium finance agency with the name and address of the wholesale producer through whom coverage was procured and, if available, the policy number of the insurance policy being financed, in writing;

(b) The premium finance agency shall notify, in writing, the wholesale producer and the insurance company of the gross premium, the borrower's name and address, and, if available, the policy number, within ten (10) business days of acceptance of the agreement;

(c) Failure by the retail producer to comply with paragraph (a) of this subdivision shall be a violation of subsection (d) of section twenty-one hundred twenty of the insurance law, and the retail producer shall be liable for actual damages caused by his or her failure to disclose;

(d) For the purposes of this subdivision, a "retail insurance producer" or "retail producer" means an insurance producer who directly deals with an insured; a "wholesale insurance producer" or "wholesale producer" means the producer from whom or through whom the retail producer has procured coverage on behalf of the insured.

§ 578. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity thereof shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§ 578-a. Electronic notes and documents. 1. For purposes of this section, the following words have the following meanings:

(a) "Delivered by electronic means" includes:

(i) delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(ii) posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of such posting which shall be provided by electronic mail to the address at which such party has consented to receive notice or by any other electronic delivery method that has been consented to by such party.

(b) "Party" means any recipient of any notice or document required as part of a premium finance transaction, including, but not limited to, an

insured, insurance agent or broker, or insurer.

2. Subject to the requirements of this section, any notice to a party or any other document required under this article in a premium finance transaction or that is to serve as evidence of a premium finance agreement may be delivered, stored, and presented by electronic means so long as it meets the requirements of article three of the state technology law. Where this chapter requires that written notice to an insured or any other document required under this article be mailed or delivered to the insured at his address as shown in such premium finance agreement or at his last known address as shown on the records of the premium finance agency, the notice may be delivered by electronic means to an electronic address not shown on such premium finance agreement.

3. Delivery of any notice or document in accordance with this section shall be considered equivalent to any mail or delivery method required under this article.

4. A notice or document may be delivered by electronic means by a premium finance agency to a party under this section if:

(a) such party has affirmatively consented to such method of delivery and has not withdrawn such consent;

(b) such party, before giving consent, is provided with a clear and conspicuous statement informing such party of:

(i) the right of such party to withdraw, at any time, consent to have such notice or document be delivered by electronic means, and any conditions or consequences imposed in the event consent is withdrawn;

(ii) the types of notices and documents to which such party's consent would apply;

(iii) the right of such party to have such notice or document delivered in paper form; and

(iv) the procedures such party must follow to withdraw consent to have such notice or document delivered by electronic means and to update such party's electronic mail address;

(c) such party:

(i) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of such

notice or document delivered by electronic means; and

(ii) consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that such party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which such party has given consent; and

(d) after consent of such party is given, such premium finance agency, in the event a change in the hardware or software requirements needed to access or retain such notice or document delivered by electronic means creates a material risk that such party will not be able to access or retain a subsequent notice or document to which such consent applies:

(i) provides such party with a statement that describes:

(A) the revised hardware and software requirements for access to and retention of such notice or document delivered by electronic means; and

(B) the right of such party to withdraw consent without the imposition on any condition or consequence that was not disclosed at the time of initial consent; and

(ii) complies with paragraph (b) of this subdivision.

5. (a) Before a notice or document is delivered by electronic means, a premium finance agency shall obtain a party's consent to deliver such notice or document by electronic means. Such party's consent to receive one type of notice or document shall not be construed as a blanket consent for every type of notice and document to be delivered by electronic means. Such party's consent shall only apply to the types of notices and documents identified in the clean and conspicuous information statement provided to the consenting party, as required by subparagraph (ii) of paragraph (b) of subdivision four of this section.

(b) Any electronic mail being sent by a premium finance agency to a party in connection with the delivery of a notice of intent to cancel or notice of cancellation delivered by electronic means shall include in the subject line and body of the communication clear and conspicuous language alerting the receiving party as to the importance of the communication and the type of notice being delivered by electronic means to such party.

6. This section does not affect requirements related to content or

timing of any notice or document required under this article.

7. The legal effectiveness, validity, or enforceability of any premium finance agreement executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party pursuant to subparagraph (ii) of paragraph (c) of subdivision four of this section.

8. (a) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to such party before such withdrawal of consent is effective.

(b) A withdrawal of consent by a party is effective within a reasonable period of time after receipt of such withdrawal by a premium finance agency.

(c) Failure by a premium finance agency to comply with paragraph (d) of subdivision four and subdivision ten of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

9. This section does not apply to a notice or document delivered by a premium finance agency in an electronic form before the effective date of this section to a party who, before such date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

10. If the consent of a party to receive certain notices or documents in an electronic form is on file with a premium finance agency before the effective date of this section, and pursuant to this section, such premium finance agency intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, such premium finance agency shall:

(a) provide such party with a statement that describes:

(i) such notices or documents that shall be delivered by electronic means under this section that were not previously delivered electronically; and

(ii) such party's right to withdraw consent to have notices or documents delivered by electronic means, without the imposition of any condition or consequence that was not disclosed at the time of initial consent; and

(b) comply with paragraph (b) of subdivision four of this section.

11. A premium finance agency shall mail or deliver a notice or document by any other delivery method permitted by this article other than electronic means if such premium finance agency:

(a) attempts to deliver by electronic means such notice or document and has a reasonable basis for believing that such notice or document has not been received by the party; or

(b) becomes aware that the electronic mail address provided by such party is no longer valid.

12. This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended.

ARTICLE 12-C
BUDGET PLANNERS

Section 579. Doing business without license prohibited.
580. Application for license.
581. Conditions for issuance of a license; procedure where application denied.
582. License provisions.
583. Changes in officers or directors of licensee.
583-a. Changes in control.
584. Grounds for suspension or revocation of license; procedure.
584-a. Contracts with debtors; fees.
584-b. Prohibited activities.
585. Superintendent authorized to examine.
586. Licensee's books and records; reports.
587. Authority of superintendent.

§ 579. Doing business without license prohibited. Only a charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law of this state, or an entity incorporated in another state and having a similar not-for-profit status, shall engage in the business of budget planning as defined in subdivision one of section four hundred fifty-five of the general business law of this state except as authorized by this article and without first obtaining a license from the superintendent.

§ 580. Application for license. 1. Application for a license required under this article shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the following:

(a) The exact name and the address of the applicant and its date of incorporation; and

(b) The name and complete business and residential address and occupation of each officer and director of the applicant; and

(c) The complete address where the business of the applicant is to be conducted, showing the street and number, if any, post office and building and room number, if any, the office building and room number, if any, and the municipality and county; and

(d) If the applicant has one or more branches, subsidiaries or affiliates operating in this state, the complete address of each such place of business; and

(e) Such other pertinent information as the superintendent may require, including but not limited to evidence indicating that the applicant, or officer, director, or manager of such applicant has at least one year of experience in financial services or related fields applicable to budget planning.

2. Where an applicant operates several places of business, separate applications for license shall be made for each such place of business.

3. Upon original application for a license or licenses to operate one or more places of business, the applicant shall pay an investigation fee in an aggregate amount as prescribed pursuant to section eighteen-a of

this chapter. No additional investigation fee shall be required for any subsequent application for a license unless such application is subsequent to a denial of a license or to a revocation, suspension or surrender of a license.

4. As a condition for the issuance and retention of a budget planner license, and subject to such regulations as the superintendent shall prescribe, applicants for a license shall file with the superintendent a surety bond in form satisfactory to the superintendent issued by a bonding company or insurance company authorized to do business in this state. Except as provided hereunder, the principal amount of such bond shall be two hundred fifty thousand dollars. The superintendent may require a larger bond if he or she determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct and that such increased bond is necessary for the protection of consumers; or the superintendent may increase or decrease the amount of such bond or deposit based upon the applicant's or licensee's financial condition, business plan, and the actual or estimated aggregate amount of payments and fees paid by debtors to such licensee. In lieu of such bond, an applicant may keep on deposit with such banks, savings banks, savings and loan associations, trust companies, private bankers, national banks, federal savings banks, or federal savings and loan associations in the state as such licensee may designate and the superintendent may approve, interest-bearing bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits, or such other assets or letters of credit as the superintendent shall by rule or regulation permit. The proceeds of each bond or deposit shall constitute a trust fund to be used exclusively to reimburse payments by debtors that have not been properly distributed to creditors or to reimburse fees determined by the superintendent to be improperly charged or collected and, in the event of the insolvency, liquidation, or bankruptcy of such licensee, to pay outstanding department of financial services examination costs and assessments. Within ninety days after the effective date of this

subdivision, each licensee shall comply with the requirements of this subdivision.

§ 581. Conditions for issuance of a license; procedure where application denied. 1. Upon the filing of an application for a license, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the officers and directors thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this article, he or she shall thereupon issue a license in duplicate to engage in budget planning in accordance with the provisions of this article. The superintendent shall transmit one copy of such license to the applicant and file another in the office of the department of financial services. Such license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the superintendent shall not so find he or she shall not issue such license and he or she shall notify the applicant of the denial. The superintendent shall approve or deny every application for license hereunder within ninety days from the filing thereof.

2. The superintendent shall not issue a license unless an applicant agrees to provide, either directly or indirectly, budgeting, educational and/or counseling services, acceptable to the superintendent, to the debtors with whom such licensee has a contract to engage in budget planning, as defined by section four hundred fifty-five of the general business law. Failure of a licensee to provide, directly or indirectly, such budgeting, educational and/or counseling services acceptable to the superintendent shall be a basis for suspension and revocation of the license.

§ 582. License provisions. Each license issued under this article shall state the address or addresses at which the business is to be conducted and shall state fully the name of the licensee, and the date and place of its incorporation. A copy of such license shall be

prominently posted in each place of business of the licensee. Such license shall not be transferable or assignable. In the event the location at which the business is to be conducted shall be changed, the licensee shall forthwith notify the superintendent who shall thereupon without charge attach to the license a rider setting forth such changed location. Each licensee, within ninety days of the close of the licensee's fiscal year, shall submit an independently audited financial statement to the superintendent.

§ 583. Changes in officers or directors of licensee. In the event that there shall be any change among the officers or directors of any licensee, the licensee shall promptly notify the superintendent of the name, address, and occupation of each new officer or director and provide such other information as the superintendent may require.

§ 583-a. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of section five hundred eighty-one of this article. The superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the superintendent.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may

prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. As used in this section: (a) the term "person" includes an individual, partnership, corporation, association or any other organization, and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The superintendent may in his discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

§ 584. Grounds for suspension or revocation of license; procedure. 1. The superintendent may revoke any license issued hereunder if he shall find that:

(a) The licensee has violated any provisions of this article, or of any rule or regulation made by the superintendent under and within the authority of this article;

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

(c) The conviction of a licensee for a crime against the laws of this state or any other state or of the United States involving moral turpitude or fraudulent or dishonest actions, or the entry of a final judgement in a court of competent jurisdiction against the licensee in a civil action arising from fraud, misrepresentation, or deceit.

2. The superintendent may, on good cause shown, suspend any license for a period not exceeding thirty days, pending investigation.

3. No license shall be revoked or suspended except after notice and a hearing thereon.

4. Any licensee may surrender any license by delivering to the superintendent written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

5. No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any person.

6. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked or suspended in accordance with the provisions of this article, but the superintendent shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the superintendent in refusing originally to issue such license under this article.

7. Whenever the superintendent shall revoke or suspend a license issued pursuant to this article, he shall forthwith execute in duplicate a written order to that effect. The superintendent shall file one copy of such order in the office of the department of financial services and shall forthwith serve the other copy upon the licensee. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such application for review as authorized by this section must be made within thirty days from the date of such order of suspension or revocation.

§ 584-a. Contracts with debtors; fees. Each licensee shall submit to the department any form of written contract it intends to use between itself and such debtor. Such form contract shall, at minimum, make provision for the following information:

1. a complete list of the debtor's obligations to be adjusted, including the name of each creditor;

2. the total fees agreed to for such services, including any adjustments for estimated available rebates from creditors, provided that nothing in this subdivision shall require a licensee to share rebates with its clients;

3. the commencement and termination date of the contract;

4. a pro forma statement of the total fees to be charged, including expected available rebates from creditors, expressed as a percentage of the total obligations, principal and interest to be adjusted under such contract;

5. settlement terms in case of cancellation of the contract or prepayment of the obligations;

6. a notice to the debtor that the debtor may cancel the contract until midnight of the third business day after the day on which the

debtor has signed the contract; and

7. the terms under which the payments may be made by the debtor. Upon execution, a copy of such contract shall be immediately furnished to the debtor. Such contract may subsequently be amended to include additional creditors and debtors obligations.

§ 584-b. Prohibited activities. 1. No person, partnership, association, corporation, or other entity, except a licensee, may make any representation, directly or indirectly, orally or in writing that he, she, or it is licensed under this article.

2. No licensee shall advertise its services in any media, whether print or electronic, in any manner that may be false or deceptive. All such advertisements shall contain the name and office address of such entity, which shall conform to a name and address on record with the department and which shall indicate that the licensee is licensed by the department. Any advertisements in any media, print or electronic, contracted for or placed prior to the effective date of this section, shall not be subject to the provisions of this section.

3. No person or any other entity, other than a licensee, shall use the title "budget planner" or "licensed budget planner" or the term "budget planning" in any public advertisement, business card, or letterhead.

4. No licensee shall commingle monies received from debtors with any other funds associated with the operation of its business or with any funds associated with any other type of business, provided, however, that for the sole purpose of making a single payment to a creditor, a licensee may commingle monies received from debtors under contract with one or more of its affiliates authorized to engage in budget planning in another state.

5. Licensees shall make payments to creditors in a timely manner, in accordance with the contract between the licensee and the debtor, provided, however, that a licensee may contract with a person or entity

that distributes, or supervises, coordinates, or controls the distribution of, such payments to the creditors, pursuant to such terms or conditions that the superintendent may prescribe by regulation. Payments made pursuant to such contract with the licensee shall not require such person or entity to be licensed pursuant to article thirteen-b of this chapter.

6. No licensee shall purchase any obligation of a debtor.

7. No licensee shall operate as a person or entity seeking payment of obligations on behalf of any creditors that are not receiving payments pursuant to a contract between a debtor and a licensee.

8. No licensee shall execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully completed, and the duration of any such contract shall be in conformance with any limitations specified pursuant to regulations of the superintendent.

9. No licensee shall pay any bonus or other consideration to any person or entity for the referral of a debtor to its business, or accept or receive any bonus, commission or other consideration for referring any debtor to any person or entity for any reason; provided, however, that nothing herein shall prohibit the payment of rebates from creditors to licensees.

10. No licensee shall disclose or threaten to disclose information concerning the existence of a debt, or any other conduct, which could coerce payment of the debt of a debtor with whom it has a contract.

11. No licensee shall use a communication which simulates in any manner a legal or judicial process, or which gives the false appearance of being authorized, issued, or approved by a government, governmental agency, or attorney-at-law.

12. No licensee, or a director, manager or officer of such licensee, or any immediate family member of such individual, or a controlling party of such licensee as defined in section five hundred eighty-three-a

of this article, shall be a director, manager, officer, owner, or controlling party of any creditor or a subsidiary of any such creditor, that is receiving or will receive payments from the licensee on behalf of a debtor with whom the licensee has contracted.

13. No licensee, or a director, manager or officer of such licensee, or any immediate family member of such individual, or a controlling party of such licensee as defined in section five hundred eighty-three-a of this article, shall disclose by any means, directly or indirectly, the name, address, or any other identifying information of a debtor, except as required by subpoena or other process from a court of competent jurisdiction or a law enforcement agency, or in order to establish an account with a creditor. "Identifying information of a debtor" as used herein shall include, but not be limited to, a debtor's name, photograph, address, telephone number, social security number, date of birth, drivers identification number, credit card number, bank account number, mother's maiden name, medical or disability information, if any, as well as any other identification number which a licensee may possess.

§ 585. Superintendent authorized to examine. For the purpose of discovering violations of this article or securing information lawfully required by him or her hereunder, the superintendent may at any time, and as often as he or she may determine, either personally or by a person duly designated by him or her, investigate the business and examine the books, accounts, records, and files used therein of every licensee hereunder. For that purpose the superintendent and his or her duly designated representative shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The superintendent and any person duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may require relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in

such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the superintendent. If, upon review, the superintendent shall determine that the fees or service charges set by the licensee are unreasonable, he or she shall direct the licensee to make adjustments in said fees and service charges in accordance with his or her findings, which shall set forth a detailed factual basis and reasoning supporting such finding.

§ 586. Licensee's books and records; reports. 1. The licensee shall keep and use in its business such books, accounts, and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts, and records, for at least three years; provided, however, that preservation by photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section.

2. Each licensee shall annually, on or before the first day of February, file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of such licensee under authority of this article. Such report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and shall be in the form prescribed by the superintendent. In addition to annual reports, the superintendent may require, under oath and in the form prescribed by him, such additional regular or special reports as he may deem necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

§ 587. Authority of superintendent. The superintendent is hereby authorized and empowered to make, in addition hereto and not inconsistent herewith, such general rules and regulations, and such specific rulings, demands, and findings as he may deem necessary for the proper conduct of the business authorized and licensed hereunder and for the enforcement of this article.

ARTICLE 12-D
LICENSED MORTGAGE BANKERS

Section 589. Declaration of policy.
590. Licensing.
590-a. Junior mortgage loans.
590-b. Responsibilities.
591. Application for a mortgage banker's license; fees.
591-a. Application to register as a mortgage broker; fees.
592. Application process to receive license to engage in the business of mortgage banking.
592-a. Application process to register as a mortgage broker.
593. License provisions.
593-a. Registration provisions.
594. Changes in officers and directors.
594-b. Changes in control.
595. Grounds for suspension or revocation of license, or suspension or deletion of name from mortgage broker roll.
595-a. Regulation of mortgage brokers, mortgage bankers and exempt organizations.
595-b. Regulation of mortgage loan servicers.
595-c. Regulation of dealings of mortgage brokers and home improvement contractors.
596. Superintendent authorized to examine; expenses.
597. Books and records; reports and electronic filing.
598. Additional penalties for violation of this article; civil, criminal; liquidated damages.
599. Separability of provisions.

§ 589. Declaration of policy. The origination, funding and servicing of residential mortgage loans and the types of entities involved in residential mortgage lending has undergone significant changes in recent years, due in part to developments in the general economy, specifically interest rate volatility, the sophistication of the national secondary market for mortgage loans and the market for mortgage-backed securities. The recent trend toward deregulation in the financial services industry has accelerated the evolution of residential mortgage lending, dramatically increasing the types of mortgage loans offered and the manner in which they are advertised and marketed to consumers. Depository institutions, traditionally the major source of residential mortgage financing for individuals, now compete for capital and customers with mortgage bankers and other financial service organizations. Residential mortgage lenders of every type have increasingly relied on non-financial intermediaries, such as mortgage brokers, to make loans available to consumers. These developments have raised questions as to whether all entities engaging in this banking function operate under appropriate regulatory scrutiny and as to whether all residential mortgage lenders are conducting their business in the best interests of New York homeowners and potential homeowners.

The activities of lenders and their agents offering financing for residential real property have a direct and immediate impact upon the housing industry, the neighborhoods and communities of this state, its homeowners and potential homeowners. The legislature finds that it is essential for the protection of the citizens of this state and the stability of the state's economy that reasonable standards governing the business practices of mortgage lenders and their agents be imposed. The legislature further finds that the obligations of lenders and their agents to consumers in connection with making, soliciting, processing, placing or negotiating of mortgage loans are such as to warrant the uniform regulation of the residential mortgage lending process, including the application, solicitation, making and servicing of mortgage loans. Consistent with the purposes of promoting mortgage lending for the benefit of our citizens by responsible providers of mortgage loans and services and avoiding requirements inconsistent with

legitimate and responsible business practices in the mortgage lending industry, the purpose of this article is to protect New York consumers seeking a residential mortgage loan and to ensure that the mortgage lending industry is operating fairly, honestly and efficiently, free from deceptive and anti-competitive practices.

§ 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.

§ 590-a. Junior mortgage loans. 1. A licensee may make a loan to a natural person upon the security of a mortgage on residential real property which is not a first lien at the rate or rates agreed to by the licensee 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. For purposes of this section, 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 residential real estate.

2. A contract, note or instrument evidencing or securing a junior mortgage loan shall not contain any acceleration clause which would provide that the junior mortgage loan may be declared due and payable upon the condition that the licensee deems itself insecure with respect to the unpaid balance of such junior mortgage loan; shall not contain clauses which authorize confession of judgment; shall allow the borrower to prepay the loan in whole or in part without penalty, and shall contain the following notice in bold face type, at least ten point size:

"DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW, YOU MAY HAVE

THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT."

3. Where the contract, note or instrument evidencing or securing a junior mortgage loan provides for a variable rate of interest, said rate shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the licensee, and (d) approved by the superintendent. The interest rate of the junior mortgage loan shall be reduced in proportion to any decrease in the index rate. Increases in the interest rate may be made at the option of the licensee.

4. The superintendent of financial services shall adopt regulations, including but not limited to: (a) providing for disclosure to the borrower by the licensee of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase, (b) providing for disclosure to the borrower by the licensee of a history of the fluctuations of the index over a reasonable period of time, and (c) providing for notice to the borrower from the licensee of any rate increase or change in the terms of payment.

5. A line of credit secured by a junior mortgage shall be established in an amount of no less than twenty-five hundred dollars; and shall be repayable in monthly installments.

§ 590-b. Responsibilities. 1. Each mortgage broker shall, in addition to the duties imposed by otherwise applicable provisions of state and federal law, with respect to any transaction, including any practice, or course of business in connection with the transaction, in which the mortgage broker solicits, processes, places or negotiates a home loan:

(a) act in the borrower's interest;

(b) act with reasonable skill, care and diligence;

(c) act in good faith and with fair dealing;

(d) not accept, give, or charge any undisclosed compensation, directly

or indirectly, that inures to the benefit of the mortgage broker, whether or not characterized as an expenditure made for the borrower;

(e) clearly disclose to the borrower, not later than three days after receipt of the loan application, all material information as specified by the superintendent that might reasonably affect the rights, interests, or ability of the borrower to receive the borrower's intended benefit from the home loan, including total compensation that the broker would receive from any of the loan options that the lender or mortgage broker presents to the borrower; and

(f) diligently work to present the borrower with a range of loan products for which the borrower likely qualifies and which are appropriate to the borrower's existing circumstances, based on information known by, or obtained in good faith by, the broker.

2. No lender or mortgage broker shall improperly influence or attempt to improperly influence the development, reporting, result or review of a real estate appraisal relating to real property securing a home loan, provided that it shall not be a violation of this prohibition to:

(a) ask an appraiser to consider additional information about a borrower's principal dwelling or about comparable properties;

(b) request that an appraiser provide additional information about the basis for a valuation;

(c) request that an appraiser correct factual errors in a valuation;

(d) obtain multiple appraisals of a borrower's principal dwelling, so long as the lender or mortgage broker adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;

(e) withhold compensation from an appraiser for breach of contract or substandard performance of services;

(f) terminate a relationship with an appraiser for violations of applicable state or federal law or breaches of ethical or professional standards; and

(g) take action permitted or required by applicable state or federal statute, regulation, or agency guidance.

3. Any mortgage broker found by a preponderance of evidence to have violated subdivision one of this section, shall be liable to the

borrower for actual damages.

3-a. 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 subdivision shall not prohibit compensation based on the principal balance of the loan.

4. Any lender or mortgage broker found by a preponderance of evidence to have violated subdivision two of this section, shall be liable to the borrower for actual damages.

5. 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.

6. A court may also award reasonable attorneys' fees to a prevailing borrower in a foreclosure action.

7. The attorney general or the superintendent may enforce the provisions of this section.

8. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower.

§ 591. Application for a mortgage banker's license; fees. 1. The application for a license to be a mortgage banker shall be in writing, under oath, and in the form prescribed by the superintendent. Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that an application for, or renewal of, a license or any other submission or application for approval as may be required by this article, be made or executed by electronic means, including through the National Mortgage Licensing System and Registry or other entities designated by the National Mortgage Licensing System and Registry if he or she deems it necessary to ensure the efficient and effective administration of this article.

The application shall contain the name and complete business and residential address or addresses of the applicant. If the applicant is a partnership, association, corporation or other form of business organization, the application shall contain the names and complete business and residential addresses of each member, director and principal officer thereof. Such application shall also include a description of the activities of the applicant, in such detail and for such periods, as the superintendent may require; including:

(a) An affirmation of financial solvency noting such capitalization requirements as may be required by the superintendent, and access to such credit as may be required by the superintendent;

(b) The fingerprints of the applicant, which may be submitted to the division of criminal justice services and the federal bureau of investigation for state and national criminal history record checks;

(c) An affirmation that the applicant, or its members, directors or principals as may be appropriate, are at least twenty-one years of age;

(d) Information as to the character, fitness, financial and business responsibility, background and experiences of the applicant.

2. An application shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter payable to the superintendent.

3. A licensee may apply for authority to open and maintain a branch office by giving the superintendent prior notice of its intention in such form as shall be prescribed by the superintendent. Unless the superintendent denies the application within thirty days of publication of notice of receipt of a completed application, the licensee shall be permitted to open and maintain such branch office. An application to open and maintain a branch office shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

4. As a condition for the issuance and retention of a mortgage banker's license, and subject to such regulations as the superintendent shall prescribe, applicants for a license shall file with the superintendent a surety bond in form satisfactory to him or her issued

by a bonding company or insurance company authorized to do business in this state. The principal amount of such bond shall be in an amount and form prescribed by regulations of the superintendent. Such regulations shall provide for a varying bond amount based upon a licensee's volume of business and any other relevant factors as determined by the superintendent, but in no case shall such bond be less than fifty thousand dollars nor more than five hundred thousand dollars; provided, however, that if the superintendent determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the superintendent may require such licensee to post a surety bond, or keep on deposit as provided in this subdivision, twice the amount of such bond or deposit as is required consistent with such regulations. In lieu of such bond, an applicant may keep on deposit with such banks, savings banks, savings and loan associations, or trust companies or private bankers or national banks or federal savings banks or federal savings and loan associations in the state of New York as such applicant may designate and the superintendent may approve, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits, or such other assets or letters of credit as the superintendent shall by rule or regulation permit. In the event of the insolvency, liquidation or bankruptcy of such licensee, or the surrender or revocation of such mortgage banker's license, or where the superintendent takes possession of such licensee, the proceeds of each bond or deposit shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the superintendent to be improperly charged or collected and to pay past due department of financial services examination costs and assessments charged to the licensee, unpaid penalties, or other obligations of the licensee. The superintendent is authorized to promulgate such regulations as are necessary and desirable to define and implement the provisions of this subdivision. Persons and entities licensed prior to the effective date of any regulations of the superintendent prescribing the bonding requirement authorized by this subdivision shall file such

bond or establish such deposit within six months of the effective date of such regulations.

§ 591-a. Application to register as a mortgage broker; fees. 1. An application to become registered as a mortgage broker shall be in writing, under oath, in such form as shall be prescribed by the superintendent, and shall be accompanied by the fingerprints of the applicant. Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that an application for, or renewal of, a license or any other submission or application for approval as may be required by this article, be made or executed by electronic means, including through the National Mortgage Licensing System and Registry or other entities designated by the National Mortgage Licensing System and Registry if he or she deems it necessary to ensure the efficient and effective administration of this article. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check. Such application shall contain the name and complete business and residential address or addresses of the applicant, or if the applicant is a partnership, association, corporation or other form of business organization, the names and complete business and residential addresses of each member, director and principal officer thereof. Such application shall also include an affirmation of financial solvency noting such capitalization requirements as may be required by the superintendent, and such descriptions of the business activities, financial responsibility, educational background and general character and fitness of the applicant as may be required by the superintendent. Such application shall be accompanied by an investigation fee payable to the superintendent as prescribed pursuant to section eighteen-a of this chapter.

2. A registrant may apply for authority to open and maintain a branch office by giving the superintendent prior notice of its intention in

such form as shall be prescribed by the superintendent. Unless the superintendent denies the application within thirty days of publication of notice of receipt of a completed application, the registrant shall be permitted to open and maintain such branch office. An application to open and maintain a branch office shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

3. As a condition for the issuance and retention of a mortgage broker's registration, and subject to such regulations as the superintendent shall prescribe, applicants for a registration shall file with the superintendent a surety bond or make a deposit, as described in subdivision four of section five hundred ninety-one of this article, in an amount and form prescribed by regulations of the superintendent. Such regulations shall provide for a varying bond amount based upon a registrant's volume of business and any other relevant factors as determined by the superintendent, but in no case shall such bond be less than ten thousand dollars nor more than one hundred thousand dollars; provided however that if the superintendent determines, in his or her sole discretion, that a registrant has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the superintendent may require such registrant to post a surety bond, or keep on deposit as provided in this subdivision, twice the amount of such bond or deposit as is required consistent with such regulations. In the event of the insolvency, liquidation or bankruptcy of such registrant, or the surrender or revocation of such mortgage broker's registration, or where the superintendent takes possession of such registrant, the proceeds of each bond or deposit shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the superintendent to be improperly charged or collected and to pay past due department of financial services examination costs and assessments charged to the registrant, unpaid penalties, or other obligations of the registrant. The superintendent is authorized to promulgate such regulations as are necessary and desirable to define and implement the provisions of this subdivision. Persons and entities registered prior to the effective date of any regulations of the superintendent implementing or modifying the bonding requirement

authorized by this subdivision shall file such bond or establish such deposit within six months of the effective date of such regulations.

§ 592. Application process to receive license to engage in the business of mortgage banking. 1. Upon the filing of an application for a license, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant and of the members thereof if the applicant is a co-partnership or association, and of the officers and directors thereof if the applicant is a corporation are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this article, the superintendent shall thereupon issue a license in duplicate to engage in the business of making mortgage loans described in section five hundred ninety of this article in accordance with provisions of this article. If the superintendent shall not so find, the superintendent shall not issue such license, and the superintendent shall notify the applicant of the denial. The superintendent shall transmit one copy of such license to the applicant and file another in the office of the department of financial services. Upon receipt of such license, a mortgage banker shall be authorized to engage in the business of making mortgage loans in accordance with the provisions of this article. Such license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided. The superintendent shall approve or deny every application for license hereunder within ninety days from the filing of a completed application provided, however, that failure to act within the prescribed period shall not be deemed approval of any such application.

2. The superintendent may refuse to issue a license pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred

seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state or (b) has had a license or registration revoked by the superintendent or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockholder", as used in this subdivision, shall be deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 592-a. Application process to register as a mortgage broker. 1. Upon the filing of an application for registration, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a co-partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this article, the superintendent shall thereupon register the applicant as a mortgage broker on a roll maintained for that purpose at the department of financial services, and issue a certificate attesting to such registration in duplicate. If the superintendent shall not so find, the superintendent shall not register such applicant, and shall notify the applicant of the denial. The superintendent shall transmit one copy of such certificate to the applicant and file another in the office of the department of financial services. Upon receipt of such certificate a mortgage broker shall be authorized to engage in the business of placing, processing and negotiating mortgage loans. Such

registration shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided, except that such registration, notwithstanding any provisions of subdivision five of section seventeen of this chapter to the contrary, shall expire upon the registrant's failure to pay the required assessment charged pursuant to such section seventeen thirty days after the date or dates such payment or payments are due. If the registrant fails to pay such charged assessment by the date or dates such payment or payments are due, then the registrant shall be required to pay, in addition, a late fee in the amount of one hundred dollars. Such registration shall be reinstated if the registrant pays such assessment charged and any applicable late fees and/or interest within sixty days of such expiration. The superintendent shall approve or deny every application for registration hereunder within ninety days from the filing of a complete application provided, however, that failure to act within the prescribed period shall not be deemed approval of any such application.

2. The superintendent may refuse to issue a certificate pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state or (b) has had a license or registration revoked by the superintendent or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have

been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockholder", as used in this subdivision, shall be deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 593. License provisions. Each license issued under this article shall state the address or addresses at which the business is to be conducted and shall state fully the name of the licensee, and the date and place of its incorporation if applicable. A copy of such license shall be prominently posted in each place of business of the licensee. Such license shall not be transferable or assignable. In the event the location at which the business is to be conducted shall be changed, the licensee shall forthwith notify the superintendent who shall thereupon without charge attach to the license an amendment certificate setting forth such changed location.

§ 593-a. Registration provisions. 1. Each certificate issued to a registered mortgage broker under this article shall state the address or addresses at which the business is to be conducted and shall state fully the name of the registrant, and the date and place of its incorporation if applicable. A copy of such certificate shall be prominently posted in each place of business of the registrant. Such certificate shall not be transferable or assignable. In the event the location at which the business is to be conducted shall be changed, the registrant shall forthwith notify the superintendent who shall thereupon without charge attach to the certificate an amendment certificate setting forth such changed location.

2. In addition to the display of such certificate, each registered mortgage broker shall prominently display a notice printed in the English language, each letter to be at least two inches in height, indicating that the mortgage broker is not empowered to make mortgage loans, and such other notices as required by the superintendent of financial services.

§ 594. Changes in officers and directors. Upon any change of any of the executive officers, partners or directors of any licensee or registrant, the licensee or registrant shall submit to the superintendent the name, address, and occupation of each new officer, partner or director, and provide such other information as the superintendent may require.

§ 594-b. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee or registrant. Prior to any change of control, the person desirous of acquiring control of the business of a licensee or registrant shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section. This information shall include but not be limited to the information and other material required for a licensee by subdivision one of section five hundred ninety-one of this article or required for a registrant by subdivision one of section five hundred ninety-one-a of this article.

2. The superintendent shall approve or disapprove the proposed change of control of a licensee or registrant in accordance with the provisions of section five hundred ninety-two of this article relating to licensees or section five hundred ninety-two-a of this article relating to registrants. The superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the superintendent.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of

this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee or registrant. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. As used in this section: (a) the term "person" includes an individual, partnership, corporation, association or any other organization, and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee or registrant, whether through the ownership of voting stock of such licensee or registrant, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or registrant or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or registrant, but no person shall be deemed to control a licensee or registrant solely by reason of being an officer or director of such licensee or registrant or person. The superintendent may in his discretion, upon the application of a licensee or registrant or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee or registrant, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee or registrant for purposes of this section.

§ 595. Grounds for suspension or revocation of license, or suspension or deletion of name from mortgage broker roll. 1. The superintendent may revoke any license to engage in the business of a mortgage banker issued pursuant to this article or delete the name of a mortgage broker from the roll of mortgage brokers registered pursuant to this article if he shall find that:

(a) Through a course of conduct, the licensee or registrant has violated any provisions of this article, or any rule or regulation promulgated by the superintendent of financial services under and within the authority of this article or of any other law, rule or regulation of this state or the federal government;

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

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

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

2. The superintendent may, on good cause shown, or where there is a substantial risk of public harm, suspend any license or delete the name of any registrant for a period not exceeding thirty days, pending investigation. "Good cause", as used in this subdivision, shall exist only when the licensee or registrant has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the persons

afforded the protection of this article.

3. Except as provided in subdivision two of this section, no license or registration shall be revoked or suspended except after notice and a hearing thereon. Any order of suspension issued after notice and a hearing may include as a condition of reinstatement that the licensee or registrant make restitution to consumers of fees or other charges which have been improperly charged or collected as determined by the superintendent.

4. Any licensee or registrant may surrender any license or certificate by delivering to the superintendent written notice that it thereby surrenders such license or certificate, but such surrender shall not affect such licensee's or registrant's civil or criminal liability for acts committed prior to such surrender. If such surrender is made after the issuance by the superintendent of a statement of charges and notice of hearing, the superintendent may proceed against the licensee or registrant as if such surrender had not taken place.

4-a. An expiration of registration in accordance with section five hundred ninety-two-a of this article shall not affect such registrant's civil or criminal liability for acts committed prior to such expirations. If such expiration occurs after the issuance by the superintendent of a statement of charges and notice of hearing, the superintendent may proceed against the registrant as if such expiration had not taken place.

5. No revocation, suspension, surrender or expiration of any license or certificate shall impair or affect the obligation of any preexisting lawful contract between the licensee or registrant and any person.

6. Every license or registration issued pursuant to this article shall remain in force and effect until the same shall have expired in accordance with section five hundred ninety-two-a of this article or shall have been surrendered, revoked or suspended in accordance with any other provisions of this article, but the superintendent shall have authority to reinstate a suspended license or certificate or to issue a

new license or certificate to a licensee or registrant whose license or registration shall have been revoked if no fact or condition then exists which would have warranted the superintendent in refusing originally to issue such license or registration under this article.

7. Whenever the superintendent shall revoke or suspend a license or registration issued pursuant to this article, he shall forthwith execute in duplicate a written order to that effect. The superintendent shall file one copy of such order in the office of the department of financial services and shall forthwith serve the other copy upon the licensee or registrant. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such application for review as authorized by this section must be made within thirty days from the date of such order of suspension or revocation.

7-a. Whenever a registration shall have expired in accordance with section five hundred ninety-two-a of this article, the superintendent shall notify the registrant that the registration has expired and that the registrant may not 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.

8. Any hearing held pursuant to the provisions of this section shall be noticed, conducted and administered in compliance with the state administrative procedure act.

§ 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.

§ 595-b. Regulation of mortgage loan servicers. 1. Establishment of grounds to impose a fine or penalty. In addition to such other rules, regulations and policies as the superintendent may promulgate to effectuate the purposes of this article, the superintendent shall promulgate regulations and policies governing the establishment of grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer.

2. Servicing practices. In addition to such other rules, regulations and policies as the superintendent may promulgate to effectuate the purposes of this article, the superintendent may prescribe regulations which relate to: (a) providing for disclosures to borrowers of the basis for any interest rate resets; (b) requirements for the provision of pay-off statements; and (c) governing the timing of the crediting of payments made by the borrower.

§ 595-c. Regulation of dealings of mortgage brokers and home improvement contractors. 1. No home improvement contractor nor any agents or salespersons thereof shall represent, act as an agent for, or advertise, promote or arrange for the services of a mortgage broker or its affiliate while soliciting home improvement contracts nor receive anything of value from a mortgage broker or its affiliate for the referral of a borrower to a mortgage broker. The staff of a home improvement contractor shall not act on behalf of a mortgage broker in any transaction.

2. Where a mortgage broker has solicited, processed, placed or negotiated a mortgage loan, a home improvement contractor shall not be paid directly but instead may receive payment from the proceeds of a home improvement loan payable solely to the borrower or, at the election of the borrower, through an independent third party escrow agent in accordance with the terms established in a written agreement signed by the borrower, the lender and the contractor prior to disbursement. A mortgage broker shall not offer a homeowner different loan terms contingent on the homeowner executing an agreement for payment through

an independent third party as described in the preceding sentence. Any such agreement shall contain a clear and conspicuous disclosure: YOU ARE NOT REQUIRED TO EXECUTE THIS AGREEMENT. YOU MAY INSTEAD RECEIVE PAYMENT DIRECTLY. (NAME OF MORTGAGE BROKER) MAY NOT OFFER YOU DIFFERENT TERMS ON YOUR LOAN TO SIGN THIS AGREEMENT. The provisions of this subdivision shall not apply to a home improvement loan insured by the federal housing administration under section 203(k) of the National Housing Act, 12 U.S.C. 1709(k), or to amounts added to a federal housing administration insured mortgage under the energy efficiency mortgage program originally established under section 106 of the Energy Policy Act of 1992, as from time to time amended.

3. A mortgage broker shall not permit a home improvement contractor to be a cosigner or to act as a guarantor for a mortgage loan for home improvement.

4. For the purpose of this section, "home improvement contractor", means, with respect to any home improvement, a person, firm or corporation which owns or operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement for a fee and for whom the total price for all labor, materials and other items is equal to or greater than two hundred dollars. Home improvement contractor does not include a person, firm, corporation, landlord, cooperative corporation, condominium board of managers, joint tenant or co-tenant that owns, in whole or in part, the property to be improved.

5. This section shall not annul, alter, affect or exempt any person subject to the provisions of this section from complying with the laws, ordinances, rules or regulations of any locality or other governmental body, relating to home improvement contracts, except to the extent that such laws, ordinances, rules or regulations are inconsistent with any provision of this section, but no such law, ordinance, rule or regulation shall be considered inconsistent, if it affords greater protection to the homeowner from persons subject to this section.

§ 596. Superintendent authorized to examine; expenses. For the purpose of discovering violations of this article or securing information lawfully required by him hereunder, the superintendent may at any time, and as often as he or she may determine, either personally or by a person duly designated by him, investigate the business and examine the books, accounts, records, and files used therein of every licensee, servicer and registrant. For that purpose the superintendent and his or her duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such licensees, servicers and registrants. The superintendent and any person duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may require relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee, servicer or registrant so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees, servicers or registrants in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee, servicer or registrant shall become liable for and shall pay such assessment to the superintendent.

In any hearing in which the bank examiner acting under authority of this chapter is available for cross-examination, any official written report, worksheet, other related papers, or duly certified copy thereof, compiled, prepared, drafted, or otherwise made by said bank examiner, after being duly authenticated by said examiner, may be admitted as competent evidence upon the oath of said examiner that said worksheet, investigative report, or other related documents were prepared as a result of an examination of the books and records of a licensee, servicer or registrant or other person, conducted pursuant to the authority of this chapter.

§ 597. Books and records; reports and electronic filing. Each

licensee, servicer, registrant and exempt organization shall keep and use in its business such books, accounts and records as will enable the superintendent to determine whether such licensee, servicer, registrant or exempt organization is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent and the superintendent of financial services. Every licensee, servicer, registrant and exempt organization shall preserve such books, accounts, and records, for at least three years; provided, however, that preservation by photographic reproduction thereof or records in photographic form, including an optical disk storage system and the use of electronic data processing equipment that provides comparable records to those otherwise required and which are available for examination upon request shall constitute compliance with the requirements of this section.

Each licensee and registrant shall annually, on or before a date to be determined by the superintendent, file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of such licensee or registrant under authority of this article. Such report shall be subscribed and affirmed as true by the licensee or registrant under the penalties of perjury and shall be in the form prescribed by the superintendent. In addition to annual reports, the superintendent may require such additional regular or special reports as he or she may deem necessary to the proper supervision of licensees and registrants under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that any application for, or renewal of, any license or registration or any other submission or approval as may be required by the superintendent be made or executed by electronic means if he or she deems it necessary to ensure the efficient administration of this article.

The superintendent may require servicers to file annual reports or

other regular or special reports, including reports with respect to mortgage delinquencies and foreclosures. Such reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

§ 598. Additional penalties for violation of this article; civil, criminal; liquidated damages. 1. In addition to such penalties as may otherwise be applicable by law, the superintendent may, after notice and hearing as provided elsewhere in this article, require any entity, licensee, servicer, registrant or exempt organization found violating the provisions of this article or the rules or regulations promulgated hereunder to pay to the people of this state an additional penalty for each violation of the article or any regulation or policy promulgated hereunder a sum not to exceed an amount as determined pursuant to section forty-four of this chapter for each such violation.

2. Whoever violates any provision of the licensing requirements of subparagraphs (a) and (b) of subdivision two of section five hundred ninety of this article by making a mortgage loan without being licensed or specifically exempted from licensing, or soliciting, processing, placing or negotiating a mortgage loan without being registered or specifically exempted from registration, shall be guilty of a class A misdemeanor, punishable as provided in articles seventy and eighty of the penal law.

3. Liquidated damages. In addition to any other remedy which an applicant for a mortgage loan or mortgagor may have against a licensee, registrant or exempt organization for breach of contract or agreement to make a mortgage loan, the court after considering the circumstances may award the plaintiff, upon granting a judgment in his favor in an individual action on such claim, liquidated damages an amount equal to twice the amount of any fees or other charges paid by the applicant or mortgagor in connection with such contract or agreement exclusive of any amounts paid or payable after the mortgage or other security instrument is executed.

4. Statutory or common-law remedies. Nothing in this article shall limit any statutory or common-law right of any person to bring any action in any court for any act, or the right of the state to punish any person for any violation of any law.

5. Civil penalties assessable against unlicensed or unregistered persons or entities. If any non-exempt unlicensed or unregistered person or entity engages in activities encompassed by this article, he shall be liable to any person or entity affected by such activities for a sum of money of not less than the amount of money paid to an affected person or entity in connection with such activities, nor more than four times such sum; provided however that where a non-exempt unlicensed or unregistered person has continued to engage in such unauthorized activities after receiving a cease and desist notice from the superintendent, the maximum amount of liability shall be up to the amount of actual damages. Such sum may be sued for and recovered by any person or entity for his use and benefit in any court of competent jurisdiction.

§ 599. Separability of provisions. If any provision of this article, or the application of such provision to any person, co-partnership, association, corporation or circumstance, shall be held invalid, the remainder of the article, and the application of such provision to persons, co-partnerships, associations, corporations or circumstances other than those as to which it is held invalid, shall not be affected thereby.

ARTICLE 12-E
LICENSED MORTGAGE LOAN ORIGINATORS

Section 599-a. Legislative purpose.
599-b. Definitions.
599-c. License required.
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599-e. Issuance of a license.
599-f. Pre-licensing educational requirements.
599-g. Testing of mortgage loan originators.

599-h. Mortgage call reports.
599-i. Standards for license renewal; inactive status.
599-j. Continuing education for mortgage loan originators.
599-k. Required surety bond.
599-l. Reports by the superintendent; permissive challenges by licensees.
599-m. Required records and reporting.
599-n. Enforcement authority; grounds for suspension or revocation of a mortgage loan originator license; restitution.
599-o. Rules, regulations and examinations.
599-p. Unique identifier.
599-q. Confidentiality.
599-r. Construction.

§ 599-a. Legislative purpose. The legislature deems it necessary, in order to enhance consumer protection, reduce fraud and ensure the public welfare, that mortgage loan originators who originate mortgage loans on residential real property be subject to regulation by the superintendent and that such regulation be consistent with Title V of The Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act, as it may be amended from time to time, and regulations thereunder or interpretations thereof, that may be adopted from time to time by the Secretary of the U.S. Department of Housing and Urban Development.

§ 599-b. Definitions. As used in this article:

1. "Annual expiration date" means December thirty-first of each year.

2. "Depository institution" has the same meaning as in section three of the Federal Deposit Insurance Act, and includes any credit union.

3. "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of

the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

4. "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings and adoptive relationships.

5. "Individual" means a natural person.

6. Loan processor or underwriter-

(a) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this article, provided that such individual does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(b) For purposes of this subdivision, "clerical or support duties" may include, subsequent to the receipt of an application:

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

7. Mortgage loan originator (MLO) --

(a) "Mortgage Loan Originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) Does not include:

(i) any individual engaged solely as a loan processor or underwriter

except as otherwise provided in subdivision four of section five hundred ninety-nine-c of this article;

(ii) an individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable New York law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) an individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(c) For purposes of this article, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in any activity, or act in any capacity, described in subparagraphs (i), (ii), (iii), or (iv) of this paragraph.

8. "Residential mortgage loan" shall mean a loan to a natural person made primarily for personal, family or household use, secured by either a mortgage, deed of trust or other equivalent consensual security interest on a dwelling (as defined in section 1203(v) of the Truth in Lending Act) or residential real property or 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 and shall include any refinance or modification of any such existing loan.

9. "Nationwide Mortgage Licensing System and Registry" (NMLSR) means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

10. "Nontraditional mortgage product" means, for purposes of this article, any mortgage product other than a thirty-year fixed rate mortgage.

11. "Originating entity" means a person or entity licensed or registered pursuant to article twelve-D of this chapter or such other employer of mortgage loan originators as the superintendent may approve.

12. "Person" means an individual or any corporation, company, limited liability company, partnership, association or other entity.

13. "Registered mortgage loan originator" means any individual who:

(a) Meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) Is registered with, and maintains a unique identifier through, the NMLSR.

14. "Residential real property" shall mean real property located in this state improved by a one-to-four family residence or residential unit in a building 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 residence is to be constructed.

15. "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

§ 599-c. License required. 1. License required. No individual, unless specifically exempt pursuant to subdivision three of this section shall engage in the business of a mortgage loan originator with respect to any dwelling or residential real property in this state without first obtaining and maintaining annually a license under this article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR.

2. Effective date. In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace:

(a) Each individual, other than an individual described in paragraph (b) of this subdivision, shall be licensed pursuant to subdivision one of this section not later than July thirty-first, two thousand ten, or such later date approved for mortgage loan originators in this state by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a) and approved by the superintendent;

(b) Each individual authorized as a mortgage loan originator under prior law not later than July thirty-first, two thousand nine, shall be licensed pursuant to subdivision one of this section not later than January first, two thousand eleven, or such later date approved for mortgage loan originators in this state by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a) and approved by the superintendent.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, after the effective date of this article, no individual shall act as a mortgage loan originator if such individual has been convicted of, or pled guilty or nolo contendere to, a felony of the types and during the time periods described in paragraph (b) of subdivision one of section five hundred ninety-nine-e of this article, in a domestic, foreign or military court, unless expressly authorized to act as a mortgage loan originator by the superintendent.

3. Exemption from licensing requirements. The following persons are exempt from the licensing requirements otherwise applicable under this

article:

(a) Registered mortgage loan originators, when acting for an entity described in subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision thirteen of section five hundred ninety-nine-b of this article.

(b) Any individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling or residential real property that served as the individual's own residence.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(e) Any individual employed by a mortgage loan servicer registered under article twelve-D of this chapter, who negotiates any modification of an existing residential mortgage loan on behalf of such servicer, and does not otherwise act as a mortgage loan originator, unless licensing is required by a rule, regulation, guideline or interpretation issued by the U.S. Department of Housing and Urban Development under Public Law 110-289.

(f) Any individual involved in the sale of manufactured homes if exempted from licensing by a rule, regulation, guideline or interpretation issued by the U.S. Department of Housing and Urban Development under Public Law 110-289.

4. Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor of an originating entity may not engage in residential mortgage loan origination activities unless such independent contractor loan processor or underwriter obtains and maintains a license under this article. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the NMLSR.

§ 599-d. State license application. 1. Form of application. Applicants for a license under this article shall apply on a form prescribed by the superintendent. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the superintendent and may be changed or updated as necessary by the superintendent in order to carry out the purposes of this article. As part of such application and notwithstanding section eighteen-a of this chapter, the applicant (or his or her originating entity on his or her behalf) shall pay a fee as determined by the superintendent as an investigation and initial license fee; provided, however, that the investigation portion of such fee shall be no more than the superintendent's reasonable estimate of the actual cost or costs to the department to undertake such investigation of the applicant, and the initial license portion of such fee and the annual license fee as hereafter required pursuant to this article shall be a license fee amount determined by the superintendent.

2. Charges to originating entities. Any expense of the administration of this article with respect to the licensing of mortgage loan originators that is included with an assessment of originating entities pursuant to section seventeen of this chapter shall be levied only upon such originating entities having employed or affiliated mortgage loan originators that are required to be licensed.

3. Fee collection by the NMLSR. Any fee established pursuant to this section may be collected by the NMLSR and include a processing fee charged by that entity. Any such processing fees shall not be remitted to the superintendent and shall not be deemed revenue pursuant to this section or the state finance law.

4. Relationship with NMLSR. In order to fulfill the purposes of this article, the superintendent is authorized to establish contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

5. Waiver or modification of requirements. The superintendent is authorized to waive or modify, in whole or part, by rule, regulation or order, any and all requirements of this article and to establish new requirements as may be reasonably necessary to participate in the NMLSR or to comply with Title V of The Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act, as it may be amended from time to time, and regulations thereunder or interpretations thereof, that may be adopted from time to time by the Secretary of the U.S. Department of Housing and Urban Development.

6. Electronic filing. Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that any application for, or renewal of, a license or for any other submission or approval as may be required by this article, be made or executed by electronic means, including through the NMLSR or other entities designated by the NMLSR if he or she deems it necessary to ensure the efficient and effective administration of this article.

7. NMLSR as agent to distribute criminal background information. For the purposes of this section and in order to expedite the processing of all fingerprints, the superintendent is authorized to use the NMLSR as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any governmental agency.

8. NMLSR as agent to distribute non-criminal background information. For the purposes of this section and in order to expedite the processing of all applications, including obtaining independent credit reports and information related to administrative, civil or criminal findings by any governmental jurisdiction, the superintendent is authorized to use the NMLSR as a channeling agent for requesting and distributing information to and from any source.

9. Background information. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the NMLSR and the superintendent, as required by the superintendent, information concerning the applicant's identity,

including:

(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check, as may be designated by the superintendent; and

(b) Personal history and experience in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(ii) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(c) The current business name and principal address of the originating entity employing the applicant or with which the applicant has an affiliation; and

(d) Such other pertinent information as the superintendent may require.

§ 599-e. Issuance of a license. 1. Findings. Notwithstanding any other law, the superintendent shall not issue a mortgage loan origination license unless he or she makes, at a minimum, the following findings:

(a) No license revocation. That the applicant has never had a mortgage loan originator authorization, license or license equivalent revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(b) No felony conviction. That the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(i) During the seven-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering, provided that for purposes of this subdivision, the superintendent may, in his or her discretion, disregard a conviction where the felon has been pardoned;

(c) Character and fitness. That the applicant has demonstrated

financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the MLO will operate honestly, fairly, and efficiently within the purposes of this article;

(d) Pre-licensing education. That the applicant has completed the pre-licensing education requirement described in section five hundred ninety-nine-f of this article;

(e) Written test. That the applicant has passed a written test that meets the test requirement described in section five hundred ninety-nine-g of this article;

(f) Surety bond. That the applicant has met the surety bond requirement described in section five hundred ninety-nine-k of this article; and

(g) Affiliation. Unless the superintendent shall have waived the affiliation requirement pursuant to regulations adopted by the superintendent, that the applicant is employed by, or is an independent contractor of (i) an originating entity, (ii) solely in the case of a mortgage loan originator engaged in the origination of residential mortgage loans on manufactured homes, an entity licensed under article nine or eleven-B of this chapter, or (iii) in the case of a mortgage loan originator engaged in mortgage loan servicing and employed by a mortgage loan servicer, an entity registered as a mortgage loan servicer under article twelve-D of this chapter or exempt from registration under such article. A mortgage loan originator may not be simultaneously employed or affiliated with more than one originating entity.

2. Disqualifying associations. The superintendent may refuse to issue a license pursuant to this article if he or she shall find that the applicant (a) has been a director, partner, or substantial stockholder of an originating entity which has had a registration or license revoked by the superintendent or a regulator of another state that regulates such originating entity, or (b) has been an employee, officer or agent of, or a consultant to, an originating entity that has had a registration or license revoked by the superintendent or a regulator of another state that regulates such originating entity where such person shall have been found by the superintendent or by such regulator of another state to bear responsibility for the acts resulting in such

revocation. For the purposes of this subdivision, a person shall be deemed to have been convicted of a crime if such person shall have pled guilty to a charge thereof before a court or magistrate, or shall have been found guilty thereof by the decision or judgment of a court or magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof.

3. Issuance of a license. The superintendent, after making the findings required by subdivision one of this section shall thereupon issue a license to the applicant as mortgage loan originator. The superintendent shall transmit one copy of such certificate to the applicant and file another in his or her office, and shall transmit notice of approval of such application, in such form as the superintendent deems appropriate, to the originating entity for which the applicant is providing services. Such license shall be deemed to terminate at the end of the annual license period, unless such license is renewed in accordance with section five hundred ninety-nine-i of this article.

§ 599-f. Pre-licensing educational requirements. 1. Minimum educational requirements. In order to meet the pre-licensing education requirement referred to in this article, a person shall complete at least twenty hours of education approved in accordance with subdivision two of this section, which shall include at least the following minimum requirements:

(a) Three hours of federal law and regulations;

(b) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) Three hours of training on applicable New York State law and regulations as may be approved by the superintendent.

2. Approved education courses. For purposes of subdivision one of this section, pre-licensing education courses shall be such courses, including the course provider thereof, as shall have been reviewed, and

approved, by the NMLSR based upon reasonable standards. An hour of education for purposes of this article shall be as defined by the NMLSR.

3. Employer and affiliate education courses. Nothing in this section shall preclude any pre-licensing education course, as approved by the NMLSR, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

4. Venue of education. Pre-licensing education may be offered either in a classroom, online or by any other means approved by the NMLSR.

5. Reciprocity of education courses. Pre-licensing education courses approved by the NMLSR pursuant to paragraphs (a), (b) and (c) of subdivision one of this section for any state shall be accepted as credit towards completion of pre-licensing education requirements in this state.

6. Re-licensing educational requirements. An individual licensed under this article subsequent to its effective date applying to be licensed again must prove that he or she has completed all the continuing education requirements for the year in which the license was last held.

§ 599-g. Testing of mortgage loan originators. 1. General requirements. In order to meet the written test requirement referred to in this article, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards.

2. Qualified test. A written test shall not be treated as a qualified written test for purposes of subdivision one of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal law and regulation pertaining to mortgage origination;

(c) State law and regulation pertaining to mortgage origination; and

(d) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

3. Testing location. Nothing in this section shall prohibit a test provider approved by the NMLSR from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of such entity, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

4. Minimum competency. The following conditions apply to individuals taking such competency tests:

(a) An individual shall not be considered to have passed a qualified written test unless the individual shall have achieved a test score of not less than seventy-five percent correct answers to questions;

(b) An individual may retake a test three consecutive times, with each consecutive taking occurring at least thirty days after the preceding test;

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again; and

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer, not taking into account any time during which such individual is a registered mortgage loan originator, shall retake the test.

§ 599-h. Mortgage call reports. Each originating entity shall submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require.

§ 599-i. Standards for license renewal; inactive status. 1. Standards for renewal. The following minimum standards for license renewal for mortgage loan originators are hereby established:

(a) The mortgage loan originator must continue to meet the minimum

standards for license issuance set forth in section five hundred ninety-nine-e of this article;

(b) The mortgage loan originator must satisfy the annual continuing education requirements described in section five hundred ninety-nine-j of this article; and

(c) The mortgage loan originator must have paid all required fees for the renewal of the license.

2. Failure to satisfy standards. The license of a mortgage loan originator failing to satisfy the minimum standards for renewal shall terminate. In the event the licensed mortgage loan originator fails to pay such fee or otherwise satisfy this section, then the department shall notify the originating entity of the termination of the license. Such license shall be reinstated, in the case of a licensed mortgage loan originator failing to timely pay such fee, if such licensed mortgage loan originator pays such fee within sixty days of such due date.

3. Submission of annual request. An annual request for renewal of a license as a mortgage loan originator shall be affirmed by the mortgage loan originator and submitted electronically, including through the NMLSR, in such form and in such manner as may be prescribed by the superintendent. The annual request for renewal shall contain such information as specified by the superintendent.

4. Inactive status. The license of a mortgage loan originator is not effective during any period during which the mortgage loan originator is not employed by, or is an independent contractor of, an originating entity. When a mortgage loan originator ceases to be employed by, or is an independent contractor of, an originating entity, the originating entity shall promptly notify the superintendent of the termination date of such employment or affiliation. The license of such mortgage loan originator shall be placed in inactive status until the superintendent receives written or electronic notice of the mortgage loan originator's new employment or affiliation. A mortgage loan originator shall continue to pay the annual license fee and to take required education courses while in inactive status.

§ 599-j. Continuing education for mortgage loan originators. 1. Continuing education requirements. In order to meet the annual continuing education requirements referred to in section five hundred ninety-nine-i of this article, a licensed mortgage loan originator shall complete, beginning in the year after such individual is licensed, at least eleven hours of education approved in accordance with subdivision two of this section, which shall include at least:

(a) Three hours of Federal law and regulations;

(b) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) Three hours of training on applicable New York State law and regulations.

2. Approved education courses. For purposes of subdivision one of this section, continuing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

3. Employer and affiliate education courses. Nothing in this section shall preclude any education course approved by the NMLSR that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

4. Venue of education. Continuing education may be offered either in a classroom, online or by any other means approved by the NMLSR.

5. Calculation of credits. A licensed mortgage loan originator:

(a) Except for subdivision nine of this section, may receive credit for a continuing education course only in the calendar year in which the course is taken; and

(b) May not take the same approved course in the same or successive

years to meet the annual requirements for continuing education.

6. Instructor credit. A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

7. Reciprocity of education. A person having successfully completed the education requirements approved by the NMLSR pursuant to paragraphs (a), (b), and (c) of subdivision one of this section for any state shall be accepted as credit towards completion of continuing education requirements in this state.

8. Lapse in license. A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

9. Make up of continuing education. An individual meeting the requirements of paragraphs (a) and (c) of subdivision one of section five hundred ninety-nine-i of this article may make up any deficiency in continuing education as established by rule or regulation of the superintendent.

§ 599-k. Required surety bond. 1. Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of an originating entity, the surety bond of such person may be used to satisfy the mortgage loan originator's surety bond requirement; provided that such surety bond contains coverage for each mortgage loan originator not otherwise covered by a qualifying surety bond in an amount prescribed in subdivision two of this section. The surety bond shall be in a form prescribed by the superintendent. The superintendent may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this

article.

2. The penal amount of the required surety bond shall be maintained in an amount that reflects the dollar amount of loans originated by the mortgage loan originator as determined by the superintendent.

3. When an action is commenced on a licensee's bond, the superintendent may require the filing of a new or supplemental bond.

4. Immediately upon recovery upon any claim or action on or under the bond, the mortgage loan originator (or the originating entity as the case may be), shall file a new or supplemental bond restoring the face amount of the bond to the amount required by the superintendent.

§ 599-l. Reports by the superintendent; permissive challenges by licensees. 1. Notwithstanding any other provisions of law, the superintendent shall report on a regular basis, not more than annually, all violations of this article, as well as enforcement actions and other relevant information, to the NMLSR subject to the provisions contained in the confidentiality provisions of section five hundred ninety-nine-q of this article.

2. The superintendent shall establish a process whereby a mortgage loan originator may challenge information entered into the NMLSR by the superintendent.

§ 599-m. Required records and reporting. 1. Educational records. Each originating entity shall obtain and retain acceptable documentation of the satisfactory completion of education courses required pursuant to this article by each mortgage loan originator employed by or affiliated with such originating entity and shall provide such documentation at the request of the superintendent. Such documentation shall be retained by an originating entity for six years. An originating entity shall retain a copy of any original proof or record of completion provided by a mortgage loan originator. In those instances when an originating entity

also retains the original proof or record of such completion of any then applicable education requirement, such originating entity shall provide the original proof or record, upon request, when a mortgage loan originator terminates or has terminated his or her employment or affiliation with the originating entity.

2. List of licensed mortgage loan originators. The superintendent shall maintain upon the internet web-page of the department a list of the mortgage loan originators licensed and in good standing. Such list shall indicate the name, license number and current originating entity, if any, employing each mortgage loan originator or with whom such mortgage loan originator is affiliated.

3. Reports by originating entities. Each originating entity shall on a quarterly basis in each calendar year provide the superintendent, in written or electronic form, with a list of the mortgage loan originators employed by, or affiliated with, such originating entity and shall also advise in such report of any dismissal for cause of a mortgage loan originator employed by, or affiliated with, such originating entity during such quarter, which is due or based upon an alleged violation of this chapter or any law involving real property.

4. Reports by mortgage loan originators. Each mortgage loan originator shall promptly notify the superintendent of the following:

(a) A change in his or her primary residence address;

(b) Any felony conviction or pending felony charges; any charge of or conviction with respect to a misdemeanor involving financial services or a financial services related business; or any charge or conviction involving fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery or extortion subsequent to initial authorization;

(c) Any termination of or resignation from employment of affiliation with an originating entity;

(d) Any initiation, settlement or resolution of any complaint, action or proceeding brought against him or her by a state or federal governmental unit or self-regulatory organization in connection with a financial services-related activity or business or involving fraud,

misrepresentation, consumer deception, larceny or perjury;

(e) Any initiation, settlement or resolution of any other civil action or proceeding against him or her involving fraud, misrepresentation, larceny or perjury; and

(f) Any other matters as directed by the superintendent.

§ 599-n. Enforcement authority; grounds for suspension or revocation of a mortgage loan originator license; restitution. 1. Licensee revocation. In addition to the authority set forth in subdivision three of this section, the superintendent may revoke a license to engage in business as a mortgage loan originator pursuant to this article if he or she finds, after notice and a hearing, that:

(a) Through a course of conduct, the licensee has violated any provisions of this article, or any rule or regulation promulgated by the superintendent thereunder, or any rule or regulation promulgated by the superintendent under article twelve-D of this chapter or of any other applicable law, rule or regulation of this state or the federal government pertaining to mortgage banking, brokering or loan originating; or

(b) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the superintendent to refuse to issue such initial license.

2. Restitution. The superintendent may order a mortgage loan originator or any other person to pay restitution for violations of this article or any rules of the superintendent promulgated hereunder.

3. Suspension; termination. (a) The superintendent may, for good cause, or where there is a substantial risk of public harm, without notice or a hearing, issue an order suspending the license of any mortgage loan originator for a period not to exceed ninety days for investigation. "Good cause", as used in this subdivision, shall exist only when the mortgage loan originator has engaged or engages in dishonest or inequitable practices or practices which demonstrate incompetent mortgage loan originating, which practices may cause substantial harm to the persons afforded the protection of article

twelve-D of this chapter, or the license of the mortgage loan originator was revoked in another state or jurisdiction participating in the NMLSR.

(b) The superintendent may, without notice or a hearing, issue an order suspending any license: (i) thirty days after the date the mortgage loan originator fails to file any report required to be filed with the superintendent pursuant to the authority provided by this article; or (ii) immediately upon notice that any required surety bond with respect to the licensee is no longer in effect.

(c) If the superintendent has issued an order suspending a license pursuant to paragraph (a) of this subdivision, such license may be reinstated if the superintendent determines, in his or her sole discretion after investigation, that good cause therefor did not exist or no longer exists. If the superintendent has issued an order suspending a license pursuant to paragraph (b) of this subdivision, such license may be reinstated, if the superintendent determines, in his or her sole discretion, that the licensee has cured all deficiencies set forth in such order by the close of business ninety days after the date of such suspension order. Otherwise, in case of a suspension pursuant to paragraph (b) of this subdivision, unless the superintendent has, in his or her sole discretion, extended such suspension, the license of such mortgage loan originator shall be deemed to be automatically terminated by operation of law at the close of business on such ninetieth day.

4. Requirement for a hearing. Except as provided in subdivision three of this section, no license shall be revoked or suspended except after notice and a hearing thereon. Any order of suspension issued after notice and a hearing may include as a condition of reinstatement that restitution be made to consumers of fees or other charges which have been improperly charged or collected as determined by the superintendent.

5. Surrender of license. With the prior consent of the superintendent, any mortgage loan originator may surrender any license by delivering to the superintendent written notice that he or she thereby surrenders such license, but such surrender shall not affect such mortgage loan originator's civil or criminal liability for acts committed prior to such surrender or its obligations to the superintendent for assessments,

fees or administrative actions with respect to the periods before such surrender.

6. Continuation of liability. A suspension, revocation or termination of a license in accordance with this article shall not affect such mortgage loan originator's civil or criminal liability for acts committed prior to such suspension, revocation or termination or its obligations to the superintendent for assessments, fees or administrative actions with respect to the periods before such suspension, revocation or termination.

7. Continuation of contracts. No revocation, suspension, surrender or termination of any license under this article shall impair or affect the obligation of any preexisting lawful contract between any licensee under article twelve-D of this chapter and any person.

8. Continuation of license. Every license issued pursuant to this article shall remain in force and effect until the same shall have been surrendered, revoked, terminated or suspended in accordance with any provision of this article, but the superintendent shall have authority in his or her sole discretion to reinstate a suspended license or to issue a new license to a mortgage loan originator whose license shall have been revoked or terminated if no fact or condition then exists which would have warranted the superintendent to refuse to issue such initial authorization under this article.

9. Notice of revocation or suspension; review. Whenever the superintendent shall revoke or suspend a license issued pursuant to this article, he or she shall forthwith execute multiple copies of a written order to that effect. The superintendent shall file one copy of such order in the office of the department and shall forthwith serve a copy upon the mortgage loan originator and any affected originating entity. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such application for review as authorized by this section must be made within thirty days from the date of such order of suspension or revocation.

10. Notice of termination. Whenever a license shall have terminated in accordance with this article, the superintendent shall notify the mortgage loan originator and any affected originating entity that the license has terminated and that the mortgage loan originator may not 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.

11. Hearing requirements. Any hearing held pursuant to the provisions of this section shall be subject to the provisions of the state administrative procedure act.

§ 599-o. Rules, regulations and examinations. 1. The superintendent is hereby authorized and empowered to make such rules and regulations and interim procedures for licensing and acceptance of applications as may in his or her judgment be necessary or appropriate for the effective administration or enforcement of this article. For individuals previously authorized to act as mortgage loan originators under this chapter, the superintendent may establish expedited review and licensing procedures.

2. For the purpose of discovering violations of this article or securing information lawfully required by him or her hereunder, the superintendent may at any time, and as often as he or she may determine, investigate the business and examine the books, accounts, records, and files of every licensee under this article and any entity with which such individual is associated as an employee or independent contractor. For that purpose the superintendent shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such entities. The superintendent shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may deem necessary or desirable relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in

such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the superintendent.

§ 599-p. Unique identifier. The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the superintendent.

§ 599-q. Confidentiality. In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, information provided to the superintendent by an MLO shall be subject to the following:

1. Except as otherwise provided in public law 110-289, section 1512, the requirements under any federal law, the freedom of information law ("FOIL") or other law of this state regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the NMLSR. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege of the loss of confidentiality protections provided by federal law, FOIL or this chapter.

2. For these purposes, the superintendent is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of

Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the superintendent.

§ 599-r. Construction. Nothing contained in this article shall be deemed to impair, alter or render ineffective any provision of article twelve-D of this chapter, including but not limited to any provision thereof relating to issuing, suspending or revoking any mortgage banker license or mortgage broker registration.

ARTICLE XIII

MERGER; VOLUNTARY DISSOLUTION; SUPERINTENDENT'S TAKING POSSESSION; REORGANIZATION; LIQUIDATION

Section 600. Merger; when authorized.
601. Merger agreement; authorization; approval; filing.
601-a. Purchase of assets.
601-b. Approval or disapproval of merger or purchase of assets.
601-c. Sale, lease, exchange or other disposition of property, rights, privileges and franchises.
602. Effect of merger.
603. Issuance of new certificates of stock or other consideration.
604. Rights of dissenting stockholders.
604-a. Transfer of fiduciary relationships.
605. Voluntary liquidation; sale of assets; forfeiture of charter by non-user.
605-a. Transfer of deposit liabilities of bank or trust company; sale or pledge of assets to facilitate such transfer.
606. When superintendent may take possession of banking organization; when possession may be surrendered.
607. Manner and time within which taking possession may be tested.
609. Resumption of business by bank, trust company or industrial bank; retirement of certificates; applicability to stock-form savings banks and

stock-form savings and loan associations.
610. Resumption of business in accordance with plan of reorganization.
611. Special deputies; assistants; counsel and other employees.
611-a. Appointment of single judge.
612. Certificates to be recorded and received in evidence.
612-a. Payment of wages.
613. Payment by superintendent of expenses of liquidation.
614. Obtaining possession of pleadings, et cetera, in actions against which attorneys' liens are asserted.
615. On taking possession, superintendent shall notify those holding assets; effect of notification; turnover of assets and payment of debts owed to the banking organization.
616. Inventory of assets; where filed.
617. Disposition of property held as bailee, or depositary; opening of safe deposit boxes; disposal of contents.
618. Liquidation and conservation of assets; compromising debts and claims; deposit of moneys collected; preference; superintendent, as liquidator, authorized to borrow on and pledge assets of banks.
618-a. Repudiation of contracts.
619. Prosecution and defense of actions; actions preferred; limitations; power to execute instruments; exemption from filing and other fees.
620. Notice to creditors to make proof of claims; form of claims; claims for priority of payment.
620-a. Certain claims shall not be accepted.
622. List of claims duly presented; filing.
623. Filing objections to claims presented or listed; procedure upon claim under objection.
624. Acceptance and rejection of claims and accounts; filing of list thereof; secured claims and accounts; determination of priorities.
625. Effect of accepting claims and accounts; limitation upon actions to establish claims and accounts; necessary

allegations; effect of judgment.
626. Judgments recovered shall not be liens.
627. Dividends to creditors; distributions to stockholders; dissolution; destruction of documents.
628. Payment of dividends when deposits have been made available by Federal Deposit Insurance Corporation.
629. Payment of dividends to minors, trustees or joint depositors; payment of dividends where adverse claim is asserted; interpleader in certain actions.
630. Claims of shareholders and members of credit unions and savings and loan associations.
631. Actions against directors, trustees, managers or officers for violation of their official duties.
633. Service of notice or process during time of war.
634. Power to appoint regulator or insurer as receiver; additional powers.

§ 600. Merger; when authorized. The following mergers are hereby authorized:

(1) One or more corporations organized under the laws of this state and subject to the provisions of article three, article eight, article eleven or article twelve of this chapter with another corporation subject to the provisions of the same article.

(2) One or more mutual savings banks with another mutual savings bank.

(3) One or more mutual savings and loan associations with another mutual savings and loan association.

(4) One or more mutual savings and loan associations with one or more mutual savings banks.

(5) One or more safe deposit companies with a bank or trust company.

(6) One or more banks, trust companies, stock-form savings banks or stock-form savings and loan associations, with one or more out-of-state banks or out-of-state trust companies as such terms are defined in section two hundred twenty-two of this chapter.

(7) One or more subsidiaries or affiliates of a bank, trust company, savings bank or savings and loan association, which are not a bank, trust company, savings bank or savings and loan association, as those

terms are defined in section two of this chapter, with the bank, trust company, savings bank or savings and loan association of which it is a subsidiary or affiliate, as the superintendent of financial services shall approve and enter on its records; provided, however, that nothing in this subdivision shall be deemed to authorize a bank, trust company, savings bank or savings and loan association to exercise any power or engage in any activity that it may not exercise or engage in pursuant to this chapter. The superintendent of financial services may promulgate such regulations as he or she deems necessary and proper to implement and define the provisions of this subdivision. Nothing in this subdivision shall alter, affect or impair any regulation or resolution adopted, or that may be adopted, by the superintendent of financial services, pursuant to section twelve-a or former sections fourteen-g or fourteen-h of this chapter.

(8) Such other mergers between and among banking institutions as the superintendent of financial services may authorize. The superintendent may promulgate such regulations as he or she deems necessary and proper to implement and define the provisions of this paragraph.

§ 601. Merger agreement; authorization; approval; filing. 1. A written plan of merger shall be submitted, in duplicate, to the superintendent by the corporations which are to merge. Such plan shall be in form satisfactory to the superintendent, shall specify each corporation to be merged and the corporation which is to receive into itself the merging corporation or corporations, and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the receiving corporation and such name may be the name of any corporation which is a party to such plan or a new name. Such plan may also name the persons who shall constitute the board of directors or trustees of the receiving corporation after the merger shall have been accomplished, provided that the number and qualifications of such persons shall be in accordance with the provisions of this chapter relating to the number and qualifications of directors or trustees of such a corporation; or, in the case of stock corporations, such plan may provide for a meeting of the stockholders to elect a board of directors within sixty days after

such merger, and may make provision for conducting the affairs of the corporation meanwhile. In the case of savings banks, such plan may also provide that the place or places of business of the merging bank may be maintained as an office or offices of the receiving bank as provided in paragraph (c) of subdivision two of section two hundred forty of this chapter.

At the time of submission for action by the superintendent of the written plan of merger, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent.

2. In the case of stock corporations, there shall be submitted, in duplicate, to the superintendent with the plan of merger, a certificate of the president, secretary or cashier of each of the corporations which are to merge, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in each county in which any of the merging corporations has its principal place of business and that such plan has been approved at such meeting by the vote of the stockholders owning at least two-thirds in amount of the stock of such corporation, except that such certificate of the president, secretary or cashier of the receiving corporation need not certify that such plan was submitted to or approved by vote of the stockholders of such corporation if (a) the total assets of the merging corporation or corporations do not exceed ten per centum of the total assets of the receiving corporation and (b) the plan of merger does not change the name or the authorized shares of capital stock of the receiving corporation or make or require any other change or amendment for which the approval or consent of stockholders of the receiving corporation would be required under provisions of law other than this section.

3. In the case of mutual savings banks, mutual savings and loan

associations or credit unions, there shall be submitted, in duplicate, to the superintendent with the plan of merger, a certificate of the president, secretary or cashier of each of the corporations which are to merge, certifying that such plan has been submitted to a special meeting of the board of trustees or directors of his corporation, that a notice of at least fifteen days, specifying the time, place and object of the meeting, together with a copy of the plan has been mailed to each trustee or director and that such plan has been approved at such meeting by a vote of two-thirds of all the members of such board of trustees or directors.

4. In the case of merger of a safe deposit company into a bank or trust company which owns at least ninety-five per centum of the outstanding shares of each class of the stock of such safe deposit company, in lieu of compliance with subdivisions one and two of this section there may be submitted, in duplicate, to the superintendent a written plan of merger in form satisfactory to the superintendent stating that such safe deposit company as the merging corporation is to be merged into such bank or trust company as the receiving corporation and setting forth any necessary or appropriate terms and conditions of the merger and provisions for carrying it into effect, including, if the receiving corporation does not own all the outstanding stock of the merging corporation, provisions with respect to the cash or other consideration to be paid or delivered to the stockholders of the merging corporation (other than the receiving corporation) upon the merger becoming effective and upon the surrender of their shares. There shall be submitted, in duplicate, to the superintendent with such plan of merger, a certificate of the president, secretary or cashier of the merging corporation and of the receiving corporation, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof. The certificate of the president, secretary or cashier of the merging corporation shall certify the extent of the ownership by the receiving corporation of the outstanding capital stock of the merging corporation. If the receiving corporation does not own all the outstanding stock of the merging corporation, the certificate of the president, secretary or cashier of the merging corporation shall also certify that there has been mailed to

each of its stockholders of record (other than the receiving corporation), at the address appearing upon the books of the merging corporation, a copy of the plan of merger. Any holder of a share or shares of stock of the merging corporation not owned by the receiving corporation may, at any time prior to the expiration of twenty days after the date of mailing of the plan of merger to the stockholders of the merging corporation, object to the merger and demand payment for his stock. Such objection and demand must be in writing and filed with the receiving corporation. Thereupon such stockholder and the receiving corporation shall have the right to have such stock appraised and paid for as provided in section six thousand twenty-two of this chapter, subject to the conditions and provisions of said section (other than the conditions and provisions of subdivisions one, two and three thereof); except that (a) the time within which the receiving corporation may mail to such stockholder a written offer accompanied by a balance sheet and profit and loss statement of the merging corporation as provided in subdivision seven of said section shall expire thirty days after the merger takes effect, (b) all references in subdivision eight of said section to the stockholders' authorization date shall be deemed to refer to the date of mailing of the plan of merger to the stockholders of the merging corporation, and (c) all references in said section to the notice of election to dissent shall be deemed to refer to the demand of a stockholder of the merging corporation for payment of his stock.

§ 601-a. Purchase of assets. 1. The following acquisitions are hereby authorized whether by purchase or otherwise, other than by merger, of all or a substantial part of the assets of:

(a) One or more corporations organized under the laws of this state and subject to the provisions of article three, article eight or article twelve of this chapter by another corporation subject to the provisions of the same article.

(b) One or more safe deposit companies by a bank or trust company.

(c) One or more mutual savings banks by another mutual savings bank.

(d) One or more mutual savings and loan associations by another mutual savings and loan association.

(e) One or more stock-form savings banks by another stock-form savings

bank.

(f) One or more stock-form savings and loan associations by another stock-form savings and loan association.

(g) One or more banks, trust companies, stock-form savings banks or stock-form savings and loan associations, with one or more out-of-state banks or out-of-state trust companies as such terms are defined in section two hundred twenty-two of this chapter.

(h) One or more banking institutions by another banking institution as the superintendent may authorize. For purposes of this paragraph, a branch or agency of a foreign banking corporation licensed pursuant to article two of this chapter and seeking approval for a transfer of fiduciary relationships pursuant to section six hundred four-a of this chapter shall be considered a banking institution. The superintendent may promulgate such regulations as he or she deems necessary and proper to implement and define the provisions of this paragraph.

2. A written plan providing for the acquisition by one corporation of the assets of another shall be submitted, in duplicate, to the superintendent by both corporations. Such plan shall be in form satisfactory to the superintendent, shall specify the selling and the acquiring corporation, and shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect.

At the time of submission for action by the superintendent of the written plan of acquisition of assets, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent; provided, however, that no investigation fee shall be payable under this subdivision with respect to an acquisition to which subdivision two of section six hundred one-b of this article is applicable.

3. There shall also be submitted, in duplicate, to the superintendent with the plan of acquisition of assets, a certificate of the president, secretary or cashier of the selling corporation and, in the event the assets of the selling corporation shall exceed ten per centum of the assets of the acquiring corporation, of the acquiring corporation, certifying that such plan has been approved by the board of directors of

his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place, and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in each county in which the selling corporation and, if applicable, the acquiring corporation has its principal place of business and that such plan has been approved at such meeting by the vote of the stockholders owning at least two-thirds in amount of the stock of such corporation.

5. Nothing contained in this section six hundred and one-a shall be construed to prohibit any other purchase of assets which is otherwise permitted by applicable law.

§ 601-b. Approval or disapproval of merger or purchase of assets. 1. The superintendent shall approve or disapprove of a proposed merger as authorized by section six hundred of this chapter or a proposed acquisition of all or a substantial part of the assets of any banking organization as authorized by section six hundred one-a of this chapter, as the case may be, within one hundred twenty days after the submission of the proposed plan thereof to him. In determining whether to so approve, the superintendent shall take into consideration (i) the declaration of policy contained in section ten of this chapter, (ii) whether the effect of such merger or acquisition shall be either to expand the size or extent of the resulting or acquiring institution beyond limits consistent with adequate and sound banking and the preservation thereof or result in a concentration of assets beyond limits consistent with effective competition, (iii) whether such merger or acquisition may result in such a lessening of competition as to be injurious to the interests of the public or tend toward monopoly and (iv) primarily, the public interest and the needs and convenience thereof. If the superintendent shall approve such proposed merger or acquisition, he shall file the plan, together with such certificates and the original of the approval of the superintendent, in the office of the

superintendent, and, in the case of merger, a duplicate of the plan, together with a duplicate of each of such certificates and a duplicate of the superintendent's approval, shall be filed in the office of the clerk of the county in which the principal office of the receiving corporation is located. Upon such filing in the office of the superintendent, the merger or acquisition shall become effective, unless a later date is specified in the plan, in which event the merger or acquisition shall become effective upon such later date.

§ 601-c. Sale, lease, exchange or other disposition of property, rights, privileges and franchises. 1. Subject to subdivision eight of section six hundred five of this chapter, and except as otherwise provided by law or by its organization certificate or other certificate filed pursuant to law, a corporation organized under the laws of this state and subject to the provisions of article three, article six, article eight, article ten or article twelve of this chapter may voluntarily sell, lease, exchange or otherwise dispose of its property, rights, privileges and franchises, or any interest therein or any part thereof; provided, however, that if such sale, lease, exchange or other disposition is not made in the regular course of business of the corporation and involves all or substantially all of its property, rights, privileges and franchises, or an integral part thereof essential to the conduct of the business of the corporation, such sale, lease, exchange or other disposition shall be authorized only in accordance with the following procedure:

(a) In the case of a corporation subject to the provisions of article three, article eight, article twelve or a stock-form banking organization subject to either article six or article ten of this chapter, the board of directors of the corporation by a majority vote of all the members thereof shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of stockholders.

Notice of meeting shall be given to each stockholder of record, whether or not entitled to vote.

The stockholders shall authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any of the terms and conditions thereof and the consideration to be received by the corporation therefor, which may consist in whole or in part of cash or other property, real or personal, including shares, bonds or other securities of any other domestic or foreign corporation or corporations, by vote at a meeting of stockholders of the holders of two-thirds of all outstanding shares entitled to vote thereon.

(b) In the case of a mutual corporation subject to the provisions of article six of this chapter, the board of trustees of the corporation by a vote of a majority of all the members thereof shall approve and authorize the proposed sale, lease, exchange or other disposition and shall fix any of the terms and conditions thereof and the consideration to be received by the corporation therefor, which may consist in whole or in part of cash or other property, real or personal, including such shares, bonds or other securities of any other domestic or foreign corporation or corporations as are authorized investments for savings banks, subject to those limitations applicable to such investments.

A verified copy of the minutes of the meeting at which the board of trustees approves and authorizes the proposed transaction shall be filed in the office of the superintendent together with a copy of the agreement governing the proposed transaction, a statement setting forth the reasons why the trustees believe the proposed transaction would be in the best interest of the savings bank, its depositors and the public and such other information as the superintendent may require. In determining whether or not to approve the proposed transaction, the superintendent shall consider whether the proposed transaction would be in the best interests of the savings bank, its depositors and the public and such other information as the superintendent may deem appropriate. The superintendent shall notify the board of trustees in writing of his or her determination. If the superintendent disapproves, the board of trustees shall abandon the proposed transaction.

(c) In the case of a mutual corporation subject to the provisions of article ten of this chapter, the board of directors of the corporation by a majority vote of all the members thereof shall approve the proposed sale, lease, exchange or other disposition and direct its submission to

a vote of shareholders.

Notice of meeting shall be given to each shareholder.

The shareholders shall authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any of the terms and conditions thereof and the consideration to be received by the corporation therefor, which may consist in whole or in part of cash or other property, real or personal, including such shares, bonds or other securities of any other domestic or foreign corporation or corporations as are authorized investments for savings and loan associations, subject to those limitations applicable to such investments, by vote at a meeting of shareholders of the holders of two-thirds in amount of the book value of all outstanding shares entitled to vote thereon.

A verified copy of the minutes of the meetings at which the board of directors and shareholders approve and authorize the proposed transaction shall be filed in the office of the superintendent together with a copy of the agreement governing the proposed transaction, a statement setting forth the reasons why the directors believe the proposed transaction would be in the best interest of the savings and loan association, its shareholders and the public and such other information as the superintendent may require. In determining whether or not to approve the proposed transaction, the superintendent shall consider whether the proposed transaction would be in the best interests of the savings and loan association, its shareholders and the public. The superintendent shall notify the board of directors in writing of his or her determination. If the superintendent disapproves, the board of directors shall abandon the proposed transaction.

2. Notwithstanding stockholder or shareholder authorization, the board may abandon the proposed sale, lease, exchange or other disposition without further action by the stockholders or shareholders, subject to the rights, if any, of third parties under any contract relating thereto.

3. This section shall not be applicable to a sale or disposition of assets the acquisition of which is authorized by section six hundred one-a of this chapter, or to any sale or other disposition of assets after the entry of an order pursuant to subdivision four of section six hundred five of this chapter, or to a sale or disposition of all or substantially all of the assets by a mutual corporation subject to the provisions of article six or article ten of this chapter to a national banking association or national banking associations or a corporation or corporations subject to the provisions of article three, article eight or article twelve of this chapter or to a stock-form corporation subject to article six or article ten of this chapter or to a stock-form federal savings bank or to a stock-form federal savings and loan association.

§ 602. Effect of merger. At the time when a merger becomes effective:

(1) the receiving corporation shall be considered the same business and corporate entity as each corporation merged into it;

(2) all of the property, rights, powers and franchises of any corporation that shall be so merged shall vest in the receiving corporation and the receiving corporation shall be subject to and be deemed to have assumed all of the debts, liabilities, obligations and duties of such merged corporation and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the receiving corporation;

(3) any reference to a merged corporation in any contract, will or document, whether executed or taking effect before or after the merger, shall be considered a reference to the receiving corporation if not inconsistent with the other provisions of the contract, will or document;

(4) a pending action or other judicial proceeding to which any corporation that shall be so merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the receiving corporation may be substituted as a party to such action or proceeding, and any judgment,

order or decree may be rendered for or against it that might have been rendered for or against such other corporation if the merger had not occurred.

No corporation organized under or subject to the provisions of this chapter which subsequent to January first, nineteen hundred thirty-eight, receives or has received into itself by merger pursuant to any provision of law a corporation organized under or subject to the provisions of any law other than this chapter shall, through such merger, acquire power to engage in any business or to exercise any right, privilege or franchise which is not conferred by the provisions of this chapter upon such receiving corporation.

§ 603. Issuance of new certificates of stock or other consideration. The receiving corporation may require the return of the original certificate or certificates held by each stockholder or shareholder in such other corporation or corporations and may issue in lieu thereof new certificates for such number of its own shares, or pay or deliver such other consideration, as such stockholder or shareholder may be entitled to receive under the merger plan.

§ 604. Rights of dissenting stockholders.

The following stockholders shall, subject to and by complying with section six thousand twenty-two of this chapter, have the right to receive payment of the fair value of their shares and the other rights and benefits provided by such section:

1. In the case of a merger pursuant to a plan submitted to stockholders as provided in subdivision two of section six hundred one of this chapter, any stockholder of the merging corporation entitled to vote thereon who does not assent thereto;

2. In the case of a plan of acquisition of assets submitted to stockholders as provided in subdivision two of section six hundred one-a

of this chapter, any stockholder of the selling corporation entitled to vote thereon who does not assent thereto; and

3. In the case of a sale, lease, exchange or other disposition which requires stockholder authorization under section six hundred one-c of this chapter, any stockholder, entitled to vote thereon, of the corporation making such sale, lease, exchange or other disposition who does not assent thereto, except in the case of a transaction wholly for cash where the stockholders' authorization thereof is conditioned upon the distribution of all the net proceeds of such transaction to the stockholders in accordance with their respective interests within one year after the date of such transaction and upon the dissolution of the corporation.

§ 604-a. Transfer of fiduciary relationships. 1. If any banking institution, including a bank or trust company, national banking association, savings bank, savings and loan association, federally chartered savings bank, federally chartered savings association, or a branch or agency of a foreign banking corporation licensed pursuant to article two of this chapter, located in this state, shall have transferred all or substantially all of its assets to another banking institution in a transaction subject to this chapter pursuant to a written agreement between the transferor and transferee whereby the transferee has assumed the deposit liabilities, if any, of the transferor and has agreed to assume all fiduciary relationships of the transferor, the transferee may file in the office of the superintendent a certificate in its name and under its seal, signed by its president, secretary or cashier, setting forth a copy of such agreement and stating that the transferee assumes all of the fiduciary relationships of the transferor pursuant to the provisions of this section; provided, however, that such certificate shall not be filed unless the approval of the superintendent shall have been endorsed thereon or annexed thereto before filing. In the case of a branch or agency licensed pursuant to article two of this chapter that seeks to participate in a transaction described in this section, such branch or agency shall be subject to the application and approval requirements governing acquisition transactions

set forth in sections six hundred one-a and six hundred one-b of this article.

2. Upon the filing of such certificate in the office of the superintendent, all of the property, rights, powers and franchises of the transferor as fiduciary shall vest in the transferee and the transferee shall be deemed to have assumed all of the debts, liabilities, obligations and duties of the transferor as fiduciary, and to have succeeded to all the fiduciary relationships of the transferor, as fully and with the same effect as is provided in sections one hundred thirty-six-c and six hundred two of this chapter in the case of a merger, and any reference to the transferor as fiduciary in any capacity, contained in any contract, will or document, whether executed or taking effect before or after the filing of such certificate in the office of the superintendent, shall be considered a reference to the transferee if not inconsistent with the other provisions of the contract, will or document.

3. For purposes of this section, the fiduciary relationships of the transferor shall include all relationships as agent, trustee, guardian, receiver, committee, conservator, executor, administrator, or other fiduciary in any capacity or for any purpose mentioned in section one hundred of this chapter, and all relationships of the transferor as bailee or depositary of personal property.

4. This section shall not be deemed to authorize a transferee to assume any fiduciary relationship of a kind which it would not otherwise have power to undertake and perform. Nothing in this section shall be deemed to authorize any such transferee to maintain as its own office any office previously maintained by the transferor, and authority, if any, to maintain any such office shall be governed by the applicable provisions of law other than this section. This section shall not be deemed to apply to contracts of the transferor for the leasing of safe deposit boxes or vaults.

§ 605. Voluntary liquidation; sale of assets; forfeiture of charter by

non-user. 1. Any corporate banking organization, the assets of which have a value at least equal to its liabilities, exclusive of any liability to shareholders or stockholders, as such, may voluntarily wind up its affairs; but no banking organization of which the superintendent has taken possession in accordance with the provisions of section six hundred six of this chapter shall take any steps for such voluntary dissolution until it has received the written approval of the superintendent.

2. To effect a voluntary dissolution of any corporation, a meeting of the stockholders or shareholders of such corporation having full voting rights, and if applicable any other stockholders or shareholders authorized by the organization certificate or by-laws of such corporation to vote on a resolution to effect a voluntary dissolution, shall be held upon not less than twenty days' written notice to each such stockholder or shareholder, either served personally or mailed to the stockholder or shareholder at the address appearing upon the books of the corporation, and containing a statement of the purpose for which such meeting is called. Proof by affidavit of due service of such notice shall be filed in the office of the corporation before or at the time of such meeting.

In the case of a mutual savings bank, a meeting of its board of trustees shall be held upon like notice. Proof by affidavit of due service of such notice shall be filed in the office of the savings bank before or at the time of such meeting.

3. At such a meeting of stockholders or mutual shareholders, such stockholders or mutual shareholders may, by a vote of the owners of at least two-thirds in amount of such stock, or of the capital of such mutual corporation, direct that the corporation be closed and its business wound up. The proceedings of such meeting shall be entered in the minutes of such corporation.

At such a meeting of the board of trustees of a savings bank, the trustees may by vote of not less than two-thirds of their whole number, direct by resolution that the savings bank be closed and its business

wound up. The vote on such resolution shall be recorded with the resolution in the minutes of the board of trustees.

A copy of the minutes of such meeting of stockholders or mutual shareholders or board of trustees, verified by the presiding officer and by the secretary of such meeting, shall be filed in the office of the superintendent within five days after the date of such meeting.

4. Within three months after the date of any such meeting, application may be made to the supreme court, after due notice to the superintendent, for an order declaring the business of such corporation closed. In a proper case, the court shall make such order which shall prescribe the notice to be given to creditors and depositors to present their claims to the corporation for payment. In the closing order, the court shall set a date certain by which claims must be presented to the corporation for payment. The corporation need not consider any claims submitted after that date. Within five days after the making of such order, a certified copy thereof shall be filed in the office of the superintendent. Upon the entry of such order such corporation shall cease to do business and shall wind up its affairs, pay its creditors and depositors, if any, and, except in the case of a mutual savings bank, distribute any remaining assets among its shareholders or stockholders according to their respective rights and interests. The corporation or any creditor or depositor thereof, upon due notice, may apply to the court that issued the closing order for a determination as to any disputed claim or for any other relief necessary to effectuate the liquidation and dissolution of the corporation. Any petition, application, or motion to vacate, set aside, modify or amend such order so as to permit the corporation to resume business shall have incorporated therein a certificate of the superintendent certifying that after investigation the superintendent has found that the public convenience and advantage will be promoted by the granting of said petition, application or motion.

4-a. (a) Such corporation may, at any time after entry of the order described in subdivision four of this section, cause to be mailed to each person claiming to be, or appearing upon the books of such

corporation to be

(1) the owner of any personal property in the custody or possession of such corporation as bailee or depositary for hire or otherwise, including the contents of any safe, vault or box theretofore opened for non-payment of rental in accordance with the provisions of this chapter, or

(2) the lessee of any safe, vault or box, a notice in writing directed by registered mail to such person at his last address as the same appears on the books of such corporation or at his last known address if no address appears on such books, notifying such person to remove all such property or the contents of any such safe, vault or box, within a period stated in said notice, which period shall be not less than sixty days from the date of such notice, and further notifying such person of the terms and provisions of this subdivision. The contract of bailment or of deposit for hire, or lease of safe, vault or box, if any, between the person to whom such notice is mailed and such corporation shall cease and determine upon the date for removal fixed in such notice. Such person shall have a claim against such corporation for the amount of the unearned rent or charges, if any, paid by such person from the date fixed in such notice, if the property or contents is removed on or before such date, or from the date of actual removal, if the property or contents is removed after such date.

(b) If such property or contents shall not be removed, and all rent or storage and other charges theretofore accrued, if any, shall not be paid, within the time fixed by such notice, such corporation shall, within thirty days thereafter, cause such property to be inventoried, or such safe, vault or box, or any package, parcel or receptacle in the custody or possession of such corporation as bailee or depositary for hire or otherwise, to be opened and the contents, if any, to be removed and inventoried, in the presence of an officer of such corporation and of a notary public, not an officer or employee thereof. Such property or contents shall thereupon be sealed up by such notary public in a package distinctly marked by him with the name of the person in whose name such property or such safe, vault, box, package, parcel or receptacle stands upon the books of such corporation, and a copy of the inventory of the property therein shall be certified and attached thereto by such notary public. Such package may be kept in such place as the corporation, with

the approval of the superintendent, may determine, at the expense and risk of the person in whose name it stands until delivered to such person or until sold, destroyed or otherwise disposed of as hereinafter provided. Such package may, from time to time, pending final disposition of its contents, be opened in the presence of an officer of such corporation and of a notary public, not an officer or employee thereof, for inspection or appraisal, or to enable such corporation to exercise any of the powers conferred or duties imposed by this article. Whenever such package is opened, the notary shall endorse on the outside thereof the date of opening and re-sealing, and shall certify and attach thereto a list of the articles, if any, removed therefrom, or placed or replaced therein, and an affidavit of the officer in whose presence it was opened showing the reason for opening the same.

(c) At any time prior to the sale, destruction or other disposition of the contents thereof, the person in whose name such package stands may require the delivery thereof upon payment of all rental or storage charges accrued, and all other charges or expenses paid or incurred to the date of delivery with respect to such package or the contents thereof, including the cost of inventorying or of opening and inventorying, the fees of the notary public, the cost of preparing and mailing the notice, and advertising, if any. If the principal of, or interest, income, or dividends on any bonds, stock certificates, promissory notes, choses in action or other securities contained in such package, is or becomes due and payable while it is in the possession of such corporation, it may at its election collect such principal, interest, income or dividends, and from the proceeds thereof may deduct all such sums due for rental and other charges, until the time of such collection. The balance, if any, of the amount or amounts so collected shall be disposed of as hereafter in paragraph (e) of this subdivision and in subdivision five hereof provided.

(d) After the expiration of one year from the time of mailing the notice in paragraph (a) of this subdivision described, such corporation may apply to the supreme court for an order authorizing such corporation to sell, destroy or otherwise dispose of the contents of such package. In a proper case, the court shall make such order upon such terms and conditions as justice may require. The application for an order of the supreme court pursuant to this paragraph shall be made upon an order to

show cause, which shall provide that notice thereof to the person in whose name such package stands and to any other person claiming or appearing to have an interest therein, shall be published, mailed or given in such other manner as the court may prescribe. Whenever, pursuant to the provisions of this paragraph, a corporation is given the power to sell the contents of any package, such power to sell shall be deemed a power to sell in satisfaction of a lien for non-payment of rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale with respect to such package and the contents thereof, including the charges and expenses described in paragraph (c) hereof. Such power to sell, or the power to destroy or otherwise dispose of, when authorized pursuant to the provisions of this paragraph, shall be deemed to include the power to sell, destroy or otherwise dispose of, as the case may be, any bonds, stock certificates, promissory notes, choses in action, or other securities, and any other tangible or intangible property contained in any package, regardless of whether or not it shall appear from such securities or properties that the person in whose name the package stands, possesses title to or interest in such securities or other properties, or power to transfer such title or interest, and any sale of such securities or properties, pursuant to this paragraph, shall vest good title thereto in the purchaser thereof.

(e) From the proceeds of any sale, such corporation shall deduct all rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale, including the charges and expenses described in paragraph (c) hereof, and the expenses of sale. The balance of such proceeds, if any, shall be credited to the person in whose name such package stood and, unless sooner paid over to the superintendent pursuant to subdivision five hereof, shall be paid over to such person, his assignee or legal representative on satisfactory evidence of identity.

(f) The provisions of this subdivision do not affect or preclude any other remedy by action or otherwise for the enforcement of the claims or rights of such corporation against the person in whose name any property, or any safe, vault, box, package, parcel or receptacle stands, nor affect, nor bar the right of such corporation to recover, before sale, any debt or claim due it or, after sale, so much of the debt or

claim as shall not be paid by the proceeds of the sale.

(g) The procedure prescribed in this subdivision may be followed by any corporation winding up its affairs in accordance with the provisions of this section, notwithstanding the fact that such corporation may have commenced proceedings to open, or may have opened, any safe, vault or box for non-payment of rental in accordance with other provisions of this chapter and notwithstanding the contents of any notice that may have been given by such corporation in accordance with any requirement of this section.

5. When such corporation shall have given the notice to creditors and depositors to present their claims as prescribed in the order entered in accordance with the provisions of subdivision four hereof, and shall have paid all its debts and obligations for which a legal claimant has been found, and shall have complied with the provisions of subdivision four-a hereof, it shall, before applying to court for a release upon final accounting or for a final order of dissolution, make a verified transcript or statement from its books of the names of all depositors, creditors, stockholders, shareholders, owners of personal property in the custody or possession of such corporation as bailee, depositary for hire or otherwise, or lessees of any safe, vault or box, who have not claimed or have not received the deposits, debts, dividends, interest balances or other amounts due them, and shall file such transcript or statement with the superintendent together with all identifying information, including, in the case of unclaimed proceeds of any sale pursuant to subdivision four-a hereof, a certified copy of the inventory, and an affidavit showing compliance with the provisions of said subdivision, a list of the articles sold, the price or prices obtained therefor, and the amount or amounts deducted and retained from the proceeds and such corporation shall thereupon pay over such unclaimed amounts to the superintendent as trustee for the persons entitled to receive them, as provided in article two of this chapter.

6. Upon the petition of such corporation showing

(a) that all its debts and obligations have been discharged except those for which no legal claimant has been found,

(b) that notice was given to creditors and depositors to present their

claims as prescribed by the court and that any period prescribed by the court for the presentation of such claims has expired,

(c) that the provisions of subdivision four-a hereof, if applicable, have been complied with and

(d) that all unclaimed amounts referred to in subdivision five hereof have been paid over to the superintendent, and on notice to the comptroller and the superintendent and such further notice as the court may prescribe, the court may, on such terms as justice requires, make an order affirming such disposition of such unclaimed amounts and declaring such corporation dissolved and its corporate existence terminated.

7. On filing with the superintendent a certified copy of the order of dissolution described in the last preceding subdivision of this section, the corporation shall cease to exist.

8. Unless the superintendent shall otherwise provide, any corporate banking organization that, pursuant to an agreement, sells or conveys more than fifty per centum of its assets without the written approval of the superintendent shall take the proceedings for voluntary dissolution herein prescribed and, within six months from the date of such sale or conveyance, shall file with the superintendent a certified copy of the closing order in the form prescribed by subdivision four of this section. The corporate banking organization, upon making written application to the superintendent for approval of the sale or conveyance of more than fifty per centum of its assets, shall pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter. If a closing order is required to be filed pursuant to this subdivision and such order is not filed within the time prescribed, the superintendent shall have the power, in the superintendent's discretion, to take possession of the business and property of such corporation and proceed with the liquidation thereof under the provisions of this article.

9. If the superintendent shall certify that any corporate banking organization is deemed by him to have abandoned and forfeited its charter by non-user and to be virtually in process of liquidation, such corporation, if its assets have a value at least equal to its liabilities, exclusive of any liability to shareholders or stockholders,

as such, shall take the proceeding for voluntary dissolution herein prescribed and, within six months from the date of such certificate, shall file with the superintendent a certified copy of the closing order in the form prescribed by subdivision four of this section. If such order is not filed within the time prescribed, the superintendent shall have the power, in his discretion, to take possession of the business and property of such corporation and proceed with the liquidation thereof under the provisions of this article.

10. (a) Upon the petition of the superintendent showing

(1) that any corporate banking organization has ceased to transact business, or has commenced but failed to complete proceedings for its voluntary dissolution in accordance with the banking law, or for any other reason is deemed by the superintendent to have abandoned and forfeited its charter by non-user, and

(2) that all of its assets have been distributed, or that the superintendent has no knowledge as to the existence of any such assets, the supreme court in the judicial district where such banking organization maintained its principal place of business may make an order declaring such corporation dissolved and the corporate existence thereof terminated. Upon the filing of a certified copy of such order in the office of the superintendent the existence of such corporation shall cease and determine.

(b) If the petition of the superintendent shall show, in addition to the allegations required by the provisions of subparagraph (1) of paragraph (a) of this subdivision, that such banking organization

(1) has undistributed assets and it appears that in the opinion of the superintendent the cost of taking possession of and liquidating such assets in accordance with the provisions of this article will exceed the fair value of such assets, and

(2) has failed, for a period of two years after ceasing to transact business or commencing proceedings for its voluntary dissolution, to complete such proceedings or to produce proof satisfactory to the superintendent that it has complied with or is in the process of complying with the provisions of the banking law, the court may, upon such notice as it may prescribe, make an order declaring such corporation dissolved and the corporate existence thereof terminated,

and further declaring that such assets have been abandoned and providing for the payment, delivery or transfer thereof to the superintendent in such manner and at such time as the court may direct. Upon the filing of a certified copy of such order in the office of the superintendent the existence of such corporation shall cease and determine. At any time within six months after the entry of such order, the court may upon good cause shown and upon such terms as justice may require, vacate or modify such order. At the expiration of such six-month period or such further period as the court may prescribe, the superintendent shall sell, redeem or otherwise dispose of such assets and from the proceeds thereof may retain and pay all costs, disbursements and legal fees allowed by the court and any assessments, penalties or forfeitures incurred by such banking organization under the banking law. The remaining proceeds if any shall forthwith be paid into the state treasury for the use and benefit of the state.

11. (a) Any foreign banking corporation which has been licensed pursuant to article two of this chapter to engage in business in this state, including any such corporation whose license has been surrendered or revoked, may, if it so desires, take proceedings for the voluntary liquidation of its business and property in this state in accordance with the provisions of paragraph (b) of this subdivision; but no such liquidation shall be commenced while the superintendent is in possession of such business and property unless such corporation shall have first received the written approval of the superintendent. In any such liquidation the claims of creditors of such corporation arising out of transactions had by them with its New York agency or agencies or branch or branches shall be accorded the same preference accorded to similar claims in a liquidation under subdivision four of section six hundred six of this article.

(b) To effect such a voluntary liquidation, a foreign corporation shall subscribe, acknowledge and file with the superintendent at his office a written notice of its intention so to liquidate, which notice shall specify the date of commencement of the liquidation, and upon such date, such corporation shall forthwith cease to transact business in this state if it has not already done so, and shall proceed to wind up its affairs in this state. Within thirty days after such date, such

corporation shall make application to the supreme court, after due notice to the superintendent, for an order prescribing the notice to be given to the preferred creditors hereinabove described to present their claims for payment. Every such corporation shall, in the course of such liquidation, comply with the provisions of subdivisions four-a, five and six of this section, except that an order entered pursuant to subdivision six of this section shall affirm the disposition of the unclaimed amounts therein referred to and shall authorize the turn-over of all of the assets remaining after payment of the preferred creditors to the principal office of such corporation. Within five days after the making of any order described in this paragraph a certified copy thereof shall be filed in the office of the superintendent.

(c) Any foreign banking corporation which has been licensed pursuant to article two of this chapter to engage in business in this state, which shall liquidate its business and property in this state without electing to comply with the provisions of paragraphs (a) and (b) of this subdivision, shall, upon completion of the liquidation, make a verified transcript or statement from its books of the names of all creditors whose claims arise out of transactions had by them with its New York agency or agencies, or its New York branch or branches and of all owners of personal property in the custody or possession of such agency or agencies or branch or branches as bailee, depositary for hire or otherwise, who have not claimed or have not received the debts or other amounts due them, and shall file such transcript or statement with the superintendent together with all identifying information, including, in the case of unclaimed proceeds of any sale of personal property, a list of the articles sold, the price or prices obtained therefor, and the amount or amounts deducted and retained from the proceeds, and such corporation shall thereupon pay over such unclaimed amounts to the superintendent as trustee for the persons entitled to receive them, as provided in article two of this chapter. Any such corporation so liquidating its business and property in this state may, if it so desires, follow the procedures for the disposition of personal property in the custody or possession of, and exercise the same powers and privileges with respect thereto accorded to, banking organizations in subdivision four-a of this section. To effectuate the purposes of this chapter, the superintendent may impose additional requirements and

procedures for the foreign banking corporation to follow with respect to the dissolution of the licensed office.

(d) For the purposes of this subdivision, the words "debts", "obligations" and "deposits", as used in subdivisions four-a, five and six of this section, shall be deemed to refer to the preferred claims hereinabove described, the words "creditors" and "depositors" shall be deemed to refer to the owners of such preferred claims, the references in subdivisions four-a and five of this section to the order entered in accordance with subdivision four of this section shall be deemed to refer to the like order entered in accordance with the provisions of this subdivision, and, except when the context shall otherwise require, the word "corporation" shall be deemed to refer to the New York agency or agencies, or branch or branches and the word "officer" shall include the agent or other person in charge of such agency or agencies and any person in charge of or who is an officer of such branch or branches or of the liquidation.

12. If the superintendent shall at any time find that any of the reasons enumerated in section six hundred six of this article for takeover of the business and property of a banking organization or of the business and property in this state of a foreign banking corporation shall exist, he may, in his discretion, forthwith take possession of such business and property in accordance with the provisions of such section notwithstanding that such banking organization or corporation may have theretofore commenced proceedings for the voluntary liquidation of such business and property in accordance with this section.

§ 605-a. Transfer of deposit liabilities of bank or trust company; sale or pledge of assets to facilitate such transfer. 1. A bank or trust company may, pursuant to a plan approved by the superintendent, enter into an agreement with another bank or trust company, whereby its liabilities to depositors will be assumed by such other bank or trust company. To facilitate the consummation of such plan and agreement, such bank or trust company may borrow money from the Federal Deposit Insurance Corporation and pledge all or any part of its assets as security for the money so borrowed, or it may sell all or any part of

its assets to Federal Deposit Insurance Corporation and the money so borrowed or realized with or without any other assets belonging to such bank or trust company, may be transferred by it to such other bank or trust company, in consideration of the latter's agreement to assume and pay the deposit liabilities of the former. If the superintendent shall thereafter take possession of the business and property of such bank or trust company, pursuant to this article, the validity of a claim against such bank or trust company which was in existence when such plan was consummated and remains unpaid shall be determined pursuant to the provisions of section six hundred twenty to six hundred twenty-five inclusive of this article as though such plan had not been consummated. Nothing in this section nor in any plan consummated pursuant to this section shall be deemed to require allowance of any claim if such claim would not otherwise be allowable in the liquidation proceedings. If such claim is allowed or ultimately established, the owner thereof shall be entitled to dividends on his claim as though such plan had not been consummated, and as though the assets of such bank or trust company had been taken over for liquidation immediately prior to any sale, pledge or transfer made pursuant to such plan. If such bank or trust company in liquidation does not have sufficient other assets to pay such dividends, the deficiency shall be paid from the proceeds of the sale or liquidation of the assets sold or pledged by such bank or trust company to Federal Deposit Insurance Corporation. If such proceeds prove insufficient to pay such deficiency in full, any remaining deficiency shall be paid from the proceeds of the sale or liquidation of the assets transferred by such bank or trust company to such other bank or trust company, exclusive of cash representing the proceeds of a sale to or a loan from Federal Deposit Insurance Corporation. The superintendent shall take such action as he shall deem necessary and appropriate to protect the interests of the owner of any such claim, but he shall not be required to obtain possession of any of the assets from the proceeds of which the deficiency in dividends upon such claim is payable, unless it shall appear that the amount required for the payment of such deficiency is not otherwise available. The superintendent may, subject to the approval of the supreme court in the judicial district where the principal office of such bank or trust company is located, enter into an agreement with the Federal Deposit Insurance Corporation and the bank or

trust company to which any assets of such bank or trust company have been transferred, or either of them, whereby payments shall be made to him as trustee for the benefit of the person or persons entitled thereto from time to time as cash is realized from the sale or liquidation of the assets from the proceeds of which claims are payable. If such agreement is approved by the supreme court, after notice of a kind which the court deems to be adequate to all persons whose interests, in the opinion of the court, may be affected thereby, such agreement shall be binding upon all such persons. No action may be brought by any such person to enforce payment of his claim unless it be clearly shown that the superintendent has refused or failed to take necessary and appropriate action to protect the interests of such person. No sale, conveyance or transfer by a bank or trust company of all or any part of its assets shall be deemed to have been made pursuant to the provisions of this section unless the plan approved by the superintendent shall expressly so state. Nothing contained in this section shall be deemed to repeal, limit, modify or otherwise affect any right or power of a bank or trust company to sell, convey or transfer all or any part of its assets pursuant to any other provision of law.

2. A bank or trust company assuming the deposit liabilities of another bank or trust company in connection with a plan pursuant to this section may issue preferred shares which, to the extent permitted by the superintendent, may have a retirable value greater than the amount received in payment for such shares.

§ 606. When superintendent may take possession of banking organization; when possession may be surrendered. 1. The superintendent may, in his discretion, forthwith take possession of the business and property of any banking organization whenever it shall appear that such banking organization:

(a) Has violated any law;

(b) Is conducting its business in an unauthorized or unsafe manner;

(c) Is in an unsound or unsafe condition to transact its business;

(d) Cannot with safety and expediency continue business;

(e) Has an impairment of its capital; or, in the case of a mutual

savings and loan association or credit union, has assets insufficient to pay its debts and the amount due members upon their shares;

(f) Has suspended payment of its obligations; or, in the case of a mutual savings and loan association, has failed for sixty days after a withdrawal application has been filed with it by any shareholder to pay such withdrawal application in full;

(g) Has neglected or refused to comply with the terms of a duly issued order of the superintendent;

(h) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the department;

(i) Has refused to be examined upon oath regarding its affairs.

(j) Has neglected, refused or failed to take or continue proceedings for voluntary liquidation in accordance with any of the provisions of this chapter.

2. The superintendent may, in his discretion, and upon such conditions as may be approved by him, surrender possession and permit such banking organization to resume business.

3. When the superintendent shall have duly taken possession of the property and business of any such banking organization, he may hold such possession until its affairs are finally liquidated by him, unless he shall surrender possession as provided in subdivision two of this section or be enjoined from continuing possession as provided in section six hundred seven of this article, or unless such banking organization shall, with the written approval of the superintendent, voluntarily wind up its affairs as provided in section six hundred five of this article.

4. (a) The superintendent may also, in his or her discretion, forthwith take possession of the business and property in this state of any foreign banking corporation that has been licensed by the superintendent under the provisions of this chapter, including, for the purposes of this article, any such corporation whose license has been surrendered or revoked, upon his or her finding that any of the reasons enumerated in subdivision one of this section exist with respect to such corporation or that it is in liquidation at its domicile or elsewhere or that there is reason to doubt its ability or willingness to pay in full

the claims of the creditors hereinbelow described. Title to such business and property shall vest by operation of law in the superintendent and his or her successors forthwith upon taking possession. Thereafter the superintendent shall liquidate or otherwise deal with such business and property in accordance with the provisions of this chapter applicable to the liquidation of banking organizations, except that the superintendent may deal with such business and property and prosecute and defend any and all actions relating thereto in his or her own name as superintendent. Only the claims of creditors of such corporation arising out of transactions had by them with its New York agency or agencies, or with its New York branch or branches, shall be accepted by the superintendent for payment out of such business and property in this state as provided in this article. Acceptance or rejection of such claims by the superintendent shall not prejudice such creditors' rights to otherwise share in the assets of such corporation. The following claims shall not be accepted by the superintendent for payment out of such business and property in this state: (1) claims which would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate and independent legal entity; and (2) amounts due and other liabilities to other offices, agencies or branches of, and affiliates of, such foreign banking corporation.

(b) Whenever the accepted claims, together with interest thereon, if interest was paid, and the expenses of the liquidation have been paid in full or properly provided for, the superintendent upon the order of the supreme court shall turn over the remaining assets to, in the first instance, other offices of the foreign banking corporation that are being liquidated in the United States, upon the request of the liquidators of those offices, in amounts which the liquidators of those offices demonstrate to the superintendent are needed to pay the claims accepted by those liquidators and any expenses incurred by the liquidators in liquidating those other offices of the foreign banking corporation. After such payments, if any, have been made, any assets of the foreign banking corporation remaining in the hands of the superintendent shall be turned over to the principal office of such foreign banking corporation, or to the duly appointed domiciliary liquidator or receiver of said foreign banking corporation. Dividends

and other amounts remaining unclaimed or unpaid in the hands of the superintendent for six months after such turn-over shall be deposited by him or her as provided in article two of this chapter.

(c) As used in this subdivision the phrase "business and property in this state" includes, but is not limited to, all property of the foreign corporation, real, personal or mixed, whether tangible or intangible, (1) wherever situated, constituting part of the business of the New York agency or branch and appearing on its books as such, and (2) situated within this state whether or not constituting part of the business of the New York agency or branch or so appearing on its books.

(d) For the purposes of this subdivision, the words "debts", "obligations", "deposits" and other similar terms as used in subsequent sections of this article, shall be deemed to refer to the claims that the superintendent shall accept pursuant to paragraph (a) of this subdivision, the words "creditors" and "depositors" shall be deemed to refer to the owners of such accepted claims and, except when the context shall otherwise require, the terms "banking organization" and "corporation" shall be deemed to refer to the New York agency or agencies or branch or branches and the word "officer" shall include the agent or other person in charge of such agency or agencies and any person in charge of or who is an officer of such branch or branches. As used in this subdivision, (i) "affiliate" shall mean any person, or group of persons acting in concert, that controls, is controlled by or is under common control with such foreign banking corporation and (ii) "control" means any person, or group of persons acting in concert, directly or indirectly, owning, controlling or holding with power to vote, more than fifty percent of the voting stock of a company, or having the ability in any manner to elect a majority of the directors of a company, or otherwise exercising a controlling influence over the management and policies of a company as defined by the superintendent by regulation. For purposes of this subdivision, the term "person" shall mean a corporation, unincorporated association, partnership, or any other entity or individual.

5. The term "banking organization" as used in this and subsequent sections of this article shall be deemed to include a corporation which has engaged in any business or other activity prohibited by section one

hundred thirty-one of this chapter, and an unincorporated association, partnership, fiduciary or individual who has engaged in any business or other activity prohibited by section one hundred eighty of this chapter.

6. (a) In the case of the liquidation of an investment company by the superintendent, accepted claims, amounts due and other liabilities owed to affiliates of such investment company shall be paid only after all accepted claims, amounts due and other liabilities owed have been fully paid to such creditors and other claimants of the investment company that are not affiliates of such investment company.

(b) For the purposes of this subdivision, (i) "affiliate" shall mean any person, or group of persons acting in concert, that controls, is controlled by or is under common control with such investment company, and (ii) "control" means any person, or group of persons acting in concert, directly or indirectly, owning, controlling, or holding with power to vote, more than fifty percent of the voting stock of a company, or having the ability in any manner to elect a majority of the directors of a company, or otherwise exercising a controlling influence over the management and policies of a company as defined by the superintendent by regulation. For purposes of this subdivision, the term "person" shall mean a corporation, unincorporated association, partnership, or any other entity or individual.

§ 607. Manner and time within which taking possession may be tested. At any time within ten days after the superintendent has taken possession of the property and business of any banking organization such banking organization may apply to the supreme court in the judicial district in which its principal office is located, for an order requiring the superintendent to show cause why he should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the superintendent to refrain from further proceedings and to surrender such possession.

§ 609. Resumption of business by bank, trust company or industrial bank; retirement of certificates; applicability to stock-form savings

banks and stock-form savings and loan associations. 1. Any bank, trust company, stock-form savings bank or stock-form savings and loan association of which the superintendent has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted by the superintendent, in his discretion and subject to such conditions as may be approved by him, to resume business in accordance with the provisions of this section.

2. No bank, trust company or industrial bank permitted by the superintendent to resume business in accordance with the provisions of this section shall, without previously obtaining the written permission of the superintendent, pay, on account of any deposit made or debt incurred before such restrictions were imposed or before the superintendent took possession of such bank, trust company or industrial bank, more than that proportion of eighty per centum of the total value of its sound assets, as determined by the superintendent, which such deposit or debt bears to the total of the deposits and debts of such bank, trust company or industrial bank at the time of resuming business: provided that nothing contained in this section shall affect any preference created by any law of this state for the benefit of any depositor or creditor or impair the rights of any secured depositor or creditor in any assets lawfully pledged or assigned as such security. For the purposes of this section, the holder of a judgment against any such bank, trust company or industrial bank for the payment of money arising out of a cause of action arising prior to such resumption of business, whether such judgment was recovered prior or subsequent to such resumption of business, shall have the same rights as if he were a depositor having a balance equal to the amount of such judgment at the time such restrictions were imposed or at the time the superintendent took possession of such bank, trust company or industrial bank. The superintendent shall prepare for each such bank, trust company or industrial bank a list of the assets which, in his judgment, are sound and the value thereof as determined by him.

3. Such bank, trust company or industrial bank shall, immediately upon resuming business, issue to its depositors and creditors non-negotiable transferable certificates, in a form approved by the superintendent,

representing the part of its deposits and debts which it is not authorized to pay at that time under the provisions of subdivision two of this section. Such certificates shall bear interest, if any, at a rate not in excess of three per centum per annum.

4. The superintendent shall from time to time determine the excess of the value of the sound assets of such bank, trust company or industrial bank over the total of the principal amount of such certificates outstanding and of the deposits and debts of such bank, trust company or industrial bank not represented by such certificates, including deposits made and debts incurred after resuming business. The amount by which such excess is greater than the excess of the value of the sound assets of such bank, trust company or industrial bank, determined as provided in subdivision two of this section, over its total deposits and debts at the time of resuming business may, unless the superintendent disapproves, be paid pro rata on account of the principal due on such certificates or, if the principal has been paid in full, on account of the interest, if any, due thereon. No such bank, trust company or industrial bank shall, without previously obtaining the written permission of the superintendent, make any other payment on account of the principal or interest of such certificates.

5. No dividends shall be paid on the stock of such bank, trust company or industrial bank while any such certificates are outstanding, unless, having previously secured the written permission of the superintendent to pay such certificates, it shall set aside and maintain a sum sufficient for the payment of all such outstanding certificates and the interest, if any, accrued thereon and shall publish once a week for two calendar weeks in a newspaper published in the county in which its principal office is located, notice to the effect that it will pay all such certificates and the interest, if any, accrued thereon upon due presentation for payment. If, thereafter, any such certificate together with all interest, if any, accrued thereon, shall not be paid when so presented, the authority of such bank, trust company or industrial bank to pay such dividends shall cease.

6. So long as any of such certificates are outstanding, every holder

of such a certificate shall have the same right to notice of all regular or special meetings of the stockholders of such bank, trust company or industrial bank and to attend and to vote in person or by proxy at such meetings as would a holder of stock of the par value of the unpaid principal amount of such certificate, except that no holder of a certificate or certificates shall be entitled to vote upon any change in respect to shares or capital stock pursuant to title eight of article fifteen or to receive notice of or attend a meeting of stockholders specially called for that purpose. Within sixty days after such bank, trust company or industrial bank has resumed business a meeting of its stockholders and holders of such certificates shall be called upon notice prescribed by the superintendent. At such meeting directors shall be elected who shall succeed the former directors, and the directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves.

7. If the superintendent shall retake possession of the business and property of such bank, trust company or industrial bank while any such certificates are still outstanding and liquidate its business as elsewhere provided in this chapter, deposits and debts not represented by such certificates, including deposits made and debts incurred after resuming business, shall be entitled to payment of principal and interest in priority to the payment of the principal and interest of such certificates.

8. (a) A plan for the retirement of certificates issued or made available by a bank, trust company or industrial bank pursuant to the provisions of this section may be promulgated in accordance with this subdivision eight in any case where the value of all the assets of such bank, trust company or industrial bank as determined by the superintendent is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates so issued or made available by such bank, trust company or industrial bank. Such plan may be promulgated by such bank, trust company or industrial bank or by the holders of ten per centum or more

in principal amount of all such outstanding certificates or the representative or representatives of such holders.

(b) Such plan may provide for any one or more of the following:

(1) The retirement of certificates by the issuance in exchange therefor of shares of capital stock or debentures or both of such bank, trust company or industrial bank;

(2) The issuance of preferred stock of such bank, trust company or industrial bank and the sale of such preferred stock for cash or its exchange for real or personal property or for outstanding capital notes, debentures or other obligations of such bank, trust company or industrial bank;

(3) The issuance of fractional shares of capital stock of such bank, trust company or industrial bank in exchange for certificates or portions thereof in unpaid amount insufficient to permit the exchange thereof for a full share of capital stock. Such fractional shares of capital stock shall have no voting rights, but, when combined with other fractional shares in sufficient amount, shall be convertible into a full share or shares of capital stock;

(4) The transfer into a separate account upon the books of such bank, trust company or industrial bank or to a separate corporation, of any assets to be liquidated for the pro rata benefit of certificate holders and the issuance to certificate holders of evidences of participation in such assets if transferred into a separate account upon the books of such bank, trust company or industrial bank, or of stock or obligations or both of such separate corporation, if such assets are transferred to a separate corporation;

(5) The organization of a corporation to issue its stock or obligations or both in exchange for certificates and for the exchange of certificates so acquired by such corporation for shares of the capital stock or debentures or both of such bank, trust company or industrial bank;

(6) The amount of capital stock which such bank, trust company or industrial bank shall have upon the plan becoming effective, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each share.

In addition to provisions herein specifically authorized to be

contained in a plan promulgated pursuant to this subdivision, such plan may also contain any other provisions deemed necessary or convenient to effectuate the general purpose or purposes of the plan.

(c) The person or persons promulgating such plan shall first submit it to the superintendent for his approval. If the plan is approved by the superintendent, such person shall within sixty days of such approval submit it to the supreme court in and for the county in which the principal office of such bank, trust company or industrial bank is located, together with an application for its approval. Such application shall set forth such facts as may be necessary to enable the court to determine the fairness of such plan and shall be made upon an order to show cause which shall provide that notice thereof of a kind which the court deems to be adequate shall be given by such bank, trust company or industrial bank to all holders of such certificates and all other persons whose interests, in the opinion of the court, may be affected by such plan. If the issue is raised in any proceeding involving a plan promulgated pursuant to this subdivision, a certificate executed by the superintendent and filed with the court shall be presumptive evidence of the fact that the value of all of the assets of such bank, trust company or industrial bank is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates issued or made available by such bank, trust company or industrial bank.

(d) The superintendent or the bank, trust company or industrial bank or any person or persons authorized to promulgate a plan hereunder may propose and submit to the court an alternative plan or a modification or modifications of any plan before the court. The court may modify any such plan or may propose a new or alternative plan, provided, however, that a modification or modifications, whether proposed by the court or by any other person or persons, may be made only after a hearing upon notice to all holders of certificates and all other persons whose interests, in the opinion of the court, may be affected thereby, and subject to the right of any person who shall previously have consented to such plan to withdraw such consent within a period to be prescribed by the court and after such notice as the court may direct. If any person having such right of withdrawal shall not withdraw within the period so prescribed he shall be deemed to have approved such plan as so

modified.

(e) After the hearing or hearings above provided the court shall by order approve a plan, with or without modifications, or shall reject all such plans, provided, however, that no order made pursuant to this paragraph approving such plan shall be made or entered unless such plan, in final form, shall first have been approved in writing by the superintendent and such written approval shall have been filed in the proceeding. If at the time of making the order approving such plan, the court is satisfied that the holders of two-thirds in amount of such certificates have approved such plan, the order of the court shall recite such fact and shall declare that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision. If at the time of making such order, such plan shall not have been approved by the holders of two-thirds in amount of such certificates, such order shall provide that upon satisfactory proof of the fact that the holders of two-thirds in amount of such certificates shall have approved the same, a further order may be entered ex parte declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision.

(f) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to paragraph (k) of this subdivision, such plan shall become binding upon the holders of all certificates of such bank, trust company or industrial bank and all such holders shall be conclusively deemed to have consented to all the terms and conditions of such plan whether or not all of such holders shall actually have consented thereto and whether or not all of them shall have received notice thereof or of the hearing thereon hereinbefore provided.

(g) Every executor, administrator, trustee, guardian, committee, conservator, receiver, or other fiduciary, and every public and private corporation or association, and every political and public

instrumentality or body, including, but not by way of limitation of the generality of the foregoing, boards of education and school districts and other special districts, is hereby authorized and empowered to approve and accept a plan promulgated pursuant to this subdivision and to execute and deliver such papers and documents as may be necessary or proper to evidence such approval and acceptance, and shall not be subject to any liability whatsoever for any such approval or acceptance or any exchange of certificates for stock or other securities or both made pursuant thereto.

(h) A plan promulgated pursuant to this subdivision may be effectuated even though it has not been expressly approved by the holders of two-thirds in amount of all outstanding certificates, provided, as an alternative to such express approval, the provisions of this paragraph have been complied with. After the plan is approved by the superintendent as provided by paragraph (c) of this subdivision, the person or persons promulgating such plan shall file a copy thereof with the clerk of the court and shall prepare and mail to each of the holders of such certificates and to each of the holders of stock of the bank, trust company or industrial bank, addressed by registered mail to him, postage prepaid, to his last known address as the same appears on the records of the bank, trust company or industrial bank, a summary of such plan together with a notice stating in substance that such plan will be presented to the supreme court in and for the county in which the principal office of the bank, trust company or industrial bank is located, and designating a date, which date shall not be less than thirty days after the mailing of such notice, when such court will consider such plan and hear any objection thereto on the part of any holder of a certificate or of stock. Such notice shall also be published by the person or persons promulgating such plan once, at least twenty days before said date, in a daily newspaper of general circulation published in the county where such hearing is to be had and if no such daily newspaper is published in such county, then such notice shall be published in a newspaper of general circulation in said county. Upon the return of such notice or any adjourned date or dates thereof, the court shall hear the parties interested therein and may accept proof in affidavit form or otherwise as to any facts and circumstances material thereto. The court upon proof by affidavit that the provisions hereof

with respect to mailing and publication have been fully complied with shall thereupon approve, modify or disapprove such plan, but in no event shall any such plan, with or without modifications, be approved by the court unless the court deems such plan fair and equitable to the holders of certificates and unless such plan, in final form, shall first have been approved in writing by the superintendent, and such written approval shall have been filed in the proceeding; or if written dissent therefrom, duly executed and acknowledged, shall be filed with the clerk of the court prior to such return date, or prior to such other date as may be fixed by the court, by the holders in the aggregate of more than thirty-three and one-third per centum of the face amount of the certificates affected by such plan. All holders of certificates who have not dissented from the plan in the manner provided by this paragraph and prior to the return date or such other date as may be fixed by the court shall be conclusively deemed to have assented thereto. Such plan shall contain a provision in respect of certificate holders dissenting thereto, to the effect that adequate protection will be provided for the realization by them of the value of their certificates by such method as will in the opinion of the court, under and consistent with the circumstances of the particular case, be equitable and fair to them. When such plan, with or without modifications, shall be approved by the court, the court shall make an order reciting such approval and declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision. The appellate court to which an appeal is taken by any dissenting certificate holder or by any stockholder from any action by the court pursuant to this section shall have the right to impose upon the appellant as part of the costs of the appeal, reasonable fees of counsel for the respondent, and such appellate court may also, in its discretion, require bond therefor before entertaining any such appeal.

(i) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to paragraph (k) of this subdivision, such steps shall be taken by the superintendent and all other persons, and all acts shall be done as may

be required by such plan and as may be necessary or desirable to make such plan operative. Within ten days after the entering of such order, the superintendent shall issue an order pursuant to article two of this chapter directing that such bank, trust company or industrial bank shall forthwith make good the impairment of its capital. Upon receipt of such order, the directors of the bank, trust company or industrial bank shall give notice to each stockholder of such requisition and of the amount of the assessment he must pay, which amount shall be the aggregate par value of his shares. Such notice shall be mailed to each stockholder at his address appearing on the records of the bank, trust company or industrial bank or shall be served personally upon him. Notwithstanding any provision of section one hundred fourteen or section three hundred six of this chapter, all outstanding stock certificates of the bank, trust company or industrial bank shall be canceled of record not less than thirty days after notice of assessment is given to stockholders as herein provided, and thereupon such stock certificates shall be null and void for all purposes and the rights of the holders thereunder shall cease and determine; provided, however, that each stockholder who pays the full amount of such assessment within thirty days after notice of assessment is given as herein provided shall receive, in lieu of the stock on account of which such assessment was paid, new stock in the amount to which he would be entitled if he held certificates issued by such bank, trust company or industrial bank pursuant to the provisions of this section in an aggregate unpaid principal and interest amount equal to the assessment so paid.

(j) Not less than thirty nor more than sixty days after notice of assessment is given to stockholders as provided in paragraph (i) of this subdivision, the superintendent shall, if the plan so provides, cause any assets of such bank, trust company or industrial bank which are to be liquidated for the pro rata benefit of certificate holders, to be set aside in a special account upon the books of such bank, trust company or industrial bank or transferred to a separate corporation.

(k) Upon the completion of the acts required to be done pursuant to paragraph (i) and paragraph (j) of this subdivision and not more than sixty days after notice of assessment is given to stockholders as provided in paragraph (i) of this subdivision, the superintendent shall execute in triplicate a certificate declaring such plan to be effective

and stating the amount of capital stock which such bank, trust company or industrial bank shall thereafter have, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each such share. The amount of capital stock stated in such certificate shall be not less than the amount of capital stock required to be issued to certificate holders pursuant to such plan, plus the amount of capital stock required, pursuant to paragraph (i) of this subdivision, to be issued to stockholders who shall have paid the full amount of the assessments levied pursuant to such paragraph (i). The amount of capital stock, the number of shares and the par value of each such share as stated in such certificate shall be the amount of capital stock, the number of shares and the par value thereof which such bank, trust company or industrial bank shall thereafter be authorized to have, provided that nothing herein contained shall be deemed to limit the power of any such bank, trust company or industrial bank subsequently to change the amount of its capital stock, the number of its shares or the par value of its shares pursuant to subdivision two of section eight thousand one. One of such triplicate certificates shall be transmitted forthwith by the superintendent to such bank, trust company or industrial bank, another shall be filed in the office of the superintendent and the third shall be filed by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank. Upon such filing in the office of the county clerk, the plan shall become effective and all certificates theretofore issued by such bank, trust company or industrial bank pursuant to the provisions of this section shall be null and void and shall not be deemed to be outstanding for any purpose. Thereupon such bank, trust company or industrial bank shall issue and make available to the holders of such certificates shares of stock or debentures or both of such bank, trust company or industrial bank, and if the plan so provides, evidences of participation in the assets aside in a special account or stock or other securities or both of a separate corporation, in the proportions and amounts specified in such plan.

(l) Within sixty days after a plan pursuant to this subdivision has become effective with respect to any bank, trust company or industrial bank, there shall be called in accordance with its by-laws a meeting of

its stockholders who shall elect directors who shall succeed the former directors. The directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves. Notwithstanding the requirements as to ownership of capital stock contained in section one hundred sixteen or section three hundred three of this chapter, the directors of such bank, trust company or industrial bank holding office at the time that such plan becomes effective may continue to hold office as directors, until their successors are elected and shall have qualified.

(m) The supreme court in and for the county in which is located the principal office of such bank, trust company or industrial bank is hereby vested with jurisdiction and authority to determine the fairness of, and to approve or disapprove, any plan, or modification or modifications thereof, which may be promulgated hereunder and to determine the fairness of, and to approve or disapprove, the terms and conditions of the issuance and exchange of stock or other securities, or both, of any corporation for certificates issued pursuant to the provisions of this section and to make such orders and do such other things as may be required by this subdivision or as may be necessary or convenient to carry out the purposes hereof.

9. If there be in article fifteen of this chapter a provision which conflicts with any provision of this section six hundred nine, the provision of this section six hundred nine shall prevail, and the conflicting provision of article fifteen shall not apply in such case. If there be in article fifteen a provision relating to a matter embraced in this section six hundred nine, but not in conflict therewith, both provisions shall apply.

§ 610. Resumption of business in accordance with plan of reorganization. The superintendent, in his discretion, may permit a corporation of which he has taken possession or which is operating on a restricted basis pursuant to regulations promulgated by duly constituted authority, to resume business in accordance with a plan of

reorganization under which depositors and other creditors will receive less than the full amount of their claims and/or in partial payment thereof will receive certificates of beneficial interest in certain segregated assets and/or stock of such corporation, and under which stockholders will contribute their shares of capital stock and/or money in lieu of assessments upon such stock. In any such case in which the superintendent permits resumption of business pursuant to such a plan of reorganization, all depositors and creditors and stockholders of any such corporation, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan; provided, however, that the superintendent shall not permit a corporation to resume business in accordance with such a plan of reorganization unless it has been shown to his satisfaction that (1) such plan is fair and equitable to all depositors and other creditors and stockholders and is in the public interest and (2) that depositors and other creditors, representing at least eighty per centum in amount of its total deposits and other liabilities, exclusive of the claims of depositors and other creditors which will be satisfied in full under the plan of reorganization, and stockholders owning at least two-thirds of its outstanding capital stock, as shown by the books of the corporation, have consented in writing to such plan; provided further, that permission to resume business under any such plan of reorganization shall be granted by the superintendent only upon an order of the supreme court in and for the county in which the principal office of such corporation is located. The application for an order of the supreme court pursuant to this section shall be made upon an order to show cause which shall provide that notice thereof, of a kind which the court deems to be adequate and proper, be given to depositors, creditors and stockholders of such corporation.

§ 611. Special deputies; assistants; counsel and other employees. The superintendent may, by certificate, under his hand and the official seal of the department, appoint one or more special deputy superintendents as agent or agents to assist him in liquidating the business and affairs of

any banking organization in his possession. The superintendent shall file such certificate in his office and shall cause a certified copy thereof to be filed with the supreme court in the judicial district in which the principal office of such banking organization is located. He may delegate such special deputy superintendents to perform such duties connected with such liquidation as he may deem proper. The superintendent may employ such counsel and expert assistants, without being subject to the requirements of section one hundred twelve of the state finance law or to the prior approval of any other state agency, under such titles as he shall assign to them and may retain such of the officers or employees of such banking organization as he may deem necessary in the liquidation and distribution of its assets. He shall require such security as he may deem proper from his agents and assistants appointed pursuant to the provisions of this section.

§ 611-a. Appointment of single judge. When the superintendent has taken possession of and is liquidating the business and property in this state of any banking organization under the provisions of this article, the superintendent shall be entitled to the appointment of a single judge to supervise the liquidation upon request to the administrative judge of the supreme court in the judicial district in which the principal office of such banking organization is located. Such judge shall have the power to order expedited or simplified procedures or order a reference wherever necessary to resolve a matter in such liquidation.

§ 612. Certificates to be recorded and received in evidence. The superintendent, deputy superintendents, and the special deputy superintendents designated under the provisions of section six hundred eleven of this chapter, are hereby authorized to subscribe and acknowledge written statements reciting determinations made or acts performed pursuant to the powers vested in and duties imposed upon the superintendent pursuant to the terms and provisions of this chapter. Every paper so executed and acknowledged by the superintendent or a deputy superintendent or a special deputy superintendent may be recorded

in any proper recording office in the same manner and with the same effect as a deed regularly acknowledged and, whether or not so recorded, shall be received in evidence in any action or proceeding now pending or hereafter commenced, and shall be presumptive evidence of the facts therein stated.

Any statement, similarly executed and acknowledged, setting forth an extract from a book, record or document of any banking organization in the possession of the superintendent or any other book, record or document relating to the liquidation thereof, shall be received in evidence in any action or proceeding now pending or hereafter commenced with the same effect as the original book, record or document.

§ 612-a. Payment of wages. All wages actually owing to the employees of a banking organization in the possession of the superintendent for services rendered within three months prior to the date when possession was taken, not exceeding two thousand dollars to each employee, shall be paid prior to the payment of every other debt or claim, and in the discretion of the superintendent may be paid as soon as practicable after taking possession, except that at all times the superintendent shall reserve such funds as will in his opinion be sufficient for the expenses of administration.

§ 613. Payment by superintendent of expenses of liquidation. The superintendent shall pay out of the funds in his hands of any banking organization of which he is in possession, all expenses of liquidation, subject to the approval of the supreme court in the judicial district in which the principal office of such banking organization was located. The application for an order of the supreme court pursuant to this section shall be made upon an order to show cause which shall provide that notice thereof to the depositors and creditors, and to the stockholders or shareholders, if any, of such banking organization be published once in each week for two consecutive weeks in a newspaper of general circulation in the county in which the principal office of such banking organization was located. Such order to show cause shall also be served

upon such banking organization in such manner as the court, in such order to show cause, may direct. The hearing upon such application shall be held not less than ten days after the first publication of such notice. An order approving the final expenses of liquidation of a corporate banking organization may, in a proper case, and if the petition complies with the requirements of subdivision three of section six hundred twenty-seven of this article, include a provision declaring the banking organization dissolved and its corporate existence terminated. The supreme court shall not upon any application under this section increase the compensation of special deputy superintendents, assistants, counsel or other employees over the amount fixed by the superintendent, or direct the superintendent to make any expenditure not approved by him.

§ 614. Obtaining possession of pleadings, et cetera, in actions against which attorneys' liens are asserted. When the superintendent is in possession of any banking organization, and attorneys' liens are asserted by attorneys of such banking organization against any causes of action to which such banking organization is a party, or against pleadings or other papers in the possession of such attorneys relating to such causes of action, or if such liens are asserted against any evidences of title to any assets or against any of the assets of such banking organization then in the possession of such attorneys, the superintendent may institute special proceedings and petition the court to fix and determine the amount of such liens. Such proceedings shall be instituted in the county in which the principal office of such banking organization is located. Upon application of the superintendent and upon notice to such attorneys to be prescribed by the court, the court may by order prior to final order in such proceeding direct such attorneys to deliver to the superintendent all property of such banking organization, against which such liens are asserted, together with such consents to substitution of attorneys as the court may direct, upon the superintendent furnishing security to such attorneys in the manner and to an amount that may be fixed by the court.

§ 615. On taking possession, superintendent shall notify those holding assets; effect of notification; turnover of assets and payment of debts owed to the banking organization. When the superintendent shall take possession of the property and business of any banking organization:

1. The superintendent shall forthwith give notice of such fact to all corporations, unincorporated associations, partnerships, governmental entities and other entities and individuals known to him to hold any assets of such banking organization. No corporation, unincorporated association, partnership, governmental entity or other entity or individual having notice or knowledge that the superintendent has taken possession of such banking organization, shall have a lien or charge for any payment, advance or clearance thereafter made against any of the assets of such banking organization for liability thereafter incurred.

2. Upon the written demand of the superintendent, any corporation, unincorporated association, partnership, governmental entity or other entity or individual holding assets of such banking organization shall deliver such assets to the superintendent and shall thereupon be discharged from liability with respect to any claim upon such assets; provided, however that such demand shall not affect the right of a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, to retain collateral, including any right of such secured creditor under any security arrangement related to a qualified financial contract, as defined in section six hundred eighteen-a of this article to retain collateral and apply such collateral in accordance with paragraph (d) of subdivision two of section six hundred eighteen-a of this article. Nothing in this section shall affect any right of setoff permitted under applicable law; provided, however, that in connection with the liquidation of a branch or agency of a foreign banking corporation pursuant to this article, no entity or individual may set off the business and property in this state of such foreign banking corporation described in subparagraph one of paragraph (c) of subdivision four of section six hundred six of this article against liabilities of such foreign banking corporation other than those that arise out of transactions had by such entity or individual with such branch or agency

(which liabilities shall be deemed to include in the case of qualified financial contracts the lesser of the two amounts calculated with respect to any such qualified financial contract pursuant to paragraph (c) of subdivision two of section six hundred eighteen-a of this article) and provided that such setoff is otherwise permissible under applicable law.

§ 616. Inventory of assets; where filed. After the superintendent shall have taken possession of and shall have determined to liquidate the property and business of any banking organization, he shall make in duplicate an inventory of the assets of such banking organization. He shall file one copy of such inventory in his office and shall cause one copy to be filed with the supreme court in the judicial district in which the principal office of such banking organization is located.

§ 617. Disposition of property held as bailee, or depositary; opening of safe deposit boxes; disposal of contents. 1. The superintendent may, after he has taken possession of any banking organization, cause to be mailed to each person claiming to be, or appearing upon the books of such banking organization to be

(1) the owner of any personal property in the custody or possession of such banking organization as bailee or depositary for hire or otherwise, including the contents of any safe, vault or box theretofore opened for non-payment of rental in accordance with the provisions of this chapter, or

(2) the lessee of any safe, vault or box, a notice in writing directed by registered mail to such person at his last address as the same appears on the books of such banking organization or at his last known address if no address appears on such books, notifying such person to remove all such property or the contents of any such safe, vault or box, within a period stated in said notice, which period shall be not less than sixty days from the date of such notice, and further notifying such person of the terms and provisions of this section. The contract of bailment or of deposit for hire, or lease of safe, vault or box, if any, between the person to whom such notice is mailed and such banking

organization shall cease and determine upon the date for removal fixed in such notice. Such person shall have a claim against such banking organization for the amount of the unearned rent or charges, if any, paid by such person from the date fixed in such notice, if the property or contents is removed on or before such date, or from the date of actual removal, if the property or contents is removed after such date.

As used herein the phrase "personal property in the custody or possession of such banking organization as bailee or depositary for hire or otherwise" shall include, without limitation, securities, whether held in custody directly or in book-entry form by such banking organization, its nominee, subcustodian, clearing corporation or similar entity.

2. If such property or contents shall not be removed, and all rent or storage and other charges theretofore accrued, if any, shall not be paid, within the time fixed by such notice, the superintendent may cause such property to be inventoried, or such safe, vault or box, or any package, parcel or receptacle in the custody or possession of such banking organization as bailee or depositary for hire or otherwise, to be opened and the contents, if any, to be removed and inventoried, in his presence or in the presence of a deputy superintendent, a special deputy superintendent, or an examiner and of a notary public, not an officer or employee of such banking organization or of the department of financial services. Such property or contents shall thereupon be sealed up by such notary public in a package distinctly marked by him with the name of the person in whose name such property or such safe, vault, box, package, parcel or receptacle stands upon the books of such banking organization, and a copy of the inventory of the property therein shall be certified and attached thereto by such notary public. Such package may be kept by the superintendent in such place as he may determine at the expense and risk of the person in whose name it stands until delivered to such person or until sold, destroyed or otherwise disposed of as hereinafter provided. Such package may, pending final disposition of its contents, be opened by the superintendent, a deputy superintendent, special deputy superintendent or examiner, from time to time for inspection or appraisal, or to enable the superintendent to

exercise any of the powers conferred or duties imposed upon him by this article. Whenever such package is opened, the superintendent, deputy superintendent, special deputy superintendent or examiner, shall endorse on the outside of said package the date of opening and re-sealing, and shall prepare an affidavit which shall be attached thereto, showing the reason for opening and the articles, if any, removed therefrom, or placed or replaced therein.

3. At any time prior to the sale, destruction or other disposition of the contents thereof, the person in whose name such package stands may require the delivery thereof upon payment of all rental or storage charges accrued, and all other charges or expenses paid or incurred to the date of delivery with respect to such package or the contents thereof, including the cost of inventorying or of opening and inventorying, the fees of the notary public, the cost of preparing and mailing the notice, and advertising, if any. In case the superintendent is in doubt concerning the person entitled to receive such package, or there are conflicting claims thereto, he may require of the claimant an order of the supreme court authorizing and directing the delivery thereof, but for any delivery or transfer made by him in good faith to the claimant appearing from the records in his office to be entitled thereto, he shall be held harmless and shall not be liable to any subsequent claimant. If the principal of, or interest, income, or dividends on any bonds, stock certificates, promissory notes, choses in action or other securities contained in such package, is or becomes due and payable while it is in the possession of the superintendent, he may at his election collect such principal, interest, income or dividends, and from the proceeds thereof may deduct all such sums due for rental and other charges, until the time of such collection. The balance, if any, of the amount or amounts so collected shall be disposed of by the superintendent as hereafter in subdivision five provided.

4. After the expiration of one year from the time of mailing the notice in subdivision one hereof described, the superintendent may apply to the supreme court for an order authorizing him to sell, destroy or otherwise dispose of the contents of such package. In a proper case, the court shall make such order upon such terms and conditions as justice

may require. The application for an order of the supreme court pursuant to this subdivision shall be made upon an order to show cause, which shall provide that notice thereof to the person in whose name such package stands and to any other person claiming or appearing to have an interest therein, shall be published, mailed or given in such other manner as the court may prescribe. Whenever, pursuant to the provisions of this subdivision, the superintendent is given the power to sell the contents of any package, such power to sell shall be deemed a power to sell in satisfaction of a lien for non-payment of rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale with respect to such package and the contents thereof, including the charges and expenses described in subdivision three hereof. Such power to sell, or the power to destroy or otherwise dispose of, when authorized pursuant to the provisions of this subdivision, shall be deemed to include the power to sell, destroy or otherwise dispose of, as the case may be, any bonds, stock certificates, promissory notes, choses in action, or other securities, and any other tangible or intangible property contained in any package, regardless of whether or not it shall appear from such securities or properties that the person in whose name the package stands, possesses title to or interest in such securities or other properties, or power to transfer such title or interest, and any sale of such securities or properties, pursuant to this subdivision, shall vest good title thereto in the purchaser thereof.

5. From the proceeds of any sale, the superintendent shall deduct all rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale, including the charges and expenses described in subdivision three hereof, and the expenses of sale. The balance of such proceeds, if any, shall be credited to the person in whose name such package stood and shall be paid over to such person, his assignee or legal representative on satisfactory evidence of identity. At the expiration of six months after the completion of the liquidation of such banking organization, the superintendent shall deposit any unclaimed amounts derived from such sale, as provided in article two of this chapter.

6. The provisions of this section do not affect or preclude any other remedy by action or otherwise for the enforcement of the claims or rights of the superintendent, or of a banking organization of which he is in possession, against the person in whose name any property, or any safe, vault, box, package, parcel or receptacle stands, nor affect, nor bar the right of the superintendent or the banking organization to recover, before sale, any debt or claim due him or it, or, after sale, so much of the debt or claim as shall not be paid by the proceeds of the sale.

§ 618. Liquidation and conservation of assets; compromising debts and claims; deposit of moneys collected; preference; superintendent, as liquidator, authorized to borrow on and pledge assets of banks. 1. (a) The superintendent is authorized, upon taking possession of any banking organization, to liquidate the affairs thereof and to do all acts and to make such expenditures as in his or her judgment are necessary to conserve its assets and business. The superintendent shall proceed to collect the debts due. The superintendent may, upon an order of the supreme court (unless such order is not required pursuant to the provisions of paragraph (b), (c) or (d) of this subdivision), (i) sell, assign, compromise, or otherwise dispose of all bad or doubtful debts held by such banking organization, (ii) compromise claims against such banking organization, other than deposit claims, and (iii) sell or otherwise dispose of all or any of the real and personal property of such banking organization wherever situated. In case any of the real property so sold is located in a county in this state other than a county in which the application to the court for leave to sell is made, the superintendent shall cause a certified copy of such order to be filed in the office of the clerk of the county in which such real property is located.

(b) The superintendent may sell, assign, compromise or otherwise dispose of any bad or doubtful debt held by such banking organization the value of which does not exceed fifty thousand dollars upon such terms as he or she may deem for the best interests of such banking organization without obtaining the approval of the court. For purposes of this paragraph, the value of any such bad or doubtful debt shall be

the current value thereof as determined by the superintendent in good faith.

(c) The superintendent may, when the amount proposed to be paid by the superintendent in compromise does not exceed fifty thousand dollars, compromise any claim against such banking organization, other than any deposit claim, upon such terms as he or she may deem for the best interests of such banking organization without obtaining the approval of the court.

(d) The superintendent may sell or otherwise dispose of any personal property of such banking organization (other than bad or doubtful debts subject to the provisions of paragraph (b) of this subdivision) the value of which does not exceed fifty thousand dollars upon such terms as he or she may deem for the best interests of such banking organization without obtaining the approval of the court. For purposes of this paragraph, the value of any such personal property of such banking organization shall be (i) in the case of any single class of a security, or any commodity, or other property or claim that has a readily ascertainable market value, such market value, and (ii) in any other case, the current value thereof as determined by the superintendent in good faith.

2. The moneys collected by the superintendent shall be: (a) Deposited on demand, time or otherwise in one or more banks, savings banks or trust companies and, in case of the insolvency or voluntary or involuntary liquidation of the depositary, such deposits shall be entitled to priority of payment on an equality with any other priority given by this chapter;

(b) Deposited on demand, time or otherwise in one or more national banks with its principal office located in this state and with total assets exceeding five billion dollars; or

(c) Invested in obligations of the United States, or those for which the full faith and credit of the United States is pledged to provide for the payment of interest and principal.

3. Upon an order of the supreme court in and for the county in which the principal office of such banking organization is located, the superintendent is authorized to borrow money and to execute, acknowledge

and deliver notes or other evidences of indebtedness therefor and to secure the repayment thereof by the mortgage, pledge, assignment in trust or hypothecation of any or all of the property whether real, personal or mixed of such banking organization. Money may be so borrowed for any one or more of the following purposes:

(a) Facilitating liquidation;

(b) Protecting or preserving the assets in his possession;

(c) Declaring and paying dividends to depositors and other creditors;

(d) Providing for the expenses of administration and liquidation;

(e) Aiding in the reopening or reorganization of such banking organization;

(f) Aiding in the merger or consolidation of any one or more of such banking organizations which are corporations;

(g) Aiding in the sale of all of the assets of any such banking organization.

The superintendent with the aforesaid order of the supreme court shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof.

The superintendent shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this subdivision. The obligation for the repayment of any such loan shall be solely the obligation of the banking organization receiving the benefit of such loan.

§ 618-a. Repudiation of contracts. 1. Except as otherwise provided in this section, when the superintendent has taken possession of the business and property in this state of a banking organization, unless the federal regulator or insurer is appointed as receiver or liquidator, the superintendent may assume or repudiate any contract, including an unexpired lease, of the banking organization: (a) to which such banking organization is a party, (b) the performance of which the superintendent, in the superintendent's discretion, determines to be burdensome, and (c) the repudiation of which the superintendent determines, in the superintendent's discretion, will promote the orderly

administration of the banking organization's affairs. After the expiration of ninety days from the date that the superintendent takes possession of the banking organization, any party to a contract with the banking organization being liquidated may demand in writing that the superintendent assume or repudiate such contract. If the superintendent has not assumed or repudiated the contract within fifteen calendar days from the date of receipt of the demand by the superintendent, the affected party may bring an action in the supreme court in the judicial district in which the principal office of the banking organization is located to obtain an order requiring the superintendent to decide whether to assume or repudiate that contract. If the superintendent has not assumed or repudiated a contract by one month before the last date for filing claims against the banking organization being liquidated pursuant to section six hundred twenty of this article, such contract shall be deemed repudiated. Notwithstanding the foregoing, with respect to an unexpired lease of the banking organization for the rental of real property under which the banking organization was a lessee, if the superintendent remains in possession of the leasehold, the superintendent shall not be required to assume or repudiate such lease and may continue in possession of such leasehold for the remainder of the term of the lease in accordance with the terms of the lease; provided, however, that should the superintendent later repudiate the lease before the end of the lease term, any amounts that may be due the lessor due to such repudiation shall be calculated according to the provisions of paragraph (a) of subdivision three of this section. Notwithstanding any other provision contained in this subdivision, in liquidating a branch or agency of a foreign banking corporation, the superintendent shall not assume or repudiate any qualified financial contract that the branch or agency entered into which is subject to a multi-branch netting agreement or arrangement that provides for netting present or future payment obligations or payment entitlements (including termination or close-out values relating to the obligations or entitlements) among the parties to the contract and agreement or arrangement and the superintendent shall not be required to assume or repudiate any other qualified financial contract that the branch or agency entered into; provided, however, that upon any repudiation of any qualified financial contract or the termination or liquidation of any

qualified financial contract in accordance with its terms, the liability of the superintendent under such qualified financial contract shall be determined in accordance with subdivision two of this section.

2. (a) Except as otherwise provided in this section, upon the repudiation or termination of any contract pursuant to subdivision one of this section, the liability of the superintendent shall be limited to the actual direct compensatory damages of the parties to the contract, determined as of the date the superintendent took possession of the banking organization. The superintendent shall not be liable for any future wages other than severance payments (to the extent such payments are reasonable), or for payments for future services, costs of cover, or any consequential, punitive or exemplary damages, damages for lost profits or lost opportunity or damages for pain and suffering.

(b) Except as otherwise provided in this section, the liability of the superintendent upon the repudiation of any qualified financial contract, or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms thereof, shall be limited as provided in paragraph (a) of this subdivision, except that compensatory damages shall be deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized among participants in the market for qualified financial contract claims, calculated as of the date of repudiation or the date of the termination of such qualified financial contract in accordance with its terms. Upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms thereof, if the superintendent shall be entitled to damages, such damages shall be paid over by the party to the superintendent upon written demand pursuant to subdivision two of section six hundred fifteen of this article, notwithstanding any provision in any such contract that purports to effect a forfeiture of such damages.

(c) In the case of the liquidation of a branch or agency of a foreign banking corporation by the superintendent, with respect to qualified financial contracts subject to netting agreements or arrangements that provide for netting present or future payment obligations or payment entitlements (including termination or close-out values relating to the

obligations or entitlements) among the parties to the contracts and agreements or arrangements, the liability of the superintendent to any party to any such qualified financial contract upon repudiation or in connection with the termination or liquidation of such qualified financial contract in accordance with the terms thereof, shall be calculated as of the date of repudiation or the date of the termination of such qualified financial contract in accordance with its terms and shall be limited to the lesser of (i) the global net payment obligation and (ii) the branch/agency net payment obligation. The liability of the superintendent under this paragraph shall be reduced by any amount otherwise paid to or received by the party in respect of the global net payment obligation pursuant to such qualified financial contract which if added to the liability of the superintendent under this paragraph would exceed the global net payment obligation. The liability of the superintendent under this paragraph to a party to a qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the foreign banking corporation pursuant to such qualified financial contract to the party. In the event that netting under the applicable netting agreement or arrangement results in a branch/agency net payment entitlement, notwithstanding any provision in any such contract that purports to effect a forfeiture of such entitlement, the superintendent may make written demand upon the party to such contract under subdivision two of section six hundred fifteen of this article for an amount not to exceed the lesser of (x) the global net payment entitlement and (y) the branch/agency net payment entitlement. The liability of the party under this paragraph shall be reduced by any amount otherwise paid to or received by the superintendent or any other liquidator or receiver of the foreign banking corporation in respect of the global net payment entitlement pursuant to such qualified financial contract which if added to the liability of the party under this paragraph would exceed the global net payment entitlement. The liability of the party under this paragraph to the superintendent pursuant to such qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the party pursuant to such qualified financial contract

to the foreign banking corporation.

(d) A party to a qualified financial contract with a foreign banking corporation, the branch or agency of which the superintendent is liquidating, which party has a perfected security interest in collateral, or other valid lien or security interest in collateral enforceable against third parties pursuant to a security arrangement related to such qualified financial contract, may retain all such collateral and upon repudiation of that qualified financial contract, or in connection with the termination or liquidation of that qualified financial contract in accordance with its terms thereof, apply such collateral in satisfaction of any claims secured by the collateral, provided that the total amount so applied to such claims shall in no event exceed the global net payment obligation, if any.

(e) The following terms shall have the following meanings: (i) "qualified financial contract" means any securities contract, commodity contract, forward contract (including spot and forward foreign exchange), repurchase agreement, swap agreement, and any similar agreement, any option to enter into any such agreement, including any combination of the foregoing, and any master agreement for such agreements (such master agreement, together with all supplements thereto, shall be treated as one qualified financial contract), provided that such contract, option or agreement, or combination of contracts, options or agreements is reflected in the books, accounts or records of the banking organization or a party provides documentary evidence of such agreement; the superintendent may define by regulation securities contract, commodity contract, forward contract, repurchase agreement and swap agreement, and may by regulation or order determine any other agreement to be a qualified financial contract for purposes of this paragraph; (ii) "global net payment obligation" means the amount, if any, owed by a foreign banking corporation as a whole to a party after giving effect to the netting provisions of a qualified financial contract with respect to all transactions subject to netting under such qualified financial contract; (iii) "global net payment entitlement" means the amount, if any, owed by a party (or that would be owed if the relevant agreements provided for payments to either party, upon termination thereof under any and all circumstances) to a foreign banking corporation as a whole after giving effect to the netting

provisions of a qualified financial contract with respect to all transactions subject to netting under such qualified financial contract; (iv) "branch/agency net payment obligation" means with respect to a qualified financial contact the amount, if any, that would have been owed by the foreign banking corporation to a party after netting only those transactions entered into by the branch or agency and such party under such qualified financial contract; and (v) "branch/agency net payment entitlement" means with respect to a qualified financial contract the amount, if any, that would have been owed by a party to the foreign banking corporation after netting only those transactions entered into by the branch or agency and such party under such qualified financial contract. The superintendent shall have authority to prescribe such regulations relating to qualified financial contracts and netting thereof as the superintendent shall deem appropriate.

3. (a) If the superintendent repudiates a lease of the banking organization for the rental of real or personal property under which the banking organization was a lessee, the lessor under such lease shall be entitled to file a claim with the superintendent for whichever is the least amount of: (i) the amount designated as liquidated damages contained in the agreement between the banking organization and the lessor, (ii) an amount equal to one year's rent under the terms of the repudiated lease, or (iii) an amount equal to the rent for the remaining term of the lease.

(b) If the superintendent repudiates a lease of the banking organization for the rental of real property under which the banking organization was a lessor, and the lessee was not in default at the time of repudiation, the lessee under such repudiated lease may either (i) treat the lease as terminated by such repudiation and vacate the premises, or (ii) remain in possession of the leasehold interest for the balance of the term of the lease, and for any renewal or extension of such term that is enforceable by such lessee under applicable non-insolvency law, unless the lessee defaults under the terms of the lease after the date of such repudiation. If the lessee remains in possession of the leasehold interest, the lessee shall continue to pay to the superintendent the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease, and may offset

against such rent payment any damages which may accrue due to the nonperformance of any obligation of the banking organization under the lease after the date of repudiation. The superintendent shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under this subdivision. Nothing stated herein shall prohibit the superintendent from entering into a new contract with the lessee for the rental of the leasehold which was the subject of the repudiated lease.

4. Except as otherwise provided, notwithstanding any provision in an unexpired lease or other contract, or in applicable law, a contract or unexpired lease of the banking organization may not be terminated or modified by any party other than the superintendent without the concurrence of the superintendent, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the superintendent's taking of possession, solely pursuant to a provision in such contract or lease that is conditioned on the superintendent's taking of possession, or the insolvency, financial condition or liquidation of the banking organization.

5. Nothing in this section shall affect the right of a party to a contract of a foreign banking corporation to seek performance of such contract or damages thereon in any other jurisdiction, provided, however, that the superintendent shall not be liable for the performance of such contract or damages thereon in any other jurisdiction.

6. The rights granted herein are in addition to any other rights available to the superintendent under common law or any other law.

§ 619. Prosecution and defense of actions; actions preferred; limitations; power to execute instruments; exemption from filing and other fees. 1. (a) For the purpose of executing any of the powers and performing any of the duties hereby conferred upon him, the superintendent may, in the name of any banking organization of which he is in possession, prosecute and defend any and all actions. Any such action, upon application of the superintendent, shall be entitled to the

same preference to which an action by or against a receiver appointed by the court is entitled in any court of the state. Except as provided in the civil practice law and rules for venue for real property actions, all actions against a banking organization in the possession of the superintendent or against the superintendent arising out of its affairs, shall be instituted and maintained in a court of record in the county in which such banking organization maintained its principal place of business.

(b) If the superintendent takes possession of the business and property of any banking organization entitled to maintain an action, before the expiration of the time limited for the commencement thereof, such action may be commenced by the superintendent in the name of such banking organization before the expiration of that time or within one year after taking such possession, whichever date is later.

(c) Where by any agreement a period of limitation is fixed for instituting an action upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any action or by statute or ordinance, a period of limitation is fixed for serving or filing any claim or pleading, taking any appeal, or doing any other act, and where in any such case such period had not expired at the date of taking possession of the business and property of any such banking organization, the superintendent may for the benefit of such banking organization institute any such action, serve or file any such claim or pleading, take any such appeal, or do any such other act, required or permitted to such banking organization within a period of one year subsequent to the date of taking of such possession, or within such further period as may be permitted by the agreement, or in the action, or by statute or ordinance, as the case may be.

(d) (1) Except as provided in this paragraph, unless the federal regulator or insurer is appointed as receiver or liquidator, the superintendent's taking of possession of any banking organization and the liquidation of same shall operate as a stay of and as an injunction against, as of the date the superintendent takes possession of the banking organization, applicable to all persons or entities, of:

(i) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the banking organization that was or could have been

commenced before the taking of possession, or to recover a claim against the banking organization that arose before the taking of possession;

(ii) The enforcement, against the banking organization or the business and property of the banking organization in this state, of a judgment obtained before the taking of possession;

(iii) Any act to obtain possession of property of the banking organization or of property from the banking organization or to exercise control over property of the banking organization;

(iv) Any act to create, perfect, or enforce any lien against property of the banking organization;

(v) Any act to create, perfect or enforce against property of the banking organization any lien to the extent that such lien secures a claim that arose before the taking of possession; and

(vi) Any act to collect, assess, or recover a claim against the banking organization that arose before the taking of possession.

(2) The superintendent's taking of possession of a banking organization and the liquidation of same does not operate as a stay of or as an injunction against:

(i) The filing of a claim pursuant to section six hundred twenty of this article in the liquidation of the banking organization; the making of a demand upon the superintendent pursuant to section six hundred eighteen-a of this article to decide whether to assume or repudiate a contract of the banking organization; the exercise of any setoff otherwise permissible under applicable law except as limited by subdivision two of section six hundred fifteen of this article; the right of any secured creditor with a perfected security interest or other valid lien or security interest enforceable against third parties to retain collateral, including any right of such secured creditor under any security arrangement related to a qualified financial contract, as defined in section six hundred eighteen-a of this article, to retain collateral and to apply such collateral in accordance with paragraph (d) of subdivision two of section six hundred eighteen-a of this article; any automatic termination in accordance with the terms of any qualified financial contract or any right to cause the termination or liquidation of any qualified financial contract, as defined in section six hundred eighteen-a of this article, in accordance with the terms thereof; any right to offset or net out any termination value, payment amount, or

other transfer obligation arising under or in connection with one or more such qualified financial contracts; or the commencement of an action under section six hundred seven of this article or any other action relating to the liquidation before the supreme court justice overseeing the liquidation of the banking organization;

(ii) The commencement or continuation of a criminal action or proceeding against the banking organization;

(iii) The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(iv) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(v) The issuance to the banking organization by a governmental unit of a notice of tax deficiency; and

(vi) The commencement or continuation of a judicial action or proceeding by a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, including any right of such secured creditor under any security arrangement related to a qualified financial contract, as defined in section six hundred eighteen-a of this article, to enforce such security interest or lien.

(3) Except as otherwise provided in this paragraph:

(i) The stay or enjoining of an act against property of the banking organization under this paragraph shall continue until such property is no longer the property of the superintendent in possession of the banking organization; and

(ii) The stay or enjoining of any other act under this paragraph shall continue until the superintendent has concluded liquidating the banking organization.

(4) For good cause shown, on request of a party in interest and after notice and a hearing, the supreme court justice overseeing the liquidation may grant relief from the stay or injunction provided under this paragraph, such as by terminating, annulling, modifying or conditioning such stay or injunction.

(5) In the case of any willful violation of a stay or injunction provided in this paragraph by any person or entity who has knowledge of

the superintendent's taking of possession of the banking organization that is the subject of the stay or injunction, the superintendent shall recover actual damages, including costs and attorneys' fees and, in appropriate circumstances, may recover punitive damages.

(e) No action against the superintendent, his or her deputies, special deputies, attorneys, agents or employees, or against a banking organization whose business and property have been taken over by him or her, with respect to any matter arising out of the liquidation, administration, distribution or other disposition by or on behalf of the superintendent

(i) of the estate of such banking organization, or

(ii) of money or property in its possession or under its control as executor, administrator, trustee, guardian, committee, conservator, or other fiduciary capacity, or as bailee, pledgee, depository, agent or otherwise, or

(iii) of money or property in or removed from a safe, vault or box of which it is or was the lessor, shall be commenced subsequent to either (a) three years after the accrual of such cause of action, or (b) the expiration of such period of limitation as may be otherwise applicable thereto under the provisions of any other statute, whichever period is shorter. A cause of action shall be deemed to accrue within the meaning of this paragraph, when the facts upon which such cause of action is based come into existence. Nothing in this paragraph shall be deemed to extend or otherwise affect the period of limitation in section six hundred twenty-five of this article provided with respect to claims or causes of action therein referred to.

2. (a) The superintendent may, in the name of any banking organization of which he is in possession, execute, acknowledge and deliver any and all deeds, assignments, bills of sale, releases, extensions, satisfactions and other instruments necessary and proper to effectuate any sale, lease or transfer of real or personal property or to carry into effect any power conferred or duty imposed upon him by this article or by order of the supreme court. Any instrument executed pursuant to the authority hereby given shall be as valid and effectual for all purposes as though executed by the officers of the banking organization.

(b) The superintendent shall not be required to pay any fee to any

clerk, sheriff, register or other public officer for entering, filing, docketing, registering, recording, executing, issuing a copy, transcript, extract or certificate of, or authenticating or exemplifying any paper, record or instrument pertaining to the exercise by the superintendent of any of the powers conferred or duties imposed upon him by any of the provisions of this article, whether or not such paper, record or instrument be executed by the superintendent and whether or not it is connected with an action.

3. The word "action" contained in this section and section six hundred twenty-five of this article is to be construed as including a special proceeding or any proceeding therein or in an action. A cause of action upon which an action cannot be maintained, as prescribed in this article, cannot be effectually interposed as a defense, set-off or counterclaim.

§ 620. Notice to creditors to make proof of claims; form of claims; claims for priority of payment. 1. When the superintendent shall have taken possession of any banking organization, and shall have determined to liquidate its affairs, he or she shall notify all persons who may have claims against such banking organization to present such claims to him or her and make proper proof thereof within four months from the date of such notice and at a place specified therein; provided, that (a) if the superintendent finds that a shorter period than four months will afford a reasonable time for presenting claims and making proof thereof, he or she may specify such shorter period which shall in no event be less than thirty days or (b) if the superintendent finds that a longer period than four months is needed to afford a reasonable time for presenting claims and making proof thereof, he or she may specify such longer period which shall in no event be more than six months from the date of such notice. In any event the superintendent shall specify in such notice the last date for presenting claims and for making proof thereof. The superintendent shall cause such notice to be mailed to all persons whose names appear as creditors upon the books of the banking organization. Such notice to persons appearing as depositors shall be mailed to the address appearing upon the deposit records or ledger of

such banking organization. The superintendent shall also cause such notice to be inserted biweekly in such newspaper or newspapers as he or she may direct for three consecutive months, the first insertion thereof to be published more than ninety days before the last day fixed in such notice for presenting proof of claims; provided, that where the notice requires claims to be presented within less than four months, the superintendent shall cause such notice to be inserted weekly in such newspaper or newspapers as he or she may direct for three consecutive weeks, the first insertion thereof to be published more than twenty-one days before the last day fixed in such notice for presenting claims. Such notice shall specify that all persons having claims for priority of payment shall make demand in writing for priority in the proof of their claims. The superintendent shall have no power to accept any claim presented after the date specified in such notice as the last date for presenting claims.

2. A proof of claim shall consist of a written statement under oath signed by the claimant or his attorney in fact, and shall be in such form as the superintendent shall require.

3. All persons who shall have failed to demand in writing priority of payment as specified in the notice to file claims shall be deemed to have waived and abandoned any right to such priority of payment. No person who shall have failed to demand in writing priority of payment as herein above provided, shall be entitled to maintain any action or proceeding for any priority of payment. In all actions or proceedings for priority of payment, the claimant shall be required to allege and prove that the claim upon which the action is instituted was duly filed and contained therein demand in writing for priority of payment.

§ 620-a. Certain claims shall not be accepted. The superintendent shall not accept a claim based on an agreement with the banking organization unless the agreement is either reflected on the accounts, books or records of the banking organization or a creditor provides documentary evidence of such agreement. The superintendent may issue any regulations determined to be necessary to implement this section.

§ 622. List of claims duly presented; filing. The superintendent shall cause to be made in duplicate a complete list of all claims duly presented specifying the name of the claimant, the nature of the claim and the amount thereof. Such list shall also contain a statement of accounts payable as shown by the books and records and as to which no claims have been presented, specifying the name of each person to whom such an account appears to be payable, the nature of the debt and amount thereof. Within sixty days after the last date fixed in the notice to creditors to present and make proof of claims, the superintendent shall file one copy of such list in his office, and cause one copy to be filed with the supreme court in the judicial district in which the principal office of such banking organization is located.

§ 623. Filing objections to claims presented or listed; procedure upon claim under objection. Within forty days after the superintendent shall have filed in his office a copy of the list of claims required by section six hundred twenty-two, objections to any claim duly presented or to any account appearing on such list may be made by any party interested, by filing with the superintendent such objections in writing, signed by the objector and duly verified. Unless the superintendent rejects any claim or accounts to which objections have been duly filed with him, he shall, within sixty days after the time to file such objections has expired, apply to the supreme court, upon notice to the objector, for an order directing the superintendent as to the disposition of such claim or account. The court may thereupon dispose of such objections or may order a reference for that purpose.

§ 624. Acceptance and rejection of claims and accounts; filing of list thereof; secured claims and accounts; determination of priorities. 1. The superintendent shall, not later than sixty days after the time has expired to file objections to claims duly presented, accept or reject, in whole or in part, every duly filed claim except claims as to which objections are still pending undetermined by the court and accept or

reject, in whole or in part, every account payable as shown by the books and records and as to which no claim has been presented except accounts as to which objections are still pending undetermined by the court. Whenever the superintendent accepts a portion of a claim or account and rejects the remainder, the portion accepted and the portion rejected shall, for the purposes of this article, each be deemed separate claims or accounts as the case may be.

2. No claim or account of any secured claimant or creditor shall be accepted at a sum greater than the difference between the value of the claim or account without security and the value of the security itself as of the commencement of the liquidation, unless the claimant or creditor shall, prior to the expiration of the time fixed by the superintendent for the presentation of claims, surrender his security to the superintendent, in which event the claim or account may be accepted in the full amount for which it is valued.

3. Every claim or account payable accepted by the superintendent shall be endorsed "accepted" and filed so endorsed in his office. If the superintendent is unable, from the books, accounts or records of the banking organization, to determine the ownership of a claim or account payable or if for any other reason he doubts the justice or validity of any claim or account payable, he shall reject such claim or account payable and shall endorse the same "rejected" and file it as so endorsed in his office. He shall cause notice of such acceptance or rejection to be mailed within fourteen calendar days after the superintendent has accepted or rejected all claims duly filed. Where a proof of claim has been filed, such notice need be mailed only to the address appearing thereon, and where no proof of claim has been filed, only to the address appearing upon the books of the banking organization. Where, however, the superintendent is unable from the proof of claim or the books and records of the banking organization to identify a name or address, such notice of rejection need not be given.

4. Within thirty days after the superintendent has accepted or rejected all claims duly filed, and all accounts payable as shown by the books and records as to which no claims have been presented, he shall

make a list of all such claims and accounts accepted or rejected by him and file one copy thereof in his office and one copy with the supreme court in the judicial district in which the principal office of such banking organization is located.

5. The superintendent shall not determine priorities, in accepting or rejecting claims and the acceptance by the superintendent of a claim in which priority of payment is demanded shall not entitle the claimant to priority. Accepted claims in which priority of payment is duly demanded shall be presented to the supreme court on notice to the claimant for determination as to their priority of payment. All claims entitled to priority of payment shall be paid ratably and proportionately.

§ 625. Effect of accepting claims and accounts; limitation upon actions to establish claims and accounts; necessary allegations; effect of judgment. 1. When the superintendent has accepted a duly filed claim and has filed such claim endorsed "accepted" in his office, the claimant, unless priority of payment has been duly demanded, and such claim is entitled by law to priority of payment, shall be entitled to share ratably with other general creditors in the distribution of the proceeds of the liquidation of the assets of such banking organization as such proceeds are distributed pursuant to section six hundred twenty-seven of this article, provided, however, that any accepted claim or claims for taxes owed to any taxing authority shall be paid in full, to the extent that assets of the banking organization are available, prior to the payment of any other accepted claim. Where the claimant has duly demanded priority of payment, and such claim is entitled by law to priority of payment, the receipt and acceptance of ratable dividends shall be without prejudice to the right to such priority of payment.

2. When the superintendent has accepted an account payable as shown by the books and records and as to which no claim has been presented and included the same in the list filed in his office as provided in section six hundred twenty-four of this article, the owner thereof shall be entitled to share ratably with other general creditors in the distribution of the proceeds of the liquidation of the assets of such

banking organization as such proceeds are distributed pursuant to section six hundred twenty-seven of this article.

3. Within six months after the date that the superintendent files the list required by subdivision four of section six hundred twenty-four of this article listing the claims and accounts payable accepted or rejected by the superintendent, a claimant whose claim has been duly filed and has not been accepted by the superintendent, or any person whose account payable as shown by the books and records, as to which no claim has been presented, has not been accepted by the superintendent, may institute and maintain an action thereon against such banking organization. Such action may be maintained only in the supreme court in the judicial district in which the principal office of such banking organization was located.

4. No action shall be maintained against such banking organization while the superintendent is in possession of its affairs and business unless brought within the period of limitation specified in this section. In all actions instituted against such banking organization while the superintendent is in possession of its property and business, the plaintiff shall be required to allege and prove that the claim upon which the action is instituted was duly filed and that such claim has not been accepted, or in the case of an action upon an account as to which no claim has been presented the plaintiff shall be required to allege and prove that such account appeared upon the books and records and that such account has not been accepted.

5. If, in an action instituted in accordance with this section, the court should determine that a claim or account rejected by the superintendent should be allowed, the judgment entered therein shall so provide and shall fix and determine the amount thereof as of the date the superintendent took possession. A claim or account whose status and amount have been so fixed shall have the same force and effect as a claim or account which has been accepted by the superintendent in accordance with the provisions of section six hundred twenty-four of this article. Notwithstanding any other provision of law, the court shall not award interest, nor shall interest accrue, in any such action

at a rate greater than the amount rate of interest, if any, that the superintendent has determined is payable to other creditors; provided further that the court shall not award interest, nor shall interest accrue, except from the date from which the superintendent has determined to pay interest to creditors whose claims or accounts payable have been accepted or otherwise duly established to the date such claims or accounts are paid; provided, however, that the court may in its discretion award interest at a rate not to exceed the rate permitted by section six hundred twenty-seven of this article on any such judgment for the claimant in any such action for the period from the date such claim would have been paid had it been accepted initially by the superintendent to the date such judgment is paid.

§ 626. Judgments recovered shall not be liens. A lien shall not attach to any of the property or assets of any banking organization by reason of the entry of any judgment recovered against such banking organization after the superintendent has taken possession of its property and business and so long as such possession continues.

§ 627. Dividends to creditors; distributions to stockholders; dissolution; destruction of documents. 1. At any time after the date fixed by the superintendent for the presentation of claims, the superintendent may, upon an order of the supreme court, declare and pay out of the funds remaining in his or her hands after the payment of expenses, one or more dividends to creditors whose claims or accounts payable have been accepted or otherwise duly established. If the superintendent intends to declare and pay more than one dividend to creditors, at the time he or she declares and pays out such first dividend to creditors, the superintendent may pay in full those claims and accounts payable that were accepted, or otherwise duly established, in an amount that is less than one hundred dollars; provided, however, that this sentence shall not be construed as a right to priority of payment; and provided further, that if the superintendent will not be able to satisfy in full all other creditors with accepted claims or accounts payable either in the first or succeeding dividends, then such

payment may not be made. After a dividend or dividends aggregating one hundred per centum of the principal amount of all such claims and accounts payable shall have been paid or set apart, and if funds are available therefor, a further dividend or dividends on account of interest accruing, on such claims and accounts payable, subsequent to the commencement of the liquidation may, at the sole discretion of the superintendent, be paid to the creditors entitled thereto at a rate not to exceed four per centum per annum, but nothing herein shall be deemed to create any right to interest which would not otherwise accrue or be payable. No creditor shall be entitled to receive nor be paid interest on any dividend or dividends by reason of delay in payment of such dividend or dividends. Dividends remaining unclaimed or unpaid in the hands of the superintendent for six months after payment of a final dividend, shall be deposited as provided in article two of this chapter except that if, after payment of such a dividend, the liquidation is continued in accordance with the provisions of subdivision two of this section, then such dividends shall be so deposited simultaneously with the like deposit of unclaimed or unpaid distributive amounts pursuant to the provisions of such subdivision at the expiration of six months after a final distribution.

2. Whenever the superintendent shall have (a) paid to, or set apart for, each creditor of any stock corporation whose claim or account payable has been accepted or otherwise duly established, a dividend or dividends aggregating the full amount of such claim or account payable together with interest thereon, and (b) set aside proper reserves for claims and accounts payable in litigation and not finally determined and for such other purposes as in the discretion of the superintendent shall be necessary or desirable, and (c) paid all the expenses of liquidation, the superintendent shall, if there be assets remaining in his or her hands, continue the liquidation of the affairs of such corporation and after paying the expenses thereof, distribute the proceeds, together with any part of the foregoing reserves not finally necessary to pay creditors and expenses in full, among the persons equitably entitled thereto according to their respective rights and interests and in such manner and upon such notice as may be directed by order of the supreme court. Any such distributive amounts remaining unpaid or unclaimed in

the hands of the superintendent for six months after a final distribution shall be deposited by the superintendent as provided in article two of this chapter.

3. Upon the petition by the superintendent showing that the liquidation of a corporate banking organization of which he has taken possession has been completed and upon such notice as the supreme court may prescribe, the court may, on such terms as justice requires, make an order declaring such corporation dissolved and the corporate existence thereof terminated. Upon the filing of a certified copy of such order in the office of the superintendent, the existence of such corporation shall cease and determine.

4. Any records, documents and correspondence of any banking organization of which the superintendent has taken possession and any records, documents and correspondence in the custody of the superintendent relating to the liquidation of such banking organization may be destroyed or otherwise disposed of at such time or times and in such manner as the supreme court by order may authorize.

§ 628. Payment of dividends when deposits have been made available by Federal Deposit Insurance Corporation. When the superintendent shall have taken possession of any banking organization for the purpose of liquidation, and Federal Deposit Insurance Corporation shall have made available to the depositors thereof the amounts of their respective deposits insured by such corporation, he shall be authorized, without requiring assignments from depositors, to pay to such corporation such dividends on account of such insured deposits as such depositors would be entitled to receive had their deposits not been made available to them by such corporation.

§ 629. Payment of dividends to minors, trustees or joint depositors; payment of dividends where adverse claim is asserted; interpleader in certain actions. 1. Where a claim or an account payable in the name of any minor has been accepted by the superintendent, dividends thereon

shall be paid to such minor and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge to the superintendent.

5. Notice to the superintendent of an adverse interest in a claim or account payable accepted by the superintendent to the credit of any person shall not be effectual to cause the superintendent to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said superintendent from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit said claim or account payable was accepted or his executor or administrator is made a party and served with summons, or shall execute to said superintendent, in form and with sureties acceptable to him, a bond, indemnifying the superintendent from any and all liability, loss, damage, costs and expenses, for and on account of the payment of dividends to such adverse claimant.

6. (a) In all actions or proceedings against the superintendent to recover dividends on claims or accounts payable accepted, if there be any person or persons, not parties to the action, who claim the fund, the court in which the action or proceeding is pending, may, on the motion of the superintendent, make an order amending the proceedings making such claimants parties thereto; and the court shall thereafter proceed to determine the rights and interests of the several parties to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in any other interpleader provision.

(b) The dividends which are the subject of such an action may remain with the superintendent to the credit of the action until final judgment therein and shall not be entitled to interest, and shall be paid by the superintendent in accordance with the final judgment of the court; or the dividends in controversy may be paid into court to await the final determination of the action and when the dividend or dividends are so paid into court the superintendent shall be stricken out as a party to the action and his liability shall cease.

(c) The costs in all actions against the superintendent to recover dividends shall be in the discretion of the court, and may be charged

upon the fund affected by the action.

7. In case the superintendent is in doubt concerning the person entitled to receive payment of any dividend, or there are conflicting claims thereto, he may require of the claimant an order of the supreme court authorizing and directing the payment thereof, but for any payment made by him in good faith, by check or order, payable to the claimant appearing from the records in his office to be entitled thereto, he shall be held harmless and shall not be liable to any subsequent claimant.

§ 630. Claims of shareholders and members of credit unions and savings and loan associations. For the purposes of sections six hundred six to six hundred thirty-one, both inclusive, of this chapter, the terms "depositors" and "creditors" shall be deemed to include shareholders or members of a credit union or savings and loan association, and the terms "claims, " "accounts payable, " "deposits" and "deposit accounts" shall be deemed to include the liability of a credit union or savings and loan association to such shareholders or members, provided, however, that nothing contained in this section shall in any way affect any priority over such shareholders or members to which any general creditor of a credit union or savings and loan association would be entitled in the absence of this section, and provided further that the provisions of subdivision two of section six hundred twenty of this chapter shall not apply to the claims of creditors entitled to such priority.

§ 631. Actions against directors, trustees, managers or officers for violation of their official duties. At any time while the superintendent is in possession of the property and business of any corporation, he may within six years after the cause of action has accrued institute and maintain in his name as superintendent of financial services against its directors, trustees, managers or officers, or any of them, any action or proceeding which is vested in such corporation or in the stockholders or creditors thereof.

§ 633. Service of notice or process during time of war. Whenever, pursuant to the provisions of this article, any communication, notice or other paper or process is required to be given or served by the superintendent upon any person and the giving or service thereof is in any manner prohibited by the provisions of the act of congress, known as the "Trading with the Enemy Act," or any amendment thereof, or the rules, regulations or licenses issued pursuant thereto, or any other law, rule, regulation or license pursuant to law prohibiting or regulating the same, such communication, notice or other paper or process shall be deemed to have been duly given or served on such person if given or served on his or her behalf, in the manner provided in the pertinent provisions of this article, on the noncitizen property custodian or on such other officer as may have been appointed or designated by the president of the United States of America to take possession of the property of noncitizen enemies. This section shall apply whether or not (1) such noncitizen property custodian or other officer shall actually have taken possession of any property of such person, or (2) the president, or an officer duly designated by him or her for the purpose, has the power to authorize or license the giving or service of any such communication, notice or other paper or process, and nothing herein shall require the superintendent to apply to the president or such officer for such authority or license, provided, however, that in any case where it appears that at the time such communication, notice or other paper or process is required to be given or served, the president or such officer has actually authorized or licensed the giving or service of same in the manner provided in the pertinent provisions of this article, then this section shall not apply and the superintendent shall be required to give or serve such communication, notice or other paper or process on such person in accordance with such authorization or license.

§ 634. Power to appoint regulator or insurer as receiver; additional powers. Notwithstanding anything to the contrary in this chapter, the superintendent may, in his or her sole discretion, and upon such terms and conditions as the superintendent may approve, appoint as receiver or

liquidator of any banking organization or branch or agency of a foreign banking corporation, the business and property of which the superintendent has taken or is entitled to take possession, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the successor or assignee of any of the foregoing, or such other regulator, or insurer of deposits or shares as may be empowered by federal law to receive such appointment. Any regulator or insurer which accepts such appointment may act without bond or other security as to such appointment and shall have and possess, and may exercise, all the rights, powers and privileges provided by the laws of this state to the superintendent in his or her capacity as, or to any other, receiver or liquidator of a banking organization or branch or agency of a foreign banking corporation. Upon the payment to any depositor or shareholder of a banking organization or branch or agency of a foreign banking corporation, the regulator or insurer shall be subrogated to all the rights of such depositor or shareholder to the extent of such payment.

In addition to such other powers as he or she may possess under law, the superintendent, or any regulator or insurer which accepts appointment in accordance with the provisions of this section, may, without obtaining the approval of stockholders, shareholders or any court, sell, transfer, assign, consolidate or otherwise dispose of all or any part of the assets, real and personal, including fiduciary relationships, of the banking organization, or branch or agency of the foreign banking corporation, to another banking organization, national bank, branch or agency of a foreign banking corporation, federal savings bank, federal savings and loan association or federal credit union or to such regulator or insurer, its successor or assignee, on such terms as may be determined to be in the best interests of depositors, shareholders and other creditors. In connection therewith the superintendent may, in addition, and without obtaining court approval, borrow from such regulator or insurer any amount necessary to facilitate the assumption of deposit liabilities by any other banking institution and assign any part or all of the assets of a banking organization or branch or agency of a foreign banking corporation as security for such loan.

ARTICLE XIII-A

LICENSEES: SUPERINTENDENT'S TAKING POSSESSION: CONSERVATION: LIQUIDATION

Section 635. Definitions.
636. When superintendent may take possession of license; when possession may be surrendered.
637. Powers of superintendent in possession; application for receiver.
638. Manner and time within which taking possession may be tested.
639. Severability.

§ 635. Definitions. 1. "Person" when used in this article means an individual, partnership, corporation, unincorporated association, joint stock association, trust or other group, however organized.

2. "License" when used in this article means any license duly issued by the superintendent pursuant to the provisions of article nine, nine-A, eleven-B, twelve-B, twelve-C, twelve-D or thirteen-B of this chapter or any registration certificate issued by the superintendent pursuant to the provisions of article twelve-D of this chapter.

3. "Licensee" when used in this article means any person issued a license.

§ 636. When superintendent may take possession of license; when possession may be surrendered. 1. The superintendent may, in his discretion, forthwith take possession of the business and property of any licensee which is used in the business for which the license is granted whenever it shall appear to the superintendent that in the conduct of the business for which it has received a license, a clear and present danger exists to the public because such licensee:

(a) Is conducting its business in a manner which is unauthorized or

unsafe or which might render its further operations hazardous to the public;

(b) Is in an unsafe or unsound condition to transact business;

(c) Cannot with safety and expediency continue business;

(d) Has an impairment of its capital, has assets insufficient to pay its debts and obligations, or is otherwise unable to pay its debts and obligations as they mature;

(e) Has suspended payment of some or all of its debts and obligations;

(f) Has neglected or refused to comply with the terms of a duly issued order of the superintendent;

(g) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the department; or

(h) Has refused, or any of its officers, directors or partners have refused, to be examined under oath regarding its affairs.

2. When the superintendent shall have duly taken possession of the business and property of any such licensee, he may hold such possession until its affairs are finally liquidated by him, unless, he shall surrender possession as provided in subdivision three of this section, a receiver is appointed by the supreme court pursuant to section six hundred thirty-seven of this article to liquidate the affairs of the licensee, or he is enjoined from continuing possession as provided in section six hundred thirty-eight of this article.

3. The superintendent may, in his discretion, and upon such conditions as may be approved by him, surrender possession and permit such licensee to resume business.

§ 637. Powers of superintendent in possession; application for receiver. 1. When the superintendent has taken possession of the business and property of a licensee, he shall liquidate or otherwise deal with such business and property in accordance with the provisions of article thirteen of this chapter applicable to the possession, liquidation and conservation of the business and property of a banking organization.

2. Whenever the superintendent has taken possession of the business and property of a licensee, he may, in his discretion, apply to the supreme court in the judicial district in which such licensee's principal office is located for the appointment of a receiver to liquidate or otherwise deal with the affairs of the licensee. Any receiver which accepts such appointment may act without bond or other security as to such appointment and shall have and possess, and may exercise, all the rights, powers and privileges provided by this article to the superintendent or by the laws of this state to the superintendent in his capacity as, or to any other, receiver or liquidator of a banking organization.

§ 638. Manner and time within which taking possession may be tested. At any time within ten days after the superintendent has taken possession of the business and property of any licensee, such licensee may apply to the supreme court in the judicial district in which its principal office is located, for an order requiring the superintendent to show cause why he should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the superintendent to refrain from further proceedings and to surrender such possession.

§ 639. Severability. If any provision of this article, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this article, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

ARTICLE XIII-B
TRANSMITTERS OF MONEY

Section 640. Definitions.
641. License.
642. Action by superintendent.
643. Bond or securities.

645. Assignment of claims to superintendent.
646. Investigations, hearings and reports.
647. Judicial review.
648. Agents.
649. Rules and regulations.
650. Violations and penalties.
651. Investments.
651-a. Remittances.
651-b. Maintenance of books and records by agents.
652. Severability.
652-a. Changes in control.
652-b. Tying arrangements.

§ 640. Definitions. In this article, unless the context or subject matter otherwise requires:

1. "Person" means an individual, partnership, corporation, association, joint stock association, trust or other group, however organized.

2. "Licensee" means any person duly licensed by the superintendent pursuant to this article.

3. "Check" means any check, draft, travelers check, money order or other instrument for the transmission or payment of money.

4. "purchaser", "holder", "New York instrument" and "New York traveler's check" shall have the respective meanings ascribed to such terms by section six hundred fifty-three of this chapter.

5. "Payment instrument" means any check, draft, money order, or other instrument or order for the transmission or payment of money, whether or not such instrument or order is negotiable, and sold to one or more persons. "Payment instrument" does not include a traveler's check, any instrument which is redeemable by the issuer in merchandise or services, a letter of credit or a permissible investment as defined in this

section.

6. "Outstanding payment instruments" means unpaid payment instruments sold anywhere in the United States and whose sale has been reported to a licensee.

7. "Traveler's check" means an instrument, regardless of its form, specifically identified on the instrument as a traveler's check and issued in either written form, with a provision for a specimen signature of the purchaser to be completed at the time of purchase and a counter-signature of the purchaser to be completed at the time of its negotiation, or in electronic form with a provision for the electronic equivalent of the specimen signature and counter signature. An instrument shall not be identified as a traveler's check if it fails to comply, as the case may be, with either the written or electronic signature requirements of this subdivision.

8. "Outstanding traveler's checks" means unpaid traveler's checks sold anywhere in the United States and whose sale has been reported to a licensee.

9. "Permissible investments" means:

(i) cash;

(ii) certificates of deposit or other debt instruments of a commercial bank;

(iii) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by member banks of the federal reserve system;

(iv) commercial paper of prime quality as defined by a nationally recognized organization which rates such securities;

* (v) interest-bearing bills, notes, bonds, debentures or other obligations issued or guaranteed by the United States or any state or other local governmental entity or any agent or instrumentality thereof, bearing a rating of one of the three highest grades by a nationally recognized investment service organization that has been engaged regularly in rating state and municipal issues for a period of not less than five years;

* NB Effective until notification of the superintendent of financial services

* (v) interest-bearing bills, notes, bonds, debentures or other obligations issued or guaranteed by the United States or any state or other local governmental entity or any agent or instrumentality thereof, which meet the standards of creditworthiness established by regulation by the superintendent;

* NB Effective upon notification of the superintendent of financial services

* (vi) interest-bearing bills, notes, bonds, debentures or preferred stock traded on any national securities exchange or on a national over-the-counter market or bearing a rating of one of the three highest grades by a nationally recognized investment service organization that has been engaged regularly in rating corporate debt or equity issues for a period of not less than five years; and

* NB Effective until notification of the superintendent of financial services

* (vi) interest-bearing bills, notes, bonds, debentures or preferred stock traded on any national securities exchange or on a national over-the-counter market or which meet the standards of creditworthiness established by regulation by the superintendent; and

* NB Effective upon notification of the superintendent of financial services

(vii) such other investments or assets if and as approved by the superintendent.

Except for cash and certificates of deposit of a commercial bank, any particular investment within the classes of investments authorized by this section is subject to disqualification for one or more licensees for the purpose of this article, if unsatisfactory for any reason in the opinion of the superintendent. Notwithstanding the foregoing provisions of this section, the superintendent shall have the power to limit, with respect to any particular licensee or all licensees, the extent to which any class of investments authorized by this section, except for cash and certificates of deposit of a commercial bank, may be considered a permissible investment.

10. "Agent" means any person designated or appointed by the licensee pursuant to a written agency contract to engage in money transmission activities at locations other than a duly authorized office of the licensee as provided in section six hundred forty-eight of this article. Except for a licensee, any person acting as agent engaging in money transmission activities absent such a written agency contract shall be deemed to be in violation of section six hundred forty-one of this article and may be subject to criminal prosecution pursuant to section six hundred fifty of this article. Such term shall not be deemed to include any banking corporation incorporated or licensed under this chapter or under the laws of the United States or any other state or any casher of checks licensed under this chapter.

§ 641. License. 1. No person shall engage in the business of selling or issuing checks, or engage in the business of receiving money for transmission or transmitting the same, without a license therefor obtained from the superintendent as provided in this article, nor shall any person engage in such business as an agent, except as an agent of a licensee or as agent of a payee; provided, however, that nothing in this article shall apply to a bank, trust company, private banker, foreign banking corporation licensed pursuant to article two of this chapter or foreign banking company authorized to operate pursuant to the International Banking Act of 1978 (12 USC 3101 et seq.), as amended, savings bank, savings and loan association, an investment company, a national banking association, federal reserve bank, corporation organized under the provisions of section twenty-five-a of an act of congress entitled the "Federal Reserve Act", federal savings bank, federal savings and loan association or state or federal credit union.

2. Application for a license required under this article shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the following:

(a) The exact name of the applicant and, if incorporated, the date of incorporation and the state where incorporated.

(b) The complete address of the principal office from which the business is to be conducted, and where the books and records of the

applicant are maintained and to be maintained, showing the street and number, if any, and the municipality and county;

(c) If the applicant has one or more branches, subsidiaries or affiliates engaging in this state in the business of selling or issuing checks, or of receiving money for transmission or transmitting the same, the complete name and address of each;

(d) The name and residence address of the applicant, if an individual or, if a partnership, of its partners or, if a corporation or association, of the directors, trustees and principal officers thereof, and of any stockholder owning twenty per centum or more of any class of its stock; and

(e) Such other pertinent information as the superintendent may require.

3. Application for a license shall be accompanied by an investigation fee as prescribed pursuant to section eighteen-a of this chapter, which shall not be refunded.

§ 642. Action by superintendent. 1. Upon the filing of an application, and the payment of the fees for investigation and license, the superintendent shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant and, if the superintendent finds these qualities are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently within the purposes and intent of this article, and in a manner commanding the confidence and trust of the community, the superintendent shall advise the applicant in writing of his conditional approval of the application, and thereafter upon compliance by the applicant with the provisions of section six hundred forty-three of this article, shall issue to the applicant a license to engage in the business of selling and issuing checks, and of receiving money for transmission and transmitting the same, subject to the provisions of this article; or the superintendent may deny the application and return the license fee to the applicant.

2. The superintendent shall approve conditionally or deny every application for a license hereunder within ninety days from the filing thereof. Such period of ninety days may be extended, by the written consent of the applicant, for such additional reasonable period of time as may be required to enable compliance with such requirements and conditions as may be provided by this article and the rules or regulations of the superintendent issued thereunder.

3. A license issued pursuant to this article shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in this article.

4. The superintendent may suspend or revoke a license on any ground on which he might refuse to issue an original license, or for a violation of any provision of this chapter or any regulation issued under this article, or for failure of the licensee to pay a judgment, recovered in any court, within or without this state, by a claimant or creditor in an action arising out of the licensee's business in this state of selling or issuing checks or of receiving money for transmission or transmitting the same, within thirty days after the judgment becomes final or within thirty days after expiration or termination of a stay of execution thereon; provided, however, that if execution on the judgment be stayed, by court order or operation of law or otherwise, then proceedings to suspend or revoke the license (for failure of the licensee to pay such judgment) may not be commenced by the superintendent during the time of such stay, and for thirty days thereafter.

5. No license shall be suspended or revoked except after a hearing thereon. The superintendent shall give the licensee at least ten days' written notice of the time and place of such hearing by registered or certified mail addressed to the principal place of business of such licensee. Any order of the superintendent suspending or revoking such license shall state the grounds upon which it is based and shall not be effective until ten days after written notice thereof has been sent by registered or certified mail to the licensee at such principal place of business, except that revocation by reason of the licensee's bond not being kept in full force and effect as required by this article, or by

reason of failure to keep on deposit sufficient securities or funds as required by this article, may take effect immediately if the superintendent so orders.

6. The superintendent may, on good cause shown, or where there is a substantial risk of public harm, suspend any license issued pursuant to this article for a period not exceeding thirty days, pending investigation. "Good cause", as used in this subdivision, shall exist only when the licensee has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this article.

§ 643. Bond or securities. 1. As a condition for the issuance and retention of the license, applicants for a license and other licensees shall, within thirty days after notice by the superintendent, or such longer or shorter period as he or she shall prescribe, file with the superintendent one or more corporate surety bond or bonds, as required below, in form satisfactory to him or her and issued by a bonding company or insurance company authorized to do business in this state. One bond shall be in favor of the superintendent and in such principal amount as he or she shall determine is necessary or desirable for the protection of the purchasers and holders of New York instruments sold or to be sold by the applicant or licensee, provided, however, that until June first, nineteen hundred seventy-seven, the principal amount of such bond shall be no less than two hundred ten thousand dollars and on and after June first, nineteen hundred seventy-seven, the principal amount of such bond shall be no less than five hundred thousand dollars. If the applicant or licensee intends to engage or engages in the sale of New York traveler's checks, such applicant or licensee shall file with the superintendent a separate bond. Said bond shall be in favor of the superintendent and in such principal amount as he or she shall determine is necessary or desirable for the protection of the purchasers and holders of the New York traveler's checks sold or to be sold by the applicant or licensee; provided, however, that the principal amount of such bond shall not be less than seven hundred fifty thousand dollars,

unless the superintendent, for good cause shown, shall have determined that a lesser amount will adequately protect the purchasers and holders of the New York traveler's checks sold or to be sold by such applicant or licensee.

In making any determination under this subdivision, the superintendent may take into account the financial condition of the licensee, the number of locations in this state at which the licensee, either directly or through agents, transacts the business of selling New York instruments or New York traveler's checks, the controls imposed on such agents or, and the possible exposure of purchasers and holders of New York instruments and New York traveler's checks to loss in the event of the insolvency, bankruptcy or other financial impairment of the licensee. The proceeds of each bond shall constitute a trust fund for the exclusive benefit of the purchasers and holders of the New York instruments and New York traveler's checks, as the case may be. Except as otherwise provided in the following sentence, in the event of the insolvency or bankruptcy of any licensee, the proceeds of the bond or bonds held for the exclusive benefit of the purchasers and holders of New York instruments and the proceeds of the bond or bonds held for the exclusive benefit of the purchasers and holders of New York traveler's checks shall be paid to the superintendent forthwith for disposition in accordance with the provisions of this article. If any New York instruments have been assigned to the fund, the proceeds of the bond held for the exclusive benefit of the purchasers and holders of New York instruments shall constitute a trust fund for the benefit of, and shall be payable to, the fund to the extent of such assignment. From time to time, the superintendent may require, upon thirty days notice or such longer or shorter period as he or she shall prescribe, that such bond or bonds be increased if he or she shall determine that such increase is necessary or desirable for the protection of the purchasers and holders of New York instruments and New York traveler's checks.

2. The licensee shall give notice to the superintendent by registered or certified mail of any action which shall be brought against him and of any judgment which shall be entered against him by such purchaser or holder of a New York instrument or a New York traveler's check, with

details sufficient to identify the action or judgment, within ten days after the commencement of any such action or notice to the licensee of entry of any such judgment. The corporate surety shall within ten days after it pays any claim or judgment to any such purchaser or holder of a New York instrument or a New York traveler's check give notice to the superintendent by registered mail of such payment, with details sufficient to identify the purchaser or holder and the claim or judgment so paid. Whenever the principal sum of such bond or bonds is reduced by one or more recoveries or payments thereon the licensee shall furnish a new or additional bond or bonds under the provisions of this section, so that the total or aggregate principal sum of such bond or bonds shall equal the sum required pursuant to the provisions of this section, or shall furnish an endorsement duly executed by the corporate surety reinstating the bond or bonds to the required principal sum thereof. The liability of the surety on such bond or bonds to the superintendent and to the said purchasers and holders of New York instruments and New York traveler's checks shall not be affected in any way by any misrepresentation, breach of warranty or failure to pay the premium or by any act or omission upon the part of the licensee nor by the insolvency or bankruptcy of the licensee or the insolvency of the licensee's estate, and in the event of the death or dissolution or liquidation of the licensee, shall continue upon all transactions entered into by the agents of such deceased, dissolved or liquidated licensee within a period of thirty days after the death, dissolution or liquidation of the licensee or termination of the bond or bonds, whichever date shall first occur, provided, however, that such transactions were entered into in good faith by such purchasers and holders of New York instruments and New York traveler's checks. Every such corporate surety bond shall provide that in the event that a judgment recovered against the licensee or its legal representative or successor by any such purchaser or holder on a claim arising or a transaction entered into during the life of the bond shall remain unsatisfied after the expiration of thirty days from the service of notice of entry of judgment upon the licensee or upon his legal representative or successor or upon the attorney for the licensee, and upon the corporate surety, or in the event that the fund has become an assignee of any claim arising or a transaction entered into during the

life of the bond, then an action may be maintained against the corporate surety under the terms of the bond (1) by such purchaser or holder for the amount of such judgment not exceeding the amount of the bond, except during a stay of execution of such judgment against the licensee or his legal representatives or successors, or (2) by the superintendent, on behalf of the fund, for the amount of such claim, not exceeding the amount of the bond. The bond may not be cancelled either by the licensee or the surety except upon notice to the superintendent by registered or certified mail with return receipt requested, the cancellation to be effective not less than ten days after receipt by the superintendent of such notice.

3. In lieu of such corporate surety bond or bonds, or of any portion of the principal sum thereof as required by this section, applicants for a license and other licensees may keep on deposit, or may be required to keep on deposit by the superintendent, with such banks, trust companies, national banks, savings bank, savings and loan associations, federal savings associations, credit unions, or federal credit unions in the state of New York as such applicants or licensees may designate and the superintendent may approve, and in accordance with such rules and regulations as the superintendent shall from time to time promulgate, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district or instrumentality of this state, or guaranteed by this state, or dollar deposits, to an aggregate amount, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, of not less than the amount of the required corporate surety bond or bonds or portion or portions thereof. Such securities or funds shall be deposited to secure the same obligation or obligations as would the corporate surety bond or bonds filed under this section. So long as it shall continue business in the ordinary course, such licensee shall be permitted to collect interest on the securities so deposited and from time to time to exchange, examine and compare such securities. In the event of the failure or insolvency of such licensee, the securities, any proceeds therefrom and the funds deposited pursuant to this section shall

constitute a trust fund for the exclusive benefit of the purchasers and holders of New York instruments or New York traveler's checks, as the case may be, or, in the event such New York instruments are assigned to the fund, the securities, any proceeds therefrom and the funds deposited pursuant to this section for the benefit of the purchasers and holders of New York instruments shall constitute a trust fund, for the benefit of the fund.

4. Notwithstanding the foregoing provisions of this section, if the superintendent shall find that a licensee has transacted the business of money transmission in this state for a period of five consecutive years and that such business has been conducted honestly, efficiently and safely and that the licensee's financial condition is sound and that its New York instruments are insured, the superintendent may dispense with, modify or eliminate any of the foregoing requirements of this section with respect to New York instruments; provided, however, that if at any time subsequent thereto, the superintendent shall deem it necessary or desirable for the protection of the purchasers and holders of New York instruments, to reinstate any of the requirements of this section, he may do so.

§ 645. Assignment of claims to superintendent. At the written request of any claimant or creditor of the licensee whose claim is based on a transaction, in this state, for the sale or issuance of a check or the receipt of money for transmission or transmission of the same, under the provisions of this article, the superintendent may, in his discretion, take an assignment of such claim in trust for the benefit of the assigning claimant or creditor and may bring any legal action necessary to collect such claim. Two or more such claims against the licensee may be combined in one such action.

§ 646. Investigations, hearings and reports. 1. The superintendent shall have the power to make such investigations and conduct such hearings as he shall deem necessary to determine whether any licensee or any other person has violated any of the provisions of this article, or

whether any licensee has conducted himself in such manner as would justify the suspension or revocation of his license.

2. In making any investigation or conducting any hearing pursuant to the provisions of this article, the superintendent, or any person duly designated by him, shall have the power at all times to subpoena witnesses; to take depositions of witnesses residing without the state, in the manner provided for in civil actions in courts of record; to pay such witnesses the fees and mileage for their attendance provided for witnesses in civil actions in courts of record; and to administer oaths. He shall also have the power to compel by order or subpoena the production of and to examine all relevant books, records, accounts and other documents. Any person who fails to obey the command of the subpoena without reasonable excuse, or refuses without reasonable cause to be served or to be examined or to answer a question or to produce a book or paper when ordered so to do, or fails to perform any act required hereunder to be performed, shall be subject to the compulsions in such cases made and provided by law, and if the person be licensed hereunder, the superintendent shall have the right to suspend or revoke the license.

3. The superintendent may require of any licensee such reports, under oath or otherwise, concerning the licensee's business in this state, as he may deem necessary for the enforcement of this article.

4. All reports of investigations and other reports rendered pursuant to this section, and all correspondence and memoranda concerning or arising out of such investigations or reports, including any duly authenticated copy or copies thereof in the possession of any licensee or the department of financial services, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event the superintendent may publish or authorize the publication of a copy of any such report or other material referred to in this subdivision, or any part thereof, in such manner as may be deemed proper. For purposes of this subdivision, "reports of

investigations, and other reports rendered pursuant to this section and all correspondence and memoranda concerning or arising out of such investigations or reports" shall have the same meaning as such terms are defined pursuant to subdivision ten of section thirty-six of this chapter.

§ 647. Judicial review. The refusal by the superintendent of an original license, in the case of an applicant which, prior to January first, nineteen hundred sixty-three, and upon the date of filing such application, has lawfully been engaged in this state in the business of selling or issuing checks or of receiving money for transmission or transmitting the same, and in all cases the suspension or revocation of any license by the superintendent, shall be subject to judicial review in the manner in such cases made and provided by law.

§ 648. Agents. A licensee may conduct its business at one or more locations within this state, as follows:

(a) The business may be conducted through or by means of agents as the licensee may from time to time designate or appoint and, in no event, shall the business of money transmission be conducted through a subagent.

(b) No license under this article shall be required of any agent of a licensee in cases in which such agent is acting on behalf of a licensee under, and in accordance with, an agency contract except as provided in subdivision (c) of this section.

(c) An agent, other than a person expressly excepted from the application of this article, who sells or delivers the licensee's checks over-the-counter to the public shall not be exempt from licensing under this article if such agent in the ordinary conduct of such business receives or at any time has access to (1) the licensee's checks which, having been paid, are returned through banking channels or otherwise for verification or for reconciliation or accounting with respect thereto or (2) bank statements relating to checks so returned. No license under this article shall be required of an agent, including a general or managing agent, of a licensee who does not directly sell or deliver the

licensee's checks over-the-counter to the public.

§ 649. Rules and regulations. The superintendent is hereby authorized and empowered to make such rules and regulations as may in his judgment be necessary or appropriate for the enforcement of this article.

§ 650. Violations and penalties. 1. Any person who violates or participates in the violation of any provisions of this article, or who knowingly makes any incorrect statement of a material fact in any application, report or statement made pursuant to this article, or who knowingly omits to state any material fact necessary to give the superintendent any information lawfully required by him or refuses to permit any lawful investigation by the superintendent shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned for not more than six months or both, in the discretion of the court.

2. a. Any person who either (1) engages in the business of receiving money for transmission or transmitting the same or (2) sells or issues New York instruments or New York traveler's checks as those terms are defined by section six hundred fifty-three of this chapter, without a license therefor obtained from the superintendent as provided in this article, shall be guilty of a Class A misdemeanor.

b. Any person who violates paragraph a of this subdivision and in the course of that violation:

(1) knowingly receives or agrees to receive for transmission from one or more individuals a total of ten thousand dollars or more in a single transaction, a total of twenty-five thousand dollars or more during a period of thirty days or less, or a total of two hundred fifty thousand dollars or more during a period of one year or less; or

(2) knowingly sells or issues New York instruments or New York traveler's checks to one or more individuals totaling ten thousand dollars or more in a single transaction, a total of twenty-five thousand dollars or more during a period of thirty days or less, or a total of

two hundred fifty thousand dollars or more during a period of one year or less; or

(3) knowingly engages in the business of receiving money for transmitting or transmitting the same, knowing such money to be the proceeds of any criminal conduct; or

(4) knowingly sells or issues New York instruments or New York traveler's checks as those terms are defined by section six hundred fifty-three of this chapter, knowing such instruments or checks to be purchased with the proceeds of or derived from any criminal conduct; shall be guilty of a class E felony.

3. Any licensee who fails to make any report required by the superintendent pursuant to this article, on or before the day designated for the making thereof, or fails to include therein any prescribed matter, shall forfeit to the people of the state an amount as determined pursuant to section forty-four-a of this chapter for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the superintendent shall, in his or her sole discretion, for good cause shown, reduce the amount to be forfeited, or unless the time therefor shall have been extended by the superintendent, as provided in subdivision four of this section.

4. The superintendent may extend, for a period not exceeding ninety days, the time within which a licensee is required to make any report required by the superintendent pursuant to this article.

§ 651. Investments. Every licensee shall at all times maintain permissible investments having (i) a market value, computed in accordance with generally accepted accounting principles, at least equal to the aggregate of the amount of all its outstanding payment instruments and all its outstanding traveler's checks or (ii) a net carrying value, computed in accordance with generally accepted accounting principles, at least equal to the aggregate of the amount of all its outstanding payment instruments and all its outstanding traveler's checks so long as the market value of such permissible investments is at least eighty per centum of the net carrying value.

Notwithstanding the foregoing provisions of this section, the superintendent shall have the authority, for good cause shown, to exempt from the requirements of this section any licensee.

§ 651-a. Remittances. 1. Each agent of a licensee which sells any New York instruments or New York traveler's checks issued by such licensee shall, and each licensee shall so require each of its agents which sells any New York instruments or New York traveler's checks issued by such licensee to report such sale and remit the face amount of New York instruments and New York traveler's checks to such licensee within such period of time as the licensee requires within the normal course of its business or as the superintendent, by rule or regulation, may prescribe. For purposes of this section, remittance shall include either direct payment of such funds to the licensee or the deposit of such funds in a banking organization, national bank, federal savings bank, federal savings and loan association, federal credit union, or a banking institution chartered under the laws of another state or country, in an account in the name of such licensee specifically established for the purpose of receiving such funds. Remittance by such agent to such licensee or deposit by such agent in such account or its equivalent of funds in advance of the sale of such New York instruments and New York traveler's checks, in an amount not less than the amount said agent would normally receive from such sales of New York instruments and New York traveler's checks, shall be deemed compliance with the provisions of this section.

2. Every agent of a licensee shall remit all moneys owed such licensee in accordance with the terms of the contract between the licensee and such agent. Any intentional or negligent failure of an agent to remit all moneys due and owing the licensee within the time provided in such contract shall result in the agent's civil liability to the licensee for three times the licensee's damages. The superintendent may, by rule, establish the maximum period of time for remittance.

§ 651-b. Maintenance of books and records by agents. Each licensee

shall require of each of its agents to make and keep such accounts, correspondence, memoranda, papers, books and other records as the superintendent by regulation or order requires. All records so required shall be preserved for the time specified by the regulation or order of the superintendent.

§ 652. Severability. If any provision of this article, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this article, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

§ 652-a. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall disapprove the proposed change of control of a licensee if, after notice to and an opportunity to be heard by the applicant and such licensee, he finds the acquisition of control therein contrary to law or determines that disapproval is reasonably necessary to protect the interest of the people of this state. In making such determination, the superintendent shall consider (a) whether the character, responsibility and general fitness of the person which seeks to control such licensee are such as to command confidence and warrant belief that the business of such licensee will be honestly and efficiently conducted in a manner consistent with the public interest, (b) whether the exercise of control may impair the safe and sound

conduct of the business of such licensee, the conservation of its assets or public confidence in its business, and (c) primarily, the public interest and the needs and convenience thereof. Unless the superintendent shall have denied such application in writing within one hundred fifty days of the filing thereof, such application shall be deemed approved. If the superintendent disapproves such application, or, if no such application has been made, upon consummation of the acquisition of control, the license of the licensee shall become null and void and the applicant or licensee, whoever has possession of such license, shall forthwith surrender to the superintendent the license theretofore in effect.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. As used in this section the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person directly or indirectly, owns, controls, or holds with power to vote twenty-five per centum or more of the voting

stock of any licensee or of any person which owns, controls or holds with power to vote twenty-five per centum or more of the voting stock of such licensee, but no person shall be deemed to control a licensee solely by reason of his being an officer or director of such licensee or person. The superintendent may in his discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

§ 652-b. Tying arrangements. 1. It shall be unlawful for any transmitter of money or its officers, affiliates or subsidiaries to enter into an agreement with a check casher, licensed pursuant to the provisions of article nine-A of this chapter, whereby credit is extended to the check casher at the same time as, and on the condition that, the transmitter of money enters into an agreement with the check casher whereby the check casher will (1) sell only the New York instruments or New York traveler's checks of the transmitter of money or (2) agree to the exclusive use of any of the other services of the transmitter of money. This section shall not apply to the issuance by a transmitter of money of a guarantee of any indebtedness of a check casher licensed pursuant to the provisions of article nine-A of this chapter.

2. For purposes of this section the term "transmitter of money" means a licensee, as such term is defined in subdivision two of section six hundred forty of this article, a bank, trust company, private banker, savings bank, savings and loan association, credit union, foreign banking corporation licensed pursuant to article five of this chapter, national banking association, federal savings bank, federal savings and loan association, federal credit union, foreign banking company authorized to operate pursuant to the international banking act of 1978 (12 USC 3101 et seq.), as amended, and an investment company, which either directly or through agents transacts the business in this state of selling or issuing New York instruments or New York traveler's checks.

For purposes of this section the terms "New York instruments" and "New York traveler's checks" shall have the meaning ascribed to them by section six hundred fifty-three of this chapter.

ARTICLE XIII-C
STATE TRANSMITTER OF MONEY INSURANCE FUND

Section 653. Definitions.
654. Purpose of the fund.
655. Maximum amount of insurance.
656. Claims against the fund.
657. Payments to the fund.
658. General powers of the fund; administration of the fund.
659. Rules and regulations.

§ 653. Definitions. 1. "Claimant", when used in this article, means a purchaser or holder of a New York instrument.

2. "Federal insuring agency", when used in this article, means the Federal Deposit Insurance Corporation or the National Credit Union Administration.

3. "Fund", when used in this article, means the state transmitter of money insurance fund as provided for in this article.

4. "Holder", when used in this article, means a person, other than a purchaser, who is either (i) in possession of a New York instrument and is the named payee thereon, or (ii) in possession of a New York instrument issued or endorsed to him or bearer or in blank; provided, however, that no person who is in possession of a lost, stolen or forged New York instrument or who is in possession of a New York instrument by virtue of the fact that he is the surety on a bond required by subdivision one of section six hundred forty-three of this chapter or is a receiver or trustee, whether in bankruptcy or otherwise, for an uninsured transmitter of money shall be deemed a "holder" thereof.

5. "Insured transmitter of money" means a transmitter of money whose New York instruments are insured by a federal insuring agency.

6. "New York instrument" means a money order, check, draft or other instrument or document for the transmission or payment of money, or which evidences an obligation for the transmission or payment of money, or which evidences the purchase or deposit of funds for the purchase of any such instrument or document, sold in New York, but shall not include a New York traveler's check.

7. "Purchaser" means a person who buys or has bought a New York instrument from an uninsured transmitter of money or agent thereof.

8. "Transmitter of money" means a licensee, as such term is defined in subdivision two of section six hundred forty of this chapter, a bank, trust company, private banker, savings bank and savings and loan association, a credit union, foreign banking corporation licensed pursuant to article two of this chapter and any investment company which either directly or through agents transacts the business in this state of selling or issuing New York instruments.

9. "New York traveler's check" means an instrument, regardless of its form, specifically identified on the instrument as a traveler's check, and issued in either written form, with a provision for a specimen signature of the purchaser to be completed at the time of purchase and a counter-signature of the purchaser to be completed at the time of its negotiation, or in electronic form with provision for the electronic equivalent of the specimen signature and counter signature, and, in either case, sold in New York. An instrument shall not be identified as a traveler's check if it fails to comply, as the case may be, with either the written or electronic signature requirements of this subdivision.

10. "Uninsured transmitter of money" means a transmitter of money other than a banking organization, whose New York instruments are uninsured by a federal insuring agency.

§ 654. Purpose of the fund. There is hereby created a fund to be known as the "state transmitter of money insurance fund". The purpose of the fund shall be to insure the New York instruments of uninsured transmitters of money which, by reason of insolvency, bankruptcy or other inability to pay, have defaulted in making payment on their New York instruments, whether such default has occurred prior to or after the effective date of this act.

§ 655. Maximum amount of insurance. 1. Subject to the provisions of subdivisions two and three of this section, the maximum amount of insurance that any claimant shall be entitled to shall be determined by the superintendent after taking into account the amount of claims, the amount of the fund, including the authority of the fund to make assessments pursuant to section six hundred fifty-seven of this article, and any claim for recovery which the fund would have pursuant to the provisions of section six hundred forty-three of this chapter.

2. No insurance shall be paid on any New York instrument payable for an amount in excess of one thousand dollars, other than those New York instruments issued for the purpose of paying utility bills.

3. The maximum amount of insurance which any claimant shall be entitled to shall be determined as follows:

a. If the claimant is a purchaser, the maximum amount of insurance which such purchaser shall be entitled to on all insured New York instruments purchased by said purchaser shall be five thousand dollars.

b. If the claimant is a holder, the maximum amount of insurance which such holder shall be entitled to shall be the aggregate of the amounts which would have been due to the purchasers of the insured New York instruments held by the holder, had the instruments remained in the possession of the purchasers, rather than the holder.

§ 656. Claims against the fund. 1. If an uninsured transmitter of money has defaulted in making payment on any of its New York instruments, the superintendent shall give notice of such default to purchasers and holders of such instruments. Such notice may be given by means of publication in such newspaper or newspapers as the superintendent may direct and by such other means, if any, as the superintendent may determine to be reasonable and necessary under the circumstances. The determination of the superintendent as to the means of notice shall be conclusively presumed reasonable if notice is published in such newspaper or newspapers for five consecutive days. Such notices shall request purchasers and holders of such instruments who wish to file claims against the fund to present such claims to the superintendent and to file proper proof thereof within the period of time set forth in the notice and at a place specified therein. Such notice may limit the period of time within which claims may be filed to a period of time no less than ten business days from the final date of notice. Claimants shall file their claims in the form and manner prescribed by the superintendent and shall make proof thereof and of the loss actually suffered by such claimants to the satisfaction of the superintendent. The superintendent shall examine the claims so filed, determine the amount due upon such claims and certify, in writing, the amount due each claimant, whereupon payment by the fund to the claimant shall be made as provided for in this article. In any case where the superintendent is not satisfied as to the allowability of a claim or if he has notice of an adverse claim with respect to such New York instrument, he may require the final determination of a court of competent jurisdiction before certifying such claim. Whoever, for the purpose of obtaining payment on any insured New York instrument, or the payment of any claim, makes any statement knowing it to be false, or willfully overvalues any claim, shall be guilty of a Class A misdemeanor.

2. The payment by the fund to the claimant shall constitute an assignment, by operation of law, of all rights which the claimant has with respect to the New York instrument, including all rights, claims and interests in property which the claimant could have asserted against

the transmitter of money or its property or otherwise, and all recoveries which he would have been entitled to under the provisions of section six hundred forty-three of this chapter, provided that if any portion of such New York instrument is uninsured by virtue of the fact that it exceeds the maximum amount of insurance provided for by section six hundred fifty-five of this article or otherwise, the claimant shall retain all of his rights with respect to the uninsured portion of such instrument.

§ 657. Payments to the fund. In the event the fund has borrowed any monies from the property and liability insurance security fund pursuant to the provisions of section six hundred fifty-eight of this chapter, and has any debt outstanding thereto, or in the event an uninsured transmitter of money is declared, or declares itself, insolvent or defaults on its New York instruments, the fund shall levy an assessment upon each uninsured transmitter of money. The amount of such assessment shall be determined by the superintendent provided, however, that each uninsured transmitter of money shall be assessed ratably, in proportion to the average of the dollar amounts of the New York instruments issued by such uninsured transmitter of money outstanding at the end of each calendar quarter for the calendar year preceding that in which the assessment is made, and provided, further, that no such assessments shall be levied once the net value of the fund shall equal such amount as the superintendent shall have determined to be necessary to protect the interests of the purchasers and holders of New York instruments. In making his determination, the superintendent shall consider the scope of the risk covered by the fund, the expenses incurred or expected to be incurred by the fund, the amount of any loans and advances to the fund, and the interest thereon.

In no event shall the total amount so assessed in any one year against any uninsured transmitter of money pursuant to this section exceed two per centum of the New York instruments of such uninsured transmitter of money which were outstanding at the end of the calendar year preceding that in which such assessments are made or one hundred twenty-five thousand dollars, whichever is less. The net value of the fund shall be

determined by deducting from the value of the assets of the fund the aggregate actual and estimated liabilities of the fund as determined by the superintendent.

§ 658. General powers of the fund; administration of the fund. 1. The fund shall have the power to borrow money from the property and liability insurance security fund created by section seven thousand six hundred three of the insurance law on such terms and conditions as the superintendent may authorize pursuant to section seven of chapter one of the laws of nineteen hundred seventy-seven to the extent necessary to protect the interests of the purchasers and holders of New York instruments, and to pledge the assets of the fund or any portion thereof as security for such borrowings.

2. The fund shall have the power to accept contributions or donations to the fund from any source. The fund shall also have the power to pursue, realize upon, compromise and otherwise dispose of all rights and remedies of claimants assigned to the fund pursuant to the provisions of this article. The proceeds of all such rights and remedies and any other amounts which the fund may receive from any source shall constitute a part of the assets of the fund.

3. The fund created by this article shall be separate and apart from any other fund and from all other state monies, and the faith and credit of the state of New York is pledged for its safekeeping. The commissioner of taxation and finance shall be the custodian of the fund and all disbursements from said fund shall be made by the commissioner of taxation and finance upon vouchers signed by the superintendent or his designated deputy. The monies of said fund may be invested by the commissioner of taxation and finance only in obligations of the United States or of this state and in interest-bearing certificates of deposit for a bank or trust company located and authorized to do business in this state, or of a national bank located in this state, secured by a pledge of direct obligations of the United States or of the state of New York in an amount equal to the amount of such certificate of deposit. The commissioner of taxation and finance may sell any of the obligations

or certificates of deposit in which said fund is invested, if advisable, for its proper administration or in the best interests of said fund.

4. The expense of administering the fund shall be paid out of the fund. Prior to the first days of January, April, July and October, there shall be submitted to the director of the budget for approval an estimated budget of expenditures for the succeeding three months. There may not be expended for the purpose of administering the fund more than the amounts as authorized by the director of the budget. The superintendent shall serve as administrator of the fund without additional compensation, but may be allowed and paid from the fund expenses incurred in the performance of his duties in connection with the fund. The compensation of those persons employed by the superintendent, within the amounts approved by the director of the budget, shall be deemed administration expense payable from the fund. The superintendent shall make an annual report of the receipts to and disbursements from the fund, including the cost of administration of the fund, which report shall be made available to each uninsured transmitter of money who has made payments into the fund during such year and to any other person having an interest in the fund.

§ 659. Rules and regulations. The superintendent is hereby authorized and empowered to make such rules and regulations as may in his judgment be necessary or appropriate for the enforcement of this article.

ARTICLE XIII-D
MISCONDUCT RELATING TO BANKING ORGANIZATIONS

Section 660. Misconduct of officers, directors, trustees or employees of banking corporations and of private bankers.

661. Officer or agent of banking corporation or a private banker making guaranty or endorsement beyond the legal limit.

662. Bank officer or employee overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their

accounts.
663. Receiving deposits in insolvent bank.
664. Unlawful investments by officers of mutual savings banks.
665. Misconduct by directors of banking corporations.
666-a. Loans to be guaranteed by New York state higher education assistance corporation.
668. Use of checks with certain photographs or drawings reproduced thereon prohibited.
669. Unauthorized use of the term "bank" or "trust company."
671. False statements or rumors as to banking institutions.
672. Falsification of books, reports or statements of private bankers or corporations subject to the banking law.
673. Abstraction or misappropriation of money, funds or property, or misapplication of credit of private bankers or corporations to which the banking law is applicable, by an officer, director, trustee, employee or agent thereof.
674. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.
674-a. Unlawful undertakings.

§ 660. Misconduct of officers, directors, trustees, or employees of banking corporations and of private bankers. A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by statute; or, any director, trustee, officer or employee of any corporation to which the banking law is applicable who makes or maintains, or attempts to make or maintain, a deposit of such corporation's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of the corporation so making or maintaining

or attempting to make or maintain such deposit; or any director, trustee, officer, or employee of any banking corporation organized under the laws of another state which is doing business in New York, who makes or maintains, or attempts to make or maintain, a deposit of such corporation's funds with any banking organization or any branch of a foreign banking corporation licensed under article five of this chapter, on condition, or with the understanding, express or implied, that the banking organization or branch receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of such banking corporation so making or maintaining or attempting to make or maintain such deposit; or any director, trustee, officer, or employee of any banking organization or any branch or agency of a foreign banking corporation licensed under article five of this chapter who receives, or attempts to receive, a deposit of funds from any other banking organization, or any national banking association, federal savings and loan association, federal credit union, or a banking corporation organized under the laws of another state or country, on condition, or with the understanding, express or implied, that such banking organization or foreign banking corporation licensed under article five of this chapter receiving, or attempting to receive, such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of the banking organization, national banking association, federal savings and loan association, federal credit union or banking corporation organized under the laws of another state or country, so making or attempting to make, such deposit; or, any officer or employee of any corporation to which the banking law is applicable who intentionally conceals from the directors or trustees of such corporation any discounts or loans made by it between the regular meetings of its board of directors or trustees, or the purchase of any securities or the sale of any of its securities during the same period, or knowingly fails to report to its board of directors or trustees when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board of directors or trustees; or any director, officer or employee of a bank or trust company, or a private banker or his employee, who makes any agreement express or implied, before or at the time of issuing a certificate of deposit, by which its holder may demand or receive

payment thereof in advance of its maturity, is guilty of a misdemeanor. Nothing in this section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

§ 661. Officer or agent of banking corporation or a private banker making guaranty or endorsement beyond the legal limit. An officer or agent of any banking corporation, or a private banker or his agent, who makes or delivers any guaranty or indorsement on behalf of such corporation or private banker, whereby such corporation or private banker may become liable on any of its or his discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such corporation or private banker may legally make, is guilty of a misdemeanor.

§ 662. Bank officer or employee overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts. Any officer, director, agent, teller, clerk or employee of any bank, banking association, savings bank, trust company or private banker, who:

1. Knowingly overdraws his account with such bank, banking association, savings bank, trust company or private banker, and thereby obtains the money, notes or funds of any such bank, banking association, savings bank, trust company or private banker; or

2. Asks or receives, or consents or agrees to receive, any commission, emolument, gratuity or reward, or any promise of any commission, emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, for procuring or endeavoring to procure for any person, firm or corporation, any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange, by any such bank, banking association, savings bank, trust company or private banker, or for permitting any person, firm or corporation to overdraw any account with such bank, banking association, savings bank, trust company or private banker,

Is guilty of a misdemeanor.

§ 663. Receiving deposits in insolvent bank. An officer, agent, teller or clerk of any bank, banking association or savings bank, and every private banker or his agent and any teller or clerk of a private banker or any officer, agent or clerk of any corporation transacting any part of the business which a banking corporation is authorized by law to transact who receives any deposit, knowing that such bank or association or banker or corporation is insolvent, is guilty of a misdemeanor, if the amount or value of such deposit be less than twenty-five dollars; if the amount or value of such deposit be twenty-five dollars or over, such person shall be guilty of a felony.

§ 664. Unlawful investments by officers of mutual savings banks. Any officer or trustee of a mutual savings bank authorizing or making any investment of the funds of the bank in securities not authorized by law, is guilty of a misdemeanor.

§ 665. Misconduct by directors of banking corporations. Every director of a banking corporation who:

1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud; or

2. Wilfully does any act as such director which is expressly forbidden by statute, or wilfully omits to perform any duty imposed upon him as such director by statute,

Is guilty of a misdemeanor, if no other punishment is prescribed therefor by law.

The insolvency of a banking corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly,

legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

§ 666-a. Loans to be guaranteed by New York state higher education assistance corporation. It shall be unlawful for any banking corporation or private banker authorized to carry on the business of banking under the laws of this state to require that a person making application for a loan to be guaranteed by the New York state higher education assistance corporation be a depositor with the bank prior to the time of such application.

§ 668. Use of checks with certain photographs or drawings reproduced thereon prohibited. It shall be unlawful for any person, firm or corporation to use any bank check in this state that has printed or embossed thereon a photograph, drawing or other reproduction of any public building of the United States or of this or any other state or of any municipality, or the shield, coat of arms, flag or other insignia of the United States or of this or any other state or municipality. Violation of the provisions of this section shall constitute a misdemeanor.

§ 669. Unauthorized use of the term "bank" or "trust company." Any person not authorized by the superintendent of financial services, who:

1. Uses an office sign at the place where his business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank or trust company.

Is guilty of a misdemeanor; provided, however, that nothing in this section shall be deemed to prevent a bank holding company from using any corporate name it is duly authorized to use under subdivision (b) of section three hundred two of the business corporation law.

§ 671. False statements or rumors as to banking institutions. Any person who wilfully and knowingly makes, circulates or transmits to another or others any statement or rumor, written, printed or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or effects the solvency or financial standing of any bank, private banker, savings bank, banking association, building and loan association or trust company doing business in this state, or who knowingly counsels, aids, procures or induces another to start, transmit or circulate any such statement or rumor, is guilty of a misdemeanor.

§ 672. Falsification of books, reports or statements of private bankers or corporations subject to the banking law. 1. Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable who makes a false entry in any book, report or statement of such corporation with intent to deceive any officer, director or trustee thereof, or any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public officer, office or board to which such corporation is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or who, with like intent, wilfully omits to make a true entry of any material particular pertaining to the business of such corporation in any book, report or statement of such corporation made, written or kept by him under his direction, is guilty of a felony.

2. Any employee or agent of a private banker who makes a false entry in any book, report or statement of such private banker with intent to deceive such private banker, or any agent or examiner lawfully appointed to examine into the condition or affairs of such private banker, or any

public officer, office or board to which such private banker is required by law to report, or which has authority by law to examine into the condition of such private banker or into any of its affairs, or who, with like intent, wilfully omits to make a true entry of any material particular pertaining to the business of such private banker in any book, report or statement made, written or kept by such private banker or under his direction is guilty of a felony.

3. Any private banker who commits any act made punishable by subdivision two, or who wilfully omits to make the true entry required thereby, with intent to deceive his co-partner or any such agent, examiner, public officer, office or board is guilty of a felony.

§ 673. Abstraction or misappropriation of money, funds or property, or misapplication of credit of private bankers or corporations to which the banking law is applicable, by an officer, director, trustee, employee or agent thereof. Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable, or any employee or agent of any private banker, who abstracts or wilfully misapplies any of the money, funds or property of such corporation or private banker, or wilfully misapplies its or his credit, is guilty of a felony. Nothing in this section shall be deemed or construed to repeal, amend or impair any existing provision of law prescribing a punishment for any such offense.

§ 674. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions. It is no defense to a prosecution for a violation of the provisions of this article, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director" as used in this article includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to

have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this article. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this article occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record or minutes.

§ 674-a. Unlawful undertakings. 1. Every undertaking, whether written or oral, express or implied, constituting or contained in a contract heretofore or hereafter entered into, directly or indirectly, between a banking organization, bank holding company, national banking association, federal savings and loan association or foreign banking corporation and the owner of an interest in real property located in the state, which bars such owner from leasing, selling or otherwise disposing of any interest in real property to any other banking organization, bank holding company, national banking association, federal savings and loan association or foreign banking corporation shall be null and void.

2. Any banking organization, bank holding company, national banking association, federal savings and loan association, foreign banking corporation or any other entity or person injured in his business or property by reason of an undertaking which violates subdivision one hereof may sue on account thereof and be entitled to recover three times the amount of the damages sustained, and the cost of suit, including reasonable attorneys' fees.

3. If any provision of this section, or the application of such provision to any individual, company or circumstance, shall be held

invalid, the remainder of this section, and the application of such section to individuals, companies or circumstances other than those to which it is held invalid, shall not be affected thereby.

ARTICLE XIII-E

JOINT DEPOSITS AND SHARES; Unauthorized Withdrawals; Withdrawals From Decedents' Accounts

Section 675. Joint deposits and shares; ownership and payment.
676. Unauthorized withdrawals from savings or time deposit accounts.
677. Decedents' accounts, withdrawals by authorized persons.
678. Accounts for convenience only.
679. Public awareness; banking services.

§ 675. Joint deposits and shares; ownership and payment. (a) When a deposit of cash, securities, or other property has been made or shall hereafter be made in or with any banking organization or foreign banking corporation transacting business in this state, or shares shall have been already issued or shall be hereafter issued, in any savings and loan association or credit union transacting business in this state, in the name of such depositor or shareholder and another person and in form to be paid or delivered to either, or the survivor of them, such deposit or shares and any additions thereto made, by either of such persons, after the making thereof, shall become the property of such persons as joint tenants and the same, together with all additions and accruals thereon, shall be held for the exclusive use of the persons so named, and may be paid or delivered to either during the lifetime of both or to the survivor after the death of one of them, and such payment or delivery and the receipt or acquittance of the one to whom such payment or delivery is made, shall be a valid and sufficient release and discharge to the banking organization or foreign banking corporation for all payments or deliveries made on account of such deposit or shares prior to the receipt by the banking organization or foreign banking corporation of notice in writing signed by any one of such joint tenants, not to pay or deliver such deposit or shares and the additions

and accruals thereon in accordance with the terms thereof, and after receipt of any such notice, the banking organization or foreign banking corporation may require the receipt or acquittance of both such joint tenants for any further payments or delivery.

(b) The making of such deposit or the issuance of such shares in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding to which the banking organization, foreign banking corporation, surviving depositor or shareholder is a party, of the intention of both depositors or shareholders to create a joint tenancy and to vest title to such deposit or shares, and additions and accruals thereon, in such survivor. The burden of proof in refuting such prima facie evidence is upon the party or parties challenging the title of the survivor.

(c) 1. The superintendent of financial services shall promulgate and may from time to time amend rules and regulations which require that the joint tenants of an account established on or after the date on which the rule or regulation becomes effective and representing any deposit or shares governed by the foregoing provisions of this section, shall, at the time the account is established be informed of the terms and conditions of the account including the relationship and consequences between the parties in the account and the responsibilities of the institution with which the account is established.

2. This subdivision or any rule or regulation thereunder shall not be deemed or construed as increasing or diminishing the rights or liability of any person, or other entity.

§ 676. Unauthorized withdrawals from savings or time deposit accounts. Any withdrawal of moneys from any savings account or time deposit account maintained in any banking organization, branch of a foreign banking corporation, national bank, federal savings and loan association or federal credit union located in this state which is made by means of an unauthorized signature is wholly inoperative as to the person whose name is signed unless such person has authorized or ratified such withdrawal or is precluded from denying such withdrawal because he has received a portion of the funds withdrawn, provided that in such latter

event he shall be precluded from denying such withdrawal only with respect to the funds so received; provided, however, that such a signature shall operate as the signature of the unauthorized signer in favor of any such banking organization, branch of a foreign banking corporation, national bank, federal savings and loan association or federal credit union which has, in good faith, honored such withdrawal. No such banking organization, branch of a foreign banking corporation, national bank, federal savings and loan association or federal credit union shall interpose the defense, in an action for recovery by a depositor of money paid upon an unauthorized signature, that it has exercised due care and diligence in ascertaining the identity of the person to whom it has paid such money. The term "unauthorized signature" shall have the meaning ascribed to it by section 1--201 of the uniform commercial code and the term "savings account" shall include shares issued by a savings and loan association, state or federally chartered, and by a credit union, state or federally chartered.

Any waiver of the provisions of this section or any contrary agreement, by-law, rule or regulation of any banking organization, branch of a foreign banking corporation, national bank, federal savings and loan association or federal credit union located in this state shall be void as against public policy and wholly unenforceable.

§ 677. Decedents' accounts, withdrawals by authorized persons. 1. The maximum withdrawal permissible by law for purposes of this section shall be the amount permitted to be paid, without the consent of the commissioner of taxation and finance, under rules or regulations promulgated by such commissioner pursuant to section one hundred seventy-one of the tax law.

3. Notwithstanding the foregoing, no banking organization or foreign banking corporation shall be required to make any payment pursuant to this section if (a) it has notice of an adverse claim with respect to any such savings or time deposits or shares standing on its books to the credit of the decedent, or (b) there is in effect an order, injunction or other appropriate process of a court of competent jurisdiction

restraining such payment, or (c) it has notice that such payment would violate the terms of a legal and valid trust, or (d) such payment is inconsistent with any federal laws or regulations.

4. Such payments as any banking organization or foreign banking corporation is required to make pursuant to this section shall be a valid and sufficient release and discharge to such banking organization or foreign banking corporation for any payment so made.

§ 678. Accounts for convenience only. 1. When a deposit of cash, securities or other property has been made, or shares shall be issued in or with any banking organization or foreign banking corporation transacting business in this state, in an account established after the effective date of this section, in the name of a depositor and another person and in form to be paid or delivered to either "for the convenience" of the depositor, the making of such deposit or the issuance of such shares shall not affect the title to such deposit or shares and the depositor shall not be considered to have made a gift of one-half the deposit or of any additions or accruals thereon to the other person, and, on the death of the depositor, the other person shall have no right of survivorship in the account. If an addition is made to such an account by anyone other than the depositor, such an addition and accruals thereon shall be considered to have been made by the depositor. Such deposit or shares, together with all additions and accruals thereon, may be paid or delivered to the depositor or the other person, and such payment or delivery and the receipt or acquittance of the one to whom such payment or delivery is made, shall be a valid and sufficient release and discharge to the banking organization or foreign banking corporation prior to the receipt by the banking organization or foreign banking corporation of notice in writing signed by the depositor not to pay or deliver such deposit or shares and the additions and accruals thereon in accordance with the terms thereof, and after receipt of any such notice, the banking organization or foreign banking corporation may require the receipt or acquittance of the depositor for any further payments or delivery. If the depositor is dead, such payment or delivery to the other person shall be a valid and sufficient release

to the banking organization or foreign banking corporation prior to the receipt by the banking organization or foreign banking corporation of written notice of the depositor's death. A banking organization or foreign banking corporation which, upon the death of the depositor and prior to service upon it of a restraining order, injunction or other appropriate process from a court of competent jurisdiction prohibiting payment, makes payment to the executor, administrator or other qualified representative of the deceased depositor's estate, shall, to the extent of such payment, be released from liability to any person claiming a right to the funds and the receipt or acquittance of the executor, administrator or qualified representative to whom payment is made shall be a valid and sufficient release and discharge of the financial institution.

2. The superintendent of financial services shall promulgate and may from time to time amend rules and regulations which require that a depositor who requests the establishment of an account in the name of the depositor and another person "for the convenience" of the depositor be informed of the terms and conditions of the account described in subdivision one of this section, including the relationship and consequences between the parties in such an account, the difference between such an account and a joint account established under section six hundred seventy-five of this article, and the responsibilities of the institution with which such an account is established. This subdivision or any rule or regulation thereunder shall not be deemed or construed as increasing or diminishing the rights or liability of any person, or other entity.

§ 679. Public awareness; banking services. The superintendent shall conduct a public awareness campaign to educate consumers on different banking services available in the state, particularly those that can assist vulnerable adults in financial planning, including, but not limited to, citizens of an advanced age, individuals with cognitive or developmental disabilities, or those who have health or physical issues that impair their financial independence. The public awareness campaign shall include information regarding the differences between types of

accounts, including joint and convenience accounts, as well as the rights and responsibilities generally recognized for each. The public awareness campaign shall also include, but not be limited to, answers to general concerns and questions that individuals may have with respect to the establishment of certain types of accounts and services, as well as information and recommendations for obtaining more information.

ARTICLE XIII-F
UNIFORM SPECIAL DEPOSITS ACT

Section 680. Short title.
680-a. Definitions.
680-b. Scope; choice of law; forum.
680-c. Variation by agreement or amendment.
680-d. Requirements for special deposit.
680-e. Permissible purpose.
680-f. Payment to beneficiary by bank.
680-g. Property interest of depositor or beneficiary.
680-h. When creditor process enforceable against bank.
680-i. Injunction or similar relief.
680-j. Recoupment or set off.
680-k. Duties and liability of bank.
680-l. Term and termination.
680-m. Principles of law and equity.
680-n. Uniformity of application and construction.
680-o. Transitional provision.
680-p. Severability.

§ 680. Short title. This article shall be known and may be cited as the "uniform special deposits act".

§ 680-a. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Account agreement" means an agreement that:

(a) is in a record between a bank and one or more depositors;
(b) may have one or more beneficiaries as additional parties; and
(c) states the intention of the parties to establish a special deposit governed by this article.

2. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, trust company, and a bank as defined in section two of this chapter. Each branch or separate office of a bank is a separate bank for the purpose of this article.

3. "Beneficiary" means a person that:
(a) is identified as a beneficiary in an account agreement; or
(b) if not identified as a beneficiary in an account agreement, may be entitled to payment from a special deposit:
(i) under the account agreement; or
(ii) on termination of the special deposit.

4. "Contingency" means an event or circumstance stated in an account agreement that is not certain to occur but must occur before the bank is obligated to pay a beneficiary.

5. "Creditor process" means attachment, garnishment, levy, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant.

6. "Depositor" means a person that establishes or funds a special deposit.

7. "Good faith" means honesty in fact and observance of reasonable commercial standards of fair dealing.

8. "Knowledge" means:
(a) with respect to a beneficiary, actual knowledge of the fact; or
(b) with respect to a bank holding a special deposit:
(i) if the bank:
(1) has established a reasonable routine for communicating material

information to an individual to whom the bank has assigned responsibility for the special deposit; and

(2) maintains reasonable compliance with the routine, actual knowledge of the fact by that individual; or

(ii) if the bank has not established and maintained reasonable compliance with a routine described in subparagraph (i) of this paragraph or otherwise exercised due diligence, implied knowledge of the fact that would have come to the attention of an individual to whom the bank has assigned responsibility for the special deposit.

9. "Obligated to pay a beneficiary" or "obligation to pay a beneficiary" means a beneficiary is entitled under the account agreement to receive from the bank a payment when:

(a) a contingency has occurred; and

(b) the bank has knowledge the contingency has occurred.

10. "Permissible purpose" means a governmental, regulatory, commercial, charitable, or testamentary objective of the parties stated in an account agreement. The term includes an objective to:

(a) hold funds:

(i) in escrow, including for a purchase and sale, lease, buyback, or other transaction;

(ii) as a security deposit of a tenant;

(iii) that may be distributed to a person as remuneration, retirement or other benefit, or compensation under a judgment, consent decree, court order, or other decision of a tribunal; or

(iv) for distribution to a defined class of persons after identification of the class members and their interest in the funds;

(b) provide assurance with respect to an obligation created by contract, such as earnest money to ensure a transaction closes;

(c) settle an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure;

(d) provide assurance with respect to an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure; or

(e) hold margin, other cash collateral, or funds that support the

orderly functioning of financial market infrastructure or the performance of an obligation with respect to the infrastructure.

11. "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

12. "Record" means information:

(a) inscribed on a tangible medium; or

(b) stored in an electronic or other medium and retrievable in perceivable form.

13. "Special deposit" means a deposit that satisfies section six hundred eighty-d of this article.

14. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes an agency or instrumentality of the state.

§ 680-b. Scope; choice of law; forum. 1. This article applies to a special deposit under an account agreement that states the intention of the parties to establish a special deposit governed by this article, regardless of whether a party to the account agreement or a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to this state.

2. The parties to an account agreement may choose a forum in this state for settling a dispute arising out of the special deposit, regardless of whether a party to the account agreement or a transaction related to the special deposit, or the special deposit itself, has a

reasonable relation to this state.

3. This article does not affect:

(a) a right or obligation relating to a deposit other than a special deposit under this article; or

(b) the voidability of a deposit or transfer that is fraudulent or voidable under other law.

§ 680-c. Variation by agreement or amendment. 1. The effect of this section and sections six hundred eighty-a, six hundred eighty-b, six hundred eighty-d, six hundred eighty-e, six hundred eighty-g, six hundred eighty-h, six hundred eighty-i, six hundred eighty-j and six hundred eighty-m of this article shall not be varied by agreement, except as provided in such sections. Subject to subdivision two of this section, the effect of sections six hundred eighty-f, six hundred eighty-k and six hundred eighty-l of this article may be varied by agreement.

2. A provision in an account agreement or other record that substantially excuses liability or substantially limits remedies for failure to perform an obligation under this article is not sufficient to vary the effect of a provision of this article.

3. If a beneficiary is a party to an account agreement, the bank and the depositor may amend the agreement without the consent of the beneficiary only if the agreement expressly permits the amendment.

4. If a beneficiary is not a party to an account agreement and the bank and the depositor know the beneficiary has knowledge of the agreement's terms, the bank and the depositor may amend the agreement without the consent of the beneficiary only if the amendment does not adversely and materially affect a payment right of the beneficiary.

5. If a beneficiary is not a party to an account agreement and the bank and the depositor do not know whether the beneficiary has knowledge of the agreement's terms, the bank and the depositor may amend the

agreement without the consent of the beneficiary only if the amendment is made in good faith.

§ 680-d. Requirements for special deposit. A deposit is a special deposit if it is:

1. a deposit of funds in a bank under an account agreement;

2. for the benefit of at least two beneficiaries, one or more of which may be a depositor;

3. denominated in a medium of exchange that is currently authorized or adopted by a domestic or foreign government;

4. for a permissible purpose stated in the account agreement; and

5. subject to a contingency.

§ 680-e. Permissible purpose. 1. A special deposit must serve at least one permissible purpose stated in the account agreement from the time the special deposit is created in the account agreement until termination of the special deposit.

2. If, before termination of the special deposit, the bank or a court determines the special deposit no longer satisfies subdivision one of this section, sections six hundred eighty-g, six hundred eighty-h, six hundred eighty-i and six hundred eighty-j of this article cease to apply to any funds deposited in the special deposit after the special deposit ceases to satisfy subdivision one of this section.

3. If, before termination of a special deposit, the bank determines the special deposit no longer satisfies subdivision one of this section, the bank may take action it believes is necessary under the circumstances, including terminating the special deposit.

§ 680-f. Payment to beneficiary by bank. 1. Unless the account agreement provides otherwise, the bank is obligated to pay a beneficiary if there are sufficient actually and finally collected funds in the balance of the special deposit.

2. Except as provided in subdivision three of this section, the obligation to pay the beneficiary is excused if the funds available in the special deposit are insufficient to cover such payment.

3. Unless the account agreement provides otherwise, if the funds available in the special deposit are insufficient to cover an obligation to pay a beneficiary, a beneficiary may elect to be paid the funds that are available or, if there is more than one beneficiary, a pro rata share of the funds available. Payment to the beneficiary making the election under this subsection discharges the bank's obligation to pay a beneficiary and does not constitute an accord and satisfaction with respect to another person obligated to the beneficiary.

4. Unless the account agreement provides otherwise, the obligation of the bank obligated to pay a beneficiary is immediately due and payable.

5. The bank may discharge its obligation under this section by:

(a) crediting another transaction account of the beneficiary; or

(b) taking other action that:

(i) is permitted under the account agreement for the bank to obtain a discharge; or

(ii) otherwise would constitute a discharge under law.

6. If the bank obligated to pay a beneficiary has incurred an obligation to discharge the obligation of another person, the obligation of the other person is discharged if action by the bank under subdivision five of this section would constitute a discharge of the obligation of the other person under law that determines whether an obligation is satisfied.

§ 680-g. Property interest of depositor or beneficiary. 1. Neither a depositor nor a beneficiary has a property interest in a special deposit.

2. Any property interest with respect to a special deposit is only in the right to receive payment if the bank is obligated to pay a beneficiary and not in the special deposit itself. Any property interest under this subdivision shall be subject to the provisions of this chapter and to rules and regulations made in accordance therewith.

§ 680-h. When creditor process enforceable against bank. 1. Subject to subdivision two of this section, creditor process with respect to a special deposit is not enforceable against the bank holding the special deposit.

2. Creditor process is enforceable against the bank holding a special deposit with respect to an amount the bank is obligated to pay a beneficiary or a depositor if the process:

(a) is served on the bank;

(b) provides sufficient information to permit the bank to identify the depositor or the beneficiary from the bank's books and records; and

(c) gives the bank a reasonable opportunity to act on the process.

3. Creditor process served on a bank before it is enforceable against the bank under subdivision two of this section does not create a right of the creditor against the bank or a duty of the bank to the creditor. The lien law and any other applicable law shall determine whether creditor process creates a lien enforceable against the beneficiary on a contingent interest of a beneficiary, including a depositor as a beneficiary, even if not enforceable against the bank.

§ 680-i. Injunction or similar relief. A court may enjoin, or grant similar relief that would have the effect of enjoining, a bank from paying a depositor or beneficiary only if payment would constitute a material fraud or facilitate a material fraud with respect to a special

deposit.

§ 680-j. Recoupment or set off. 1. Except as provided in subdivision two or three of this section, a bank shall not exercise a right of recoupment or set off against a special deposit.

2. An account agreement may authorize the bank to debit the special deposit:

(a) when the bank becomes obligated to pay a beneficiary, in an amount that does not exceed the amount necessary to discharge the obligation;

(b) for a fee assessed by the bank that relates to an overdraft in the special deposit account;

(c) for costs incurred by the bank that relate directly to the special deposit; or

(d) to reverse an earlier credit posted by the bank to the balance of the special deposit account, if the reversal occurs under an event or circumstance warranted under other law of this state governing mistake and restitution.

3. The bank holding a special deposit may exercise a right of recoupment or set off against an obligation to pay a beneficiary, even if the bank funds payment from the special deposit.

§ 680-k. Duties and liability of bank. 1. A bank does not have a fiduciary duty to any person with respect to a special deposit.

2. When the bank holding a special deposit becomes obligated to pay a beneficiary, a debtor-creditor relationship arises between the bank and beneficiary.

3. The bank holding a special deposit has a duty to a beneficiary to comply with the account agreement and this article.

4. If the bank holding a special deposit does not comply with the account agreement or this article, the bank is liable to a depositor or

beneficiary only for damages proximately caused by the noncompliance. Except as provided by other law of this state, the bank is not liable for consequential, special, or punitive damages.

5. The bank holding a special deposit may rely on records presented in compliance with the account agreement to determine whether the bank is obligated to pay a beneficiary.

6. If the account agreement requires payment on presentation of a record, the bank shall determine within a reasonable time whether the record is sufficient to require payment. If the agreement requires action by the bank on presentation of a record, the bank is not liable for relying in good faith on the genuineness of the record if the record appears on its face to be genuine.

7. Unless the account agreement provides otherwise, the bank is not required to determine whether a permissible purpose stated in the agreement continues to exist.

§ 680-l. Term and termination. 1. Unless otherwise provided in the account agreement, a special deposit terminates five years after the date the special deposit was first funded.

2. Unless otherwise provided in the account agreement, if the bank cannot identify or locate a beneficiary entitled to payment when the special deposit is terminated, and a balance remains in the special deposit, the bank shall pay the balance to the depositor or depositors as a beneficiary or beneficiaries.

3. A bank that pays the remaining balance as provided under subdivision two of this section has no further obligation with respect to the special deposit.

§ 680-m. Principles of law and equity. The uniform commercial code, article twenty-two-A of the general business law, the provisions of this

chapter governing deposits generally, the abandoned property law, and the principles of law and equity, including any applicable law related to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this article except to the extent inconsistent with this article.

§ 680-n. Uniformity of application and construction. In applying and construing the provisions of this uniform special deposits act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

§ 680-o. Transitional provision. This article applies to:

1. a special deposit made under an account agreement executed on or after the effective date of this article; and

2. a deposit made under an agreement executed before the effective date of this article, if:

(a) all parties entitled to amend the agreement agree to make the deposit a special deposit governed by this article; and

(b) the special deposit referenced in the amended agreement satisfies the provisions of section six hundred eighty-d of this article.

§ 680-p. Severability. If any word, phrase, clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which judgment shall have been rendered.

ARTICLE XIV

Laws Repealed; Construction; When to Take Effect.

Section 700. Laws repealed.
701. Construction.
702. When to take effect.

§ 700. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 701. Construction. The provisions of this chapter shall be construed as a continuation of the provisions of chapter ten of the laws of nineteen hundred nine, as amended, modified or amended according to the language employed, and not as a new enactment.

§ 702. When to take effect. This act, except the repeal of chapters three hundred forty-eight of the laws of nineteen hundred ten and three hundred ninety-three of the laws of nineteen hundred eleven, shall take effect immediately; and the repeal of chapters three hundred forty-eight of the laws of nineteen hundred ten and three hundred ninety-three of the laws of nineteen hundred eleven, shall take effect on November first, nineteen hundred fourteen.

ARTICLE 14-A

STUDENT LOAN SERVICERS

Section 710. Definitions.
711. Licensing.
712. Application for a student loan servicer license; fees.
713. Application process to receive license to engage in the business of student loan servicing.
714. Changes in officers and directors.
715. Changes in control.
716. Grounds for suspension or revocation of license.
717. Books and records; reports and electronic filing.
718. Rules and regulations.
719. Prohibited practices.

720. Servicing student loans without a license.
721. Responsibilities.
722. Examinations.
723. Penalties for violations of this article.
724. Severability of provisions.
725. Compliance with other laws.

§ 710. Definitions. 1. "Applicant" shall mean any person applying for a license under this article.

2. "Borrower" shall mean any resident of this state who has received a student loan or agreed in writing to pay a student loan or any person who shares a legal obligation with such resident for repaying a student loan.

3. "Borrower benefit" shall mean an incentive offered to a borrower in connection with the origination of a student loan, including but not limited to an interest rate reduction, principal rebate, fee waiver or rebate, loan cancellation, or cosigner release.

4. "Exempt organization" shall mean any banking organization, foreign banking corporation, national bank, federal savings 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, any public postsecondary educational institution or private nonprofit postsecondary educational institution or any person licensed or supervised by the department and exempted by the superintendent pursuant to regulations promulgated in accordance with this article.

5. "Person" shall mean any individual, association, corporation, limited liability company, partnership, trust, unincorporated organization, government, and any other entity.

6. "Servicer" or "student loan servicer" shall mean a person engaged in the business of servicing student loans owed by one or more borrowers residing in this state.

7. "Servicing" shall mean:

(a) receiving any payment from a borrower pursuant to the terms of any student loan;

(b) applying any payment to the borrower's account pursuant to the terms of a student loan or the contract governing the servicing of any such loans;

(c) providing any notification of amounts owed on a student loan by or on account of any borrower in conjunction with performing such activities as described in paragraphs (a), (b), or (d) of this subdivision;

(d) during a period where a borrower is not required to make a payment on a student loan, maintaining account records for the student loan and communicating with the borrower regarding the student loan on behalf of the owner of the student loan promissory note;

(e) interacting with a borrower with respect to or regarding any attempt to avoid default on the borrower's student loan, or facilitating the activities described in paragraph (a) or (b) of this subdivision in conjunction with performing such activities as described in paragraphs (a), (b), or (d) of this subdivision; or

(f) performing other administrative services with respect to a borrower's student loan in conjunction with performing such activities as described in paragraphs (a), (b), or (d) of this subdivision.

8. "Student loan" shall mean any loan to a borrower to finance postsecondary education or expenses related to postsecondary education.

9. "Federal student loan" means (a) any student loan issued pursuant to the William D. Ford Federal Direct Loan Program; (b) any student loan issued pursuant to the Federal Family Education Loan Program, which was purchased by the government of the United States pursuant to the federal Ensuring Continued Access to Student Loans Act and is presently owned by the government of the United States; and (c) any other student loan issued pursuant to a federal program that is identified by the superintendent as a "federal student loan" in a regulation.

§ 711. Licensing. 1. Except as provided in subdivisions two, three, and four of this section, no person shall engage in the business of servicing student loans owed by one or more borrowers residing in this state without first being licensed by the superintendent as a student loan servicer in accordance with this article and such regulations as may be prescribed by the superintendent.

2. The licensing provisions of this article shall not apply to any exempt organization that is a student loan servicer; provided that, unless preempted by federal law, such exempt organization shall notify the superintendent that it is servicing student loans in this state and complies with sections seven hundred seventeen, seven hundred nineteen, seven hundred twenty-one, seven hundred twenty-three and seven hundred twenty-five of this article and article nine of the financial services law and any regulation applicable to student loan servicers promulgated by the superintendent.

3. Any person that services federal student loans owed by one or more borrowers residing in this state shall be automatically deemed by operation of law to have been issued a license to service federal student loans by the superintendent as of April first, two thousand nineteen. Such person shall notify the superintendent that it is servicing federal student loans in this state and comply with sections seven hundred seventeen, seven hundred nineteen, seven hundred twenty-one, seven hundred twenty-two, seven hundred twenty-three and seven hundred twenty-five of this article and any regulation applicable to student loan servicers promulgated by the superintendent. The provisions of sections thirty-three, thirty-nine, and forty-four of this chapter shall also apply to such person. The license automatically issued pursuant to this section shall only authorize the servicing of federal student loans. A person that services both federal student loans and non-federal student loans shall be required to be licensed pursuant to subdivision one of this section and sections seven hundred twelve and seven hundred thirteen of this article in order to be authorized to service non-federal student loans unless such person is also an exempt organization.

4. A person, other than an exempt organization, that services federal student loans owed by one or more borrowers residing in this state and that is not otherwise required to be licensed under this section shall notify the superintendent that it is servicing federal student loans in this state and shall comply with sections seven hundred seventeen, seven hundred nineteen, seven hundred twenty-one, seven hundred twenty-two, seven hundred twenty-three, and seven hundred twenty-five of this article and any regulations applicable to student loan servicers promulgated by the superintendent.

§ 712. Application for a student loan servicer license; fees. 1. The application for a license to engage in the business of servicing student loans shall be in writing, under oath, and in the form prescribed by the superintendent. Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that an application for a license or any other submission or application for approval as may be required by this article be made or executed by electronic means if he or she deems it necessary to ensure the efficient and effective administration of this article. The application shall include a description of the activities of the applicant, in such detail and for such periods as the superintendent may require; including:

(a) an affirmation of financial solvency noting such capitalization requirements as may be required by the superintendent, and access to such credit as may be required by the superintendent;

(b) a financial statement prepared by a certified public accountant, the accuracy of which is sworn to under oath before a notary public by an officer or other representative of the applicant who is authorized to execute such documents;

(c) an affirmation that the applicant, or its members, officers, partners, directors and principals as may be appropriate, are at least twenty-one years of age;

(d) information as to the character, fitness, financial and business responsibility, background and experiences of the applicant, or its members, officers, partners, directors and principals as may be appropriate;

(e) any additional detail or information required by the

superintendent.

2. An application to become a licensed student loan servicer or any application with respect to a student loan servicer shall be accomplished by a fee as prescribed pursuant to section eighteen-a of this chapter.

§ 713. Application process to receive license to engage in the business of student loan servicing. 1. Upon the filing of an application for a license, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant and, if applicable, the members, officers, partners, directors and principals of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this article, the superintendent shall thereupon issue a license in duplicate to engage in the business of servicing student loans described in section seven hundred ten of this article in accordance with the provisions of this article. If the superintendent shall not so find, the superintendent shall not issue a license, and the superintendent shall so notify the applicant. The superintendent shall transmit one copy of a license to the applicant and file another in the office of the department of financial services. Upon receipt of such license, a student loan servicer shall be authorized to engage in the business of servicing student loans in accordance with the provisions of this article. Such license shall remain in full force and effect until it is surrendered by the servicer or revoked or suspended as hereinafter provided.

2. The superintendent may refuse to issue a license pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, member, or substantial stockholder of the applicant:

(a) within the last ten years prior to the date of application, has committed any act involving dishonesty, fraud, deceit, or has been convicted of, or pleaded nolo contendere to, a crime directly related to

the qualifications, functions, or duties related to servicing student loans, provided that any criminal conviction be evaluated consistent with article twenty-three-A of the correction law;

(b) has had a license or registration revoked by the superintendent or any other regulator or jurisdiction;

(c) has been an officer, director, partner, member or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or any other regulator or jurisdiction; or

(d) has been an agent, employee, officer, director, partner or member of an entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation.

3. The term "substantial stockholder", as used in this section, shall be deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 714. Changes in officers and directors. Upon any change of any of the executive officers, directors, partners or members of any student loan servicer required to be licensed under section seven hundred eleven of this article, the student loan servicer shall submit to the superintendent the name, address, and occupation of each new officer, director, partner or member, and provide such other information as the superintendent may require.

§ 715. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a student loan servicer required to be licensed under section seven hundred eleven of this article. Prior to any change of control, the person desirous of acquiring control of the business of a student loan servicer shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the

superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section. This information shall include but not be limited to the information and other material required for a student loan servicer by subdivision one of section seven hundred twelve of this article.

2. The superintendent shall approve or disapprove the proposed change of control of a student loan servicer required to be licensed under section seven hundred eleven of this article in accordance with the provisions of section seven hundred thirteen of this article.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a student loan servicer. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative. The term "legal representative", for the purposes of this subdivision, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. As used in this section the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a student loan servicer, whether through the ownership of voting stock of such student loan servicer, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any student loan servicer or of any person which owns, controls or holds with power to vote ten per centum or more

of the voting stock of any student loan servicer, but no person shall be deemed to control a student loan servicer solely by reason of being an officer or director of such student loan servicer. The superintendent may in his or her discretion, upon the application of a student loan servicer or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such student loan servicer, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such student loan servicer for purposes of this section.

§ 716. Grounds for suspension or revocation of license. 1. After notice and hearing, the superintendent may revoke or suspend any license to engage in the business of a student loan servicer issued pursuant to this article if he or she shall find that:

(a) a servicer has violated any provision of this article, any rule or regulation promulgated by the superintendent under and within the authority of this article, or any other applicable law;

(b) any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the superintendent refusing originally to issue such license;

(c) a servicer does not cooperate with an examination or investigation by the superintendent;

(d) a servicer engages in fraud, intentional misrepresentation, or gross negligence in servicing a student loan;

(e) the competence, experience, character, or general fitness of the servicer, an individual controlling, directly or indirectly, ten percent or more of the outstanding interests, or any person responsible for servicing a student loan for the servicer indicates that it is not in the public interest to permit the servicer to continue servicing student loans;

(f) the servicer engages in an unsafe or unsound practice;

(g) the servicer is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or

(h) a servicer has violated the laws of this state, any other state or any federal law involving fraudulent or dishonest dealing, or a final

judgement has been entered against a student loan servicer in a civil action upon grounds of fraud, misrepresentation or deceit.

2. The superintendent may, on good cause shown, or where there is a substantial risk of public harm, suspend any license for a period not exceeding thirty days, pending investigation. "Good cause", as used in this subdivision, shall exist when a student loan servicer has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this article.

3. Except as provided in subdivision two of this section, no license shall be revoked or suspended except after notice and hearing thereon. Any order of suspension issued after notice and a hearing may include as a condition of reinstatement that the student loan servicer make restitution to consumers of fees or other charges which have been improperly charged or collected, including but not limited to by allocating payments contrary to a borrower's direction or in a manner that fails to help a borrower avoid default, as determined by the superintendent. Any hearing held pursuant to the provisions of this section shall be noticed, conducted and administered in compliance with the state administrative procedure act.

4. Any student loan servicer may surrender any license by delivering to the superintendent written notice that it thereby surrenders such license, but such surrender shall not affect such servicer's civil or criminal liability for acts committed prior to such surrender. If such surrender is made after the issuance by the superintendent of a statement of charges and notice of hearing, the superintendent may proceed against the servicer as if such surrender had not taken place.

5. No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the student loan servicer and any person, including the department of financial services.

6. Every license issued pursuant to this article shall remain in force

and effect until the same shall have been surrendered, revoked or suspended in accordance with any other provisions of this article.

7. Whenever the superintendent shall revoke or suspend a license issued pursuant to this article, he or she shall forthwith execute in duplicate a written order to that effect. The superintendent shall file one copy of such order in the office of the department and shall forthwith serve the other copy upon the student loan servicer. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

§ 717. Books and records; reports and electronic filing. 1. Each student loan servicer shall keep and use in its business such books, accounts and records as will enable the superintendent to determine whether such servicer or exempt organization is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent. Every servicer shall preserve such books, accounts, and records, for at least three years.

2. (a) Each student loan servicer, other than an exempt organization, shall annually, on or before a date to be determined by the superintendent, file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of such servicer under authority of this article. Such report shall be subscribed and affirmed as true by the servicer under the penalties of perjury and shall be in the form prescribed by the superintendent.

(b) In addition to annual reports, the superintendent may require such additional regular or special reports as he or she may deem necessary to the proper supervision of student loan servicers under this article. Such additional reports shall be subscribed and affirmed as true by the servicer under the penalties of perjury and shall be in the form prescribed by the superintendent.

3. Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that any

submission or approval as may be required by the superintendent be made or executed by electronic means if he or she deems it necessary to ensure the efficient administration of this article.

§ 718. Rules and Regulations. 1. In addition to such powers as may otherwise be prescribed by law, 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 student loan servicers as may be necessary and appropriate for the protection of borrowers in this state.

(b) Such rules and regulations as may be necessary and appropriate to define unfair, deceptive or abusive acts or practices in connection with the activities of student loan servicers.

(c) 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.

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

2. 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 student loan servicing industry.

§ 719. Prohibited practices. No student loan servicer shall:

1. Employ any scheme, device or artifice to defraud or mislead a borrower;

2. Engage in any unfair, deceptive or predatory act or practice toward any person or misrepresent or omit any material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or

payment due or claimed to be due on a student loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;

3. Misapply payments to the outstanding balance of any student loan or to any related interest or fees;

4. Provide inaccurate information to a consumer reporting agency;

5. Refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided that the servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower;

6. Make any false statement or make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the superintendent or another governmental agency;

7. Fail to respond within fifteen calendar days to communications from the department, or within such shorter, reasonable time as the department may request in his or her communication; or

8. Fail to provide a response within fifteen calendar days to a consumer complaint submitted to the servicer by the department. If necessary, a student loan servicer may request additional time up to a maximum of forty-five calendar days, provided that such request is accompanied by an explanation why such additional time is reasonable and necessary.

§ 720. Servicing student loans without a license. 1. Whenever, in the opinion of the superintendent, a person is engaged in the business of servicing student loans, either actually or through subterfuge, without a license from the superintendent, the superintendent may order that person to desist and refrain from engaging in the business of servicing

student loans in the state. If, within thirty days after an order is served, a request for a hearing is filed in writing and the hearing is not held within sixty days of the filing, the order shall be rescinded.

2. This section does not apply to exempt organizations.

§ 721. Responsibilities. 1. If a student loan servicer regularly reports information to a consumer reporting agency, the servicer shall accurately report a borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)), upon acceptance as a data furnisher by that consumer reporting agency.

2. (a) Except as provided in federal law or required by a student loan agreement, a student loan servicer shall inquire of a borrower how to apply a borrower's nonconforming payment. A borrower's direction on how to apply a nonconforming payment shall remain in effect for any future nonconforming payment during the term of a student loan until the borrower provides different directions.

(b) For purposes of this subdivision, "nonconforming payment" shall mean a payment that is either more or less than the borrower's required student loan payment.

3. (a) If the sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the person to whom the borrower is required to send subsequent payments or direct any communications concerning the student loan, a student loan servicer shall transfer all information regarding a borrower, a borrower's account, and a borrower's student loan, including but not limited to the borrower's repayment status and any borrower benefits associated with the borrower's student loan, to the new student loan servicer servicing the borrower's student loan within forty-five days.

(b) A student loan servicer shall adopt policies and procedures to verify that it has received all information regarding a borrower, a borrower's account, and a borrower's student loan, including but not

limited to the borrower's repayment status and any borrower benefits associated with the borrower's student loan, when the servicer obtains the right to service a student loan.

4. If a student loan servicer sells, assigns, or otherwise transfers the servicing of a student loan to a new servicer, the sale, assignment or other transfer shall be completed at least seven days before the borrower's next payment is due.

5. (a) A student loan servicer that sells, assigns, or otherwise transfers the servicing of a student loan shall require as a condition of such sale, assignment or other transfer that the new student loan servicer shall honor all borrower benefits originally represented as being available to a borrower during the repayment of the student loan and the possibility of such benefits, including any benefits that were represented as being available but for which the borrower had not yet qualified.

(b) A student loan servicer that obtains the right to service a student loan shall honor all borrower benefits originally represented as being available to a borrower during the repayment of the student loan and the possibility of such benefits, including any benefits that were represented as being available but for which the borrower had not yet qualified.

6. A student loan servicer shall respond within thirty days after receipt to a written inquiry from a borrower or a borrower's representative.

7. A student loan servicer shall preserve records of each student loan and all communications with borrowers for not less than two years following the final payment on such student loan or the sale, assignment or other transfer of the servicing of such student loan, whichever occurs first, or such longer period as may be required by any other provision of law.

§ 722. Examinations. 1. The superintendent may at any time, and as

often as he or she may determine, either personally or by a person duly designated by the superintendent, investigate the business and examine the books, accounts, records, and files used therein of every student loan servicer. For that purpose the superintendent and his or her duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such servicers. The superintendent and any person duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may require relative to such business.

2. No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

3. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the student loan servicer so examined, except that travelling and subsistence expenses so incurred shall be charged against and paid by servicers in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the servicer shall become liable for and shall pay such assessment to the superintendent.

4. In any hearing in which a department employee acting under authority of this chapter is available for cross-examination, any official written report, worksheet, other related papers, or duly certified copy thereof, compiled, prepared, drafted, or otherwise made by said department employee, after being duly authenticated by said employee, may be admitted as competent evidence upon the oath of said employee that said worksheet, investigative report, or other related documents were prepared as a result of an examination of the books and records of a servicer or other person, conducted pursuant to the authority of this chapter.

5. Unless it is an exempt organization, affiliates of a student loan servicer are subject to examination by the superintendent on the same terms as the servicer, but only when reports from, or examination of, a servicer provides evidence of unlawful activity between a servicer and affiliate benefitting, affecting, or arising from the activities regulated by this article.

6. This section shall not apply to exempt organizations. To the extent the superintendent is authorized by any other law to make an examination into the affairs of any exempt organization, this subdivision shall not be construed to limit in any way the superintendent's authority, regarding the subjects of such an examination, or otherwise.

§ 723. Penalties for violation of this article. 1. In addition to such penalties as may otherwise be applicable by law, including but not limited to the penalties available under section forty-four of this chapter, the superintendent may, after notice and hearing, require any person found violating the provisions of this article or the rules or regulations promulgated hereunder to pay to the people of this state a penalty for each violation of the article or any regulation or policy promulgated hereunder a sum not to exceed the greater of (i) two thousand dollars or where such violation is willful ten thousand dollars for each offense; (ii) a multiple of two times the aggregate damages attributable to the violation; or (iii) a multiple of two times the aggregate economic gain attributable to the violation.

2. Nothing in this article shall limit any statutory or common-law right of any person to bring any action in any court for any act, or the right of the state to punish any person for any violation of any law.

§ 724. Severability of provisions. If any provision of this article, or the application of such provision to any person or circumstance, shall be held invalid, illegal or unenforceable, the remainder of the article, and the application of such provision to persons or circumstances other than those as to which it is held invalid, illegal

or unenforceable, shall not be affected thereby.

§ 725. Compliance with other laws. 1. Student loan servicers shall engage in the business of servicing student loans in conformity with the provisions of the financial services law, 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.

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

* ARTICLE 14-B

BUY-NOW-PAY-LATER LENDERS

Section 735. Short title.
736. Definitions.
737. License or authorization.
738. Conditions precedent to issuing a license; procedure where application is denied.
739. License provisions and posting.
740. Application for acquisition of control of buy-now-pay-later lender by purchase of stock.
741. Grounds for revocation or suspension of license; procedure.
742. Superintendent authorized to examine.
743. Licensee's books and records; reports.
744. Acts prohibited.
745. Interest and other charges.
746. Consumer protections.
747. Authority of superintendent.
748. Penalties.
749. Severability.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 735. Short title.** This article shall be known and may be cited as the "buy-now-pay-later act".

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 736. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Authorized buy-now-pay-later lender" means a buy-now-pay-later lender authorized by the superintendent pursuant to subdivision two of section seven hundred thirty-seven of this article.

2. "Consumer" means an individual who is a resident of the state of New York.

3. "Buy-now-pay-later loan" means closed-end credit provided to a consumer in connection with such consumer's particular purchase of goods and/or services, other than a motor vehicle as defined under section one hundred twenty-five of the vehicle and traffic law. A "buy-now-pay-later loan" does not include credit where the creditor is the seller of such goods and/or services, unless it is credit pursuant to an agreement whereby, at a consumer's request, the creditor purchases a specific good and/or service from a seller and resells such specific good and/or service to such consumer on closed-end credit. A "buy-now-pay-later loan" shall include the following categories of such loans:

(a) "Buy-now-pay-later zero-interest loan" means a buy-now-pay-later loan payable in one or more installments without any interest or finance charge;

(b) "Buy-now-pay-later installment loan" means a buy-now-pay-later loan with either interest or finance charges or both; and

(c) Any other subset of buy-now-pay-later loans the superintendent may classify as a separate category by regulation.

4. "Buy-now-pay-later lender" means a person who offers buy-now-pay-later loans in this state. For purposes of the preceding sentence, "offer" means offering to make a buy-now-pay-later loan by extending credit directly to a consumer or operating a platform, software or system with which a consumer interacts and the primary purpose of which is to allow third parties to offer buy-now-pay-later loans, or both. A person shall not be considered a buy-now-pay-later lender on the basis of isolated, incidental or occasional transactions which otherwise meet the definitions of this section.

5. "Exempt organization" means any national bank, federal savings bank, federal savings and loan association, federal credit union, federal trust company, or foreign banking corporation licensed by the comptroller of the currency to transact business in this state.

6. "Licensee" means a person who has been issued a license under this article.

7. "Person" means an individual, partnership, corporation, association or any other business organization.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 737. License or authorization.** 1. No person or other entity, except an exempt organization or an authorized buy-now-pay-later lender as defined in this article, shall act as a buy-now-pay-later lender without first obtaining a license from the superintendent under this article.

(a) An application for a license shall be in writing, under oath, and in the form and containing such information as the superintendent may require.

(b) At the time of filing an application for a license, the applicant shall pay to the superintendent a fee as prescribed pursuant to section eighteen-a of this chapter.

(c) A license granted under this article shall be valid unless revoked or suspended by the superintendent or unless surrendered by the licensee and accepted by the superintendent.

(d) No licensee or authorized buy-now-pay-later lender shall be permitted to engage in lending of any category of buy-now-pay-later loan not captured by subdivision three of section seven hundred thirty-six of this article without receiving permission from the superintendent to do so.

(e) The superintendent shall establish a process by which a licensee or authorized lender may obtain permission to update categories of buy-now-pay-later loans they are permitted to offer to a license or authorization under this article, provided that a single license or authorization may include multiple categories of buy-now-pay-later loans. A license or authorization granted under this article shall specify the eligible buy-now-pay-later loans and shall be limited to categories of lending in which the lender has been licensed or authorized by the superintendent to engage. Buy-now-pay-later lenders shall not be required to obtain more than one license or authorization for multiple categories of lending. A licensed or authorized buy-now-pay-later lender must clearly and conspicuously disclose to consumers its license or authorization status in accordance with section seven hundred thirty-nine of this article.

(f) In connection with an application for a license, the applicant shall submit an affidavit of financial solvency, including financial statements, noting such capitalization requirements and access to such credit or such other affirmation or information as may be prescribed by the regulations of the superintendent for different categories of buy-now-pay-later loans. The applicant shall also submit policies and procedures for underwriting such buy-now-pay-later loans.

2. Any banking organization, foreign banking corporation licensed by the superintendent to transact business in this state or originating buy-now-pay-later loans from a branch in this state subject to article five-C of this chapter, or a licensed lender licensed by the superintendent under article nine of this chapter, other than an exempt organization, must obtain the superintendent's prior written authorization to act as a buy-now-pay-later lender for specific

categories of buy-now-pay-later loans. The superintendent shall establish a process by which an entity described in this subdivision may request such authorization to act as a buy-now-pay-later lender, which process shall include, but not be limited to, requirements that the entity requesting such authorization submit a written plan describing the proposed buy-now-pay-later lending, its proposed policies and procedures for complying with the provisions of this article, and the impact on the overall business of the entity. The superintendent shall establish a process for withdrawing an authorization to act as a buy-now-pay-later lender.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 738. Conditions precedent to issuing a license; procedure where application is denied.** 1. After the filing of an application for a license accompanied by payment of the fee pursuant to paragraph b of subdivision one of section seven hundred thirty-seven of this article, it shall be substantively reviewed. After the application is deemed sufficient and complete, if the superintendent finds that the financial responsibility, including meeting any capital requirements as established pursuant to subdivision three of this section, experience, character and general fitness of the applicant or any person associated with the applicant are such as to command the confidence of the community and to warrant the belief that the business will be conducted honestly, fairly and efficiently within the purposes and intent of this article, the superintendent shall issue the license. For the purpose of this subdivision, the applicant shall be deemed to include all the members of the applicant if it is a partnership or unincorporated association or organization, and all the stockholders, officers and directors of the applicant if it is a corporation.

2. If the superintendent refuses to issue a license, the superintendent shall notify the applicant of the denial and retain the fee paid pursuant to paragraph b of subdivision one of section seven

hundred thirty-seven of this article.

3. The superintendent shall promulgate rules and regulations setting capital requirements to ensure the solvency and financial integrity of licensees and their ongoing operations, taking into account the risks, volume of business, complexity, and other relevant factors regarding such licensees. Further, the superintendent may promulgate rules and regulations prescribing a methodology to calculate capital requirements with respect to licensees or categories thereof.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 739. License provisions and posting.** 1. A license issued under this article shall state the name and address of the licensee, and if the licensee be a co-partnership or association, the names of the members thereof, and for a corporation, the date and place of its incorporation.

2. Such license shall be kept conspicuously posted on the mobile application, website, or other consumer interface of the licensee, as well as listed in the terms and conditions of any buy-now-pay-later loan offered or entered into by the licensee. The superintendent may provide by regulation an alternative form of notice of licensure.

3. A license issued under this article shall not be transferable or assignable.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 740. Application for acquisition of control of buy-now-pay-later lender by purchase of stock.** 1. It shall be unlawful except with the

prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of section seven hundred thirty-eight of this article.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

4. The term "legal representative," for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

5. As used in this section, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be

presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The superintendent may in the superintendent's discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 741. Grounds for revocation or suspension of license; procedure.** 1. A license granted under this article may be revoked or suspended by the superintendent upon a finding that:

(a) the licensee has violated any applicable law or regulation;

(b) any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the superintendent's refusal to issue such license; or

(c) the licensee has failed to pay any sum of money lawfully demanded by the superintendent or to comply with any demand, ruling or requirement of the superintendent.

2. Any licensee may surrender any license by delivering to the superintendent written notice that the licensee thereby surrenders such license. Such surrender shall be effective upon its acceptance by the superintendent, and shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

3. Every license issued under this article shall remain in force and

effect until the same shall have been surrendered, revoked or suspended, in accordance with the provisions of this article, but the superintendent shall have authority to reinstate suspended licenses or to issue a new license to a licensee whose license has been revoked if no fact or condition then exists which clearly would have warranted the superintendent's refusal to issue such license.

4. Whenever the superintendent shall revoke or suspend a license issued under this article, the superintendent shall forthwith execute a written order to that effect, which order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such special proceeding for review as authorized by this section must be commenced within thirty days from the date of such order of suspension or revocation.

5. The superintendent may, for good cause, without notice and a hearing, suspend any license issued under this article for a period not exceeding thirty days, pending investigation. "Good cause," as used in this subdivision, shall exist only when the licensee has engaged in or is likely to engage in a practice prohibited by this article or the rules and regulations promulgated thereunder or engages in dishonest or inequitable practices which may cause substantial harm to the public.

6. No revocation, suspension or surrender of any license shall impair or affect any pre-existing lawful contracts between the licensee and any borrower.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 742. Superintendent authorized to examine.** 1. The superintendent shall have the power to make such investigations as the superintendent shall deem necessary to determine whether any buy-now-pay-later lender or any other person has violated any of the provisions of this article or any other applicable law, or whether any licensee has conducted

itself in such manner as would justify the revocation of its license, and to the extent necessary therefor, the superintendent may require the attendance of and examine any person under oath, and shall have the power to compel the production of all relevant books, records, accounts, and documents.

2. The superintendent shall have the power to make such examinations of the books, records, accounts and documents used in the business of any licensee as the superintendent shall deem necessary to determine whether any such licensee has violated any of the provisions of this chapter or any other applicable law or to secure information lawfully required by the superintendent.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 743. Licensee's books and records; reports.** 1. A buy-now-pay-later lender shall keep and use in its business such books, accounts and records as will enable the superintendent to determine whether such buy-now-pay-later lender is complying with the provisions of this article and with the rules and regulations promulgated by the superintendent thereunder. Every buy-now-pay-later lender shall preserve such books, accounts and records for at least six years after making the final entry in respect to any buy-now-pay-later loan recorded therein; provided, however, the preservation of photographic or digital reproductions thereof or records in photographic or digital form shall constitute compliance with this requirement.

2. By a date to be set by the superintendent, each licensee shall annually file a report with the superintendent giving such information as the superintendent may require concerning the licensee's business and operations during the preceding calendar year within the state under the authority of this article. Such report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and be in the form prescribed by the superintendent. In addition to such annual

reports, the superintendent may require of licensees such additional regular or special reports as the superintendent may deem necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 744. Acts prohibited.** 1. No buy-now-pay-later lender shall take or cause to be taken any confession of judgment or any power of attorney to confess judgment or to appear for the consumer in a judicial proceeding.

2. No buy-now-pay-later lender shall:

(a) employ any scheme, device, or artifice to defraud or mislead a borrower;

(b) engage in any deceptive or unfair practice toward any person or misrepresent or omit any material information in connection with the buy-now-pay-later loans, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on the loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;

(c) misapply payments to the outstanding balance of any buy-now-pay-later loan or to any related fees;

(d) provide inaccurate information to a consumer reporting agency; or

(e) make any false statement or make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the superintendent or another governmental agency.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 745. Interest and other charges.** 1. No buy-now-pay-later lender shall: (a) charge interest unless the rate of interest to be charged is allowable pursuant to its license or authorization; (b) charge interest unless the rate of interest to be charged is clearly disclosed and agreed to by the consumer; or (c) directly or indirectly charge, contract for, or receive any interest, discount, or consideration upon the loan, use, forbearance of money, goods, or things, or inaction, or upon the loan, use, or sale of credit greater than the maximum set by the superintendent pursuant to this section, but in no case greater than the rate permitted by section 5-501 of the general obligations law.

2. The superintendent shall establish a maximum cumulative amount of all charges and fees that a buy-now-pay-later lender can charge a consumer in connection with each category of buy-now-pay-later loans. The superintendent shall also establish a maximum amount or percentage for total specific charge or fee in connection with origination, late payment, default or any other violation of the buy-now-pay-later loan agreement, that a buy-now-pay-later lender can charge a consumer for each category of buy-now-pay-later loans. Any such fee or charge shall not be collected more than once for a single such late payment, default, or other violation of the buy-now-pay-later loan agreement.

3. The superintendent shall promulgate rules and regulations regarding the manner of charging interest and fees as prescribed as in this section.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 746. Consumer protections.** 1. A buy-now-pay-later lender shall disclose or cause to be disclosed to consumers the terms of buy-now-pay-later loans, including, without limitation, the cost, such as interest and fees, repayment schedule, the means by which a consumer may dispute billing practices, whether the transaction will or will not be reported to a credit reporting agency, and other material conditions,

in a clear and conspicuous manner. Disclosures shall comply with applicable federal regulations, including but not limited to regulation Z of title I of the Consumer Credit Protection Act.

2. Subject to regulations to be promulgated by the superintendent, a buy-now-pay-later lender shall, before providing or causing to be provided a buy-now-pay-later loan to a consumer, perform, or cause to be performed, reasonable risk-based underwriting. A buy-now-pay-later lender shall maintain or cause to be maintained policies and procedures for underwriting buy-now-pay-later loans, and shall disclose factors considered in such underwriting process, in a clear and conspicuous manner to the consumer. No buy-now-pay-later lender shall collect, evaluate, report, or maintain in the file on a borrower the credit worthiness, credit standing, or credit capacity of members of the borrower's social network for purposes of determining the credit worthiness of the borrower; the average credit worthiness, credit standing, or credit capacity of members of the borrower's social network; or any group score that is not the borrower's own credit worthiness, credit standing, or credit capacity.

3. A buy-now-pay-later lender shall maintain or cause to be maintained policies and procedures for maintaining accurate data that may be reported to credit reporting agencies. No buy-now-pay-later lender shall share consumer data in a manner inconsistent with this article and regulations promulgated thereto.

4. A buy-now-pay-later lender shall provide or cause to be provided refunds or credits for goods or services purchased in connection with a buy-now-pay-later loan, if the consumer requests and is entitled to a refund, in a manner that is fair, transparent, and not unduly burdensome to consumers. A buy-now-pay-later lender shall maintain or cause to be maintained policies and procedures to provide such refunds or credits. Such policies and procedures shall be fair, transparent, and not unduly burdensome to the consumer. A buy-now-pay-later lender shall disclose or cause to be disclosed to consumers, in a clear and conspicuous manner, the process by which they can obtain refunds or credits for goods or services they have purchased in connection with a buy-now-pay-later

loan.

5. A buy-now-pay-later lender shall resolve or cause to be resolved disputes in a manner that is fair and transparent to consumers. A buy-now-pay-later lender shall create or cause to be created a readily available and prominently disclosed method for consumers to bring a dispute to the buy-now-pay-later lender. A buy-now-pay-later lender shall maintain policies and procedures for handling consumer disputes. The superintendent may promulgate rules and regulations regarding treatment of unauthorized use, so that consumers are liable for use of buy-now-pay-later loans in their name only under circumstances where such liability would be fair and reasonable. A buy-now-pay-later lender shall apply to buy-now-pay-later loans the dispute rights and unauthorized charges requirements that apply to credit cards under the Truth in Lending Act, 15 U.S.C. § 1643, 1666, 1666a, 1666i, regardless of whether such law applies to buy-now-pay-later loans or whether the buy-now-pay-later lender offers a credit card within the scope of such law.

6. A buy-now-pay-later lender may use, sell, or share the data of a consumer, other than in connection with the making of a particular buy-now-pay-later loan to the consumer, only with the consumer's consent. A buy-now-pay-later lender shall disclose or cause to be disclosed to a consumer in a clear and conspicuous manner how such consumer's data may be used, shared, or sold by the buy-now-pay-later lender before obtaining such consumer's consent and also shall disclose or cause to be disclosed to such consumer in a clear and conspicuous manner how such consumer may subsequently withdraw consent to such use, sharing, or sale. The superintendent, in their discretion, may by regulation prohibit certain uses of consumer data. A buy-now-pay-later lender shall maintain policies and procedures regarding its use, sale, and sharing of consumers' data. Nothing in this subdivision shall preclude a buy-now-pay-later lender from using information in accordance with the Fair Credit Reporting Act or furnishing credit reporting data to a credit reporting agency.

7. Any buy-now-pay-later loan made by a person not licensed or

authorized under this article, other than an exempt organization, shall be void, and such person shall have no right to collect or receive any principal, interest or charge whatsoever.

8. Nothing in this section shall be construed to limit the obligations of a buy-now-pay-later lender to comply with any other applicable laws or regulations. Any protections, rights and remedies provided in this section to a consumer with respect to an agreement with a buy-now-pay-later lender shall be intended to supplement and not be exclusive of any protections, rights and remedies otherwise available pursuant to any other law or regulations.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 747. Authority of superintendent.** 1. The superintendent is authorized to promulgate such general rules and regulations as may be appropriate to implement the provisions of this article, protect consumers, and ensure the solvency and financial integrity of buy-now-pay-later lenders. The superintendent is further authorized to make such specific rulings, demands, and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this article, in addition hereto and not inconsistent herewith.

2. In addition to such powers as may otherwise be prescribed by law, the superintendent is hereby authorized and empowered to promulgate such rules and regulations as may in the judgment 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 buy-now-pay-later lenders as may be necessary and appropriate for the protection of borrowers in this state;

(b) such rules and regulations as may be necessary and appropriate to define deceptive or unfair practices in connection with the activities

of buy-now-pay-later lenders;

(c) 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

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

3. When promulgating rules and regulations under this article, the superintendent shall consider the applicability of other articles of this chapter to buy-now-pay-later lenders and buy-now-pay-later loans for the purpose of avoiding conflicting requirements.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 748. Penalties.** 1. Any person, including any member, officer, director or employee of a buy-now-pay-later lender, who violates or participates in the violation of section seven hundred thirty-seven of this article, or who knowingly makes any incorrect statement of a material fact in any application, report or statement filed pursuant to this article, or who knowingly omits to state any material fact necessary to give the superintendent any information lawfully required by the superintendent or refuses to permit any lawful investigation or examination, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned for not more than six months or both, in the discretion of the court.

2. (a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing require a buy-now-pay-later lender, whether or not a licensee, to pay to the people of this state a penalty for any violation of this chapter, any rule or regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this chapter, any condition imposed in writing by the superintendent in connection with the grant of any application or

request, or any written agreement entered into with the superintendent, and for knowingly making any incorrect statement of a material fact in any application, report or statement filed pursuant to this article, or knowingly omitting to state any material fact necessary to give the superintendent any information lawfully required by the superintendent or refusing to permit any lawful investigation or examination.

(b) The superintendent shall not impose or collect any penalty for an act or omission constituting a violation of this article if the superintendent imposes or collects any penalty pursuant to another provision of this chapter for the same act or omission.

(c) The superintendent shall not impose or collect a penalty for an act or omission constituting a violation of this article by a buy-now-pay-later lender more than once for the same act or omission, where the entity extending credit directly to a consumer is different from the entity operating a platform, software, or system with which the consumer interacts, unless both entities are found to have knowingly committed the same act or omission.

(d) As to any buy-now-pay-later lender that is not a licensee or an authorized buy-now-pay-later lender, the superintendent is authorized to impose a penalty in the same amount authorized in section forty-four of this chapter for a violation of this chapter by any person licensed, certified, registered, authorized, chartered, accredited, incorporated or otherwise approved by the superintendent under this chapter.

3. No person except a buy-now-pay-later lender licensed under this article shall make, directly or indirectly, orally or in writing, or by any method, practice or device, a representation that such person is licensed under this article.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

*** § 749. Severability.** If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or

applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

* NB Effective upon the one hundred eightieth day after the promulgation of rules and/or regulations by the department of financial services to effectuate certain provisions (see Ch. 58 of 2025, Part Y, § 13)

ARTICLE XV

General Provisions Applicable to Banking Stock Corporations, Limited Liability Investment Companies, and Limited Liability Trust Companies

Title 1. Definitions; Application; Certificates; Miscellaneous.
2. Corporate powers.
3. Corporate name.
4. Formation of corporations.
5. Corporate finance.
5-A. Limited liability investment company or limited liability trust company finance.
6. Stockholders.
6-A. Membership in a limited liability investment company or a limited liability trust company.
7. Directors and officers.
8. Amendments and changes.

TITLE I

Definitions; Application; Certificates; Miscellaneous

Section 1001. Definitions.
1002. Application.
1003. Certificates; requirements, signing, filing, effectiveness.
1004. Certificates; corrections.
1005. Certificates as evidence.
1006. Corporate seal as evidence.
1007. When notice or lapse of time unnecessary; notices

dispensed with when delivery is prohibited.
1008. Effect of invalidity of part of article; severability.

§ 1001. Definitions. In this article, unless the context otherwise requires:

1. "Corporation" means and includes all banks, trust companies, safe deposit companies, investment companies, mutual trust investment companies, and, to the extent not provided otherwise under any regulation of the superintendent of financial services promulgated pursuant to the provisions of section fourteen-e of this chapter, stock-form savings banks and stock-form savings and loan associations.

2. "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors".

3. "Foreign corporation" means a corporation which is licensed by the superintendent under the provisions of article two of this chapter to do business in this state or is applying for such license and a corporation authorized to conduct business in this state pursuant to article five-C of this chapter or is applying for such authorization.

4. "Office" means in the case of a bank or trust company its principal office, in the case of a safe deposit company, investment company or mutual trust investment company, its principal place of business and in the case of a foreign corporation the place of business designated in its license or its authorization pursuant to article five-C of this chapter, as the case may be, for the oldest agency or branch in this state of such foreign corporation.

5. "Organization certificate" includes (a) the original organization certificate or any other instrument filed or issued under any statute to form a corporation or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute; or (b) a

special act or charter creating a corporation or foreign corporation, as amended, supplemented or restated by special acts or by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute.

6. "Treasury shares" means shares which have been issued, have been subsequently acquired, and are retained uncancelled by the corporation.

§ 1002. Application. 1. This article applies to every corporation and, to the extent herein provided, to every foreign corporation, and shall not apply to any other banking organization, except to such extent, if any, as may be specified in any article of this chapter governing such banking organization.

2. The general corporation law, the stock corporation law and the business corporation law shall not apply to any corporation or foreign corporation as defined in section one thousand one.

§ 1003. Certificates; requirements, signing, filing, effectiveness. 1. Every certificate or other instrument relating to a corporation or foreign corporation which is delivered to the superintendent for filing under this chapter shall be in the English language, except that the corporate name may be in another language if written in English letters or characters.

2. Whenever such instrument is required to set forth an address, it shall include the street and number, or other particular description instead of a street and number. This requirement does not apply where a post office address is specified to be set forth.

3. Whenever such instrument is required to set forth the date when an organization certificate was filed by the superintendent, the original organization certificate is meant. This requirement shall be satisfied, in the case of a corporation created by special act, by setting forth the chapter number and year of passage of such act.

4. Every such instrument required under this chapter to be signed and delivered to the superintendent shall, except as otherwise specified in the section providing for such instrument, be signed either (a) by the holders of all outstanding shares entitled to vote thereon, or (b) by the chairman of the board, the president or a vice president and by the secretary or an assistant secretary or, in the case of a corporation which does not have a secretary or an assistant secretary, by the cashier or an assistant cashier or (c) if there are no such officers, by a majority of the directors or such directors as are designated by a majority of the directors in office, or (d) if also there are no directors, by the holders, or such of them as are designated by the holders, of record of a majority of all outstanding shares, entitled to vote thereon, or (e) if also there is no stockholder of record, by a subscriber for shares whose subscription has been accepted or his successor in interest, or (f) if also no subscription for shares has been accepted, by an incorporator or anyone acting in his stead under subdivision three of section six thousand fifteen. His name and the capacity in which any person signs such instrument shall be stated beneath or opposite his signature. The person signing such instrument, or if more than one person signs it, one of such persons shall verify or acknowledge the instrument if required by the section providing for such instrument.

5. No such instrument shall be filed unless it shall have endorsed thereon the approval of the superintendent. No certificate of authentication or conformity or other proof shall be required with respect to any verification, oath or acknowledgment of any instrument delivered to the superintendent under this chapter, if such verification, oath or acknowledgment purports to have been made before a notary public, or person performing the equivalent function, of one of the states, or any subdivision thereof, of the United States or the District of Columbia.

6. Except as otherwise provided in this chapter, such instrument shall become effective upon the filing thereof by the superintendent.

7. The superintendent shall make, certify and transmit a copy of each such instrument to the clerk of the county in which the office of the corporation or foreign corporation is or is to be located. The county clerk shall file and index such copy.

§ 1004. Certificates; corrections. Any certificate or other instrument relating to a corporation or foreign corporation filed by the superintendent under this chapter may be corrected with respect to any informality or error apparent on the face or defect in the execution thereof including the deletion of any matter not permitted to be stated therein. A certificate, entitled "Certificate of correction of ..... (correct title of certificate and name of corporation or foreign corporation)" shall be signed, verified or acknowledged as provided in this chapter with respect to the instrument being corrected and delivered to the superintendent. It shall set forth the name of the corporation or foreign corporation, the date the instrument to be corrected was filed by the superintendent, the provision in the instrument as corrected or eliminated and if the execution was defective, the proper execution. The filing of the certificate by the superintendent shall not alter the effective time of the instrument being corrected, which shall remain as its original effective date, and shall not affect any right or liability accrued or incurred before such filing. The name of the corporation or foreign corporation may not be changed or corrected under this section.

§ 1005. Certificates as evidence. 1. Any certificate or other instrument filed by the superintendent relating to a corporation or a foreign corporation and containing statements of fact required or permitted by law to be contained therein, shall be received in all courts, public offices and official bodies as prima facie evidence of such facts and of the execution of such instrument.

2. Whenever by the laws of any jurisdiction other than this state, any certificate by any officer in such jurisdiction or a copy of any instruments certified or exemplified by any such officer, may be

received as prima facie evidence of the incorporation, existence or capacity of any foreign corporation incorporated in such jurisdiction, or claiming so to be, such certificate when exemplified, or such copy of such instrument when exemplified shall be received in all courts, public offices and official bodies of this state, as prima facie evidence with the same force as in such jurisdiction. Such certificate or certified copy of such instrument shall be so received, without being exemplified, if it is certified by the secretary of state, or official performing the equivalent functions as to corporate records, of such jurisdiction.

§ 1006. Corporate seal as evidence. The presence of the corporate seal on a written instrument purporting to be executed by authority of a corporation or a foreign corporation shall be prima facie evidence that the instrument was so executed.

§ 1007. When notice or lapse of time unnecessary; notices dispensed with when delivery is prohibited. 1. Whenever, under this article or the organization certificate or by-laws of any corporation or by the terms of any agreement or instrument, a corporation or the board or any committee thereof is authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time. If at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken or, in the case of a stockholder, by his attorney-in-fact, submit a signed waiver of notice of such requirements.

2. Whenever any notice or communication is required to be given to any person by this article, the organization certificate or by-laws, or by the terms of any agreement or instrument, or as a condition precedent to taking any corporate action and communication with such person is then unlawful under any statute of this state or of the United States or any regulation, proclamation or order issued under said statutes, then the giving of such notice or communication to such person shall not be required and there shall be no duty to apply for a license or other

permission to do so. Any affidavit, certificate or other instrument which is required to be made or filed as proof of the giving of any notice or communication required under this article shall, if such notice or communication to any person is dispensed with under this section, include a statement that such notice or communication was not given to any person with whom communication is unlawful. Such affidavit, certificate or other instrument shall be as effective for all purposes as though such notice or communication had been personally given to such person.

§ 1008. Effect of invalidity of part of article; severability. If any provision of this article or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared severable.

TITLE 2
Corporate Powers

Section 2001. General corporate powers.

§ 2001. General corporate powers. 1. Every corporation shall have, in addition to all other powers granted by this chapter or any other statute of this state, the following powers:

(a) To sue and be sued in all courts and to participate in actions and proceedings, whether judicial, administrative, arbitrative or otherwise, in like cases as natural persons.

(b) To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

(c) To adopt, amend or repeal by-laws, including emergency by-laws made pursuant to subdivision sixteen of section twelve of the state emergency defense act, relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of

its stockholders, directors or officers.

(d) To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

(e) To pay pensions, establish and carry out pension, profit-sharing, savings, thrift and other retirement, incentive and benefit plans, trusts and provisions for any or all of its directors, officers and employees.

(f) To have perpetual existence.

2. Every corporation, subject to any limitations or other specific provisions contained in this chapter or any other statute of this state or its organization certificate, shall have such of the following powers as shall be appropriate in conducting the business of the corporation:

(a) To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(b) To sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its property or any interest therein, wherever situated.

(c) To make contracts, give guarantees and incur liabilities.

(d) To do business, carry on its operations, and have offices and exercise the powers granted by this chapter in any jurisdiction within or without the United States.

(e) To elect or appoint officers, employees and other agents of the corporation, define their duties, fix their compensation and the compensation of directors, and to indemnify corporate personnel.

(f) To be a promoter, partner, member, associate or manager of other business enterprises or ventures, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations of any type or kind; provided, however, that nothing contained in this paragraph shall authorize a banking organization to engage in any activity not otherwise authorized by the laws of New York or by regulations of the superintendent.

(g) To have and exercise all other powers necessary or appropriate in

conducting the business of the corporation.

TITLE 3
Corporate Name

Section 3001. Corporate name; general.
3002. Corporate name; exceptions.

§ 3001. Corporate name; general. Except as otherwise provided in this chapter, the name of a corporation or a foreign corporation, or the name of representative and other offices in this state, which are open to the general public and maintained by any banking corporation, wherever located, shall not be the same as the name of a corporation of any type or kind, as such name appears on the index of names of existing corporations and foreign corporations of any type or kind in the department of financial services or a name so similar to such name as to tend to confuse or deceive.

§ 3002. Corporate name; exceptions. 1. Any reference to a corporation in this section shall include both corporations and foreign corporations.

2. The provisions of section three thousand one:

(a) Shall not require any corporation, existing or licensed under this chapter on the effective date of this article, to add to, modify or otherwise change its corporate name.

(b) Shall not prevent a corporation with which another corporation is merged or which is formed by the reorganization or consolidation of one or more other corporations or upon a sale, lease, exchange or other disposition of all or substantially all the assets of another corporation, including its name, from having the same name as any of such corporations if at the time such other corporation was licensed or existing under this chapter.

TITLE 4

Formation of Corporations

Section 4001. Incorporation: organization certificate; amount of capital stock.
4001-a. Formation of limited liability investment companies.
4001-b. Formation of limited liability trust companies.
4002. Fingerprints.
4003. Organization certificate to be submitted to the superintendent.
4004. When corporate existence begins; conditions precedent to commencing business.
4005. Organization meeting.

§ 4001. Incorporation; organization certificate; amount of capital stock. When authorized by the superintendent as provided in article two of this chapter, five or more persons may incorporate a bank or trust company, a stock-form savings bank, a stock-form savings and loan association, a safe deposit company or an investment company. Such persons shall subscribe and acknowledge an organization certificate in duplicate which shall specifically state:

1. The name by which the corporation is to be known.

2. The place where its office is to be located.

3. The amount of its authorized capital stock, the number of shares into which such capital stock shall be divided and the par value of the shares, which capital stock shall amount to not less than the minimum amount prescribed by the superintendent of financial services, nor more than the aggregate of (a) the amount of capital stock the corporation expects to sell in its initial offering of shares and (b) such additional amount as may be approved by the superintendent of financial services.

4. If the shares are to be classified:

(a) The number of shares to be included in each class and the par

value of the shares;

(b) The designation of each class and the relative rights, preferences and limitations of the shares of each class;

(c) The number of shares of common stock, if any, which are to be reserved for issuance in exchange for preferred shares or otherwise to replace any capital stock represented by preferred shares.

5. The names and places of residence of the incorporators and, in the case of banks, trust companies and safe deposit companies, the citizenship of the incorporators.

6. Its duration if other than perpetual.

7. The number of its directors or that the number of directors shall not be less than a stated minimum nor more than a stated maximum. Such number, or the minimum and the maximum stated, shall be within the limitations prescribed by section seven thousand two of this article.

8. The names of the incorporators who shall be its directors until the first annual meeting of stockholders. The incorporators named as directors must possess the qualifications of directors as to citizenship and residence specified in section seven thousand one of this article; and the certificate of a safe deposit company shall recite that such qualifications are possessed by such incorporators.

9. In the case of a trust company, that the proposed corporation is to exercise the powers conferred by section one hundred of this chapter, if the proposed corporation desires to exercise such powers in addition to the other powers conferred upon banks and trust companies in article three of this chapter.

No corporation shall be authorized to exercise the powers set forth in section one hundred of this chapter unless its capital stock shall amount to not less than the amounts prescribed by the superintendent of financial services.

§ 4001-a. Formation of limited liability investment companies. 1. Notwithstanding the provisions of section four thousand one of this title and when authorized by the superintendent as provided in article two of this chapter, five or more persons may form a limited liability investment company pursuant to the provisions of article twelve of this chapter. Such person or persons shall subscribe and acknowledge the articles of organization in duplicate which shall specifically state:

(a) the name by which the limited liability investment company is to be known;

(b) the place where its office is to be located;

(c) the amount of its capital contributions;

(d) if the company is to have classes or groups of members, the relative rights, powers, preferences, limitations and voting powers of each such class or group;

(e) the names and places of residence of the persons forming the company;

(f) the duration of the company;

(g) the number of managers charged with the management of the company as its board, provided that such number shall be in accordance with the requirements set forth in section seven thousand two of this article; and

(h) the names of the persons who shall manage the company until the first annual meeting of the members, provided that such persons must possess the qualifications as to citizenship and residence specified in section seven thousand one of this article.

2. No limited liability investment company shall be authorized to exercise the powers set forth in this chapter or the limited liability company law unless its capital contributions amount to not less than the amounts prescribed by the superintendent.

§ 4001-b. Formation of limited liability trust companies. 1. Notwithstanding the provisions of section four thousand one of this title and when authorized by the superintendent as provided in article two of this chapter, five or more persons may form a limited liability trust company pursuant to the provisions of article three of this

chapter. Such person or persons shall subscribe and acknowledge the articles of organization in duplicate, which shall specifically state:

(a) the name by which the limited liability trust company is to be known;

(b) the place where its office is to be located;

(c) the amount of its capital contributions;

(d) if the company is to have classes or groups of members, the relative rights, powers, preferences, limitations, and voting powers of each such class or group;

(e) the names and places of residence of the persons forming the company;

(f) the duration of the company;

(g) the number of managers charged with the management of the company as its board, provided that such number shall be in accordance with the requirements set forth in section seven thousand two of this article; and

(h) the names of the persons who shall manage the company until the first annual meeting of the members, provided that such persons must possess the qualifications as to citizenship and residence specified in section seven thousand one of this article.

2. No limited liability trust company shall be authorized to exercise the powers set forth in this chapter or the limited liability company law unless its capital contributions amount to not less than the amounts prescribed by the superintendent.

§ 4002. Fingerprints. (a) Notwithstanding any other provisions of law, every incorporator of a corporation shall, in addition to any other requirements which may be imposed by the superintendent, submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. Every applicant filing an application to acquire control of any banking institution under sections one hundred forty-three-a and one hundred forty-three-b of this chapter shall, in addition to any other requirements which may be imposed by the superintendent, submit

simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit the fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon.

(b) The superintendent shall also, concurrent with an investigation of an incorporator of a corporation pertaining to a violation of this chapter, submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon and through the division to the federal bureau of investigation for the purpose of a fingerprint check of such incorporator.

(c) For purposes of this section, "incorporator" shall include a natural person or such principal, officer, director, trustee or stockholder of any other entity as may be designated by the superintendent. Notwithstanding any other provision of this article, the superintendent shall not access criminal history data or information, unless any agency from which the superintendent receives directly criminal history data or information has entered into a use and dissemination agreement with the superintendent consistent with the provisions of this section.

(d) An applicant shall not be required to submit his or her fingerprints as required by subdivision (a) of this section if such applicant (i) is already subject to regulation by the department and the applicant has submitted such fingerprints to the department, such fingerprints have been submitted to the division of criminal justice services for the purpose of conducting a criminal history search, and a report of such search has been received by the department from such division; or (ii) is subject to regulation by a federal bank regulatory

agency and has submitted such fingerprints to such agency which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; or (iii) is an officer or stockholder of a corporation whose common or preferred stock is registered on a national securities exchange, as provided in an act of congress of the United States entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended, or such other exchange or market system as the superintendent shall approve by regulation, and has submitted such fingerprints to such exchange or market system which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; provided, however, that the superintendent may subsequently require such applicant to submit sets of fingerprints if the superintendent has a reasonable basis for updating the information or determination resulting from the report of the criminal history search conducted at the request of such federal banking agency, exchange or market system.

§ 4003. Organization certificate to be submitted to the superintendent. The organization certificate of a bank, trust company, stock-form savings bank, stock-form savings and loan association, safe deposit company or investment company, executed in duplicate, shall be submitted to the superintendent at his office.

§ 4004. When corporate existence begins; conditions precedent to commencing business. 1. When the superintendent shall have endorsed his approval on the organization certificate as provided in article two of this chapter, the corporate existence of the corporation shall begin and such corporation shall then have power to elect officers and transact such other business as relates to its organization. Such corporation shall transact no other business until:

(a) All of its capital stock, except such shares as may be reserved in accordance with any provision made therefor in the organization certificate, shall have been fully paid in cash and an affidavit stating

that it has been so paid, subscribed and sworn to by two of its principal officers, shall have been delivered to and filed by the superintendent.

(b) In the case of a bank or trust company, stock-form savings bank, or stock-form savings and loan association, there shall have been delivered to and filed by the superintendent a list of its stockholders, verified by two of its principal officers, giving the name, residence, post-office address and the number of shares of stock held by each stockholder; which list shall become a confidential communication and shall not be filed in the office of the county clerk or be made public, unless, in the judgment of the superintendent, the ends of justice or the public advantage will be subserved by the publication thereof;

(c) The superintendent shall have duly issued to it the authorization certificate specified in article two of this chapter.

§ 4005. Organization meeting. 1. After the corporate existence has begun, an organization meeting of the incorporators shall be held within this state, for the purpose of adopting by-laws and the transaction of such other business relating to organization as may come before the meeting. The meeting may be held at the call of any incorporator, who shall give at least five days' notice thereof by mail to each other incorporator, which notice shall set forth the time and place of the meeting. Notice need not be given to any incorporator who attends the meeting or submits a signed waiver of notice before or after the meeting. A majority shall constitute a quorum and the act of the majority of the incorporators present at a meeting at which a quorum is present shall be the act of the incorporators.

2. Any action permitted to be taken at the organization meeting may be taken without a meeting if each incorporator signs an instrument setting forth the action so taken.

3. If an incorporator dies or is for any reason unable to act, action may be taken as provided in such event in subdivision three of section six thousand fifteen.

TITLE 5

Corporate Finance

Section 5001. Authorized shares.
5002. Issue of any class of preferred shares in series.
5003. Subscription for shares; time of payment, forfeiture for default.
5004. Consideration and payment for shares.
5005. Transferable rights to purchase shares; imposition of restrictions or conditions thereon.
5006. Compensation for formation, reorganization and financing.
5007. Certificates representing shares.
5008. Fractions of a share or scrip authorized.
5009. Dividends or other distributions in cash or property.
5010. Share distributions and changes.
5011. Redeemable shares.
5012. Purchase or redemption by a corporation of its own shares.
5013. Agreements for purchase by a corporation of its own shares.
5014. Reacquired shares.
5015. Capital notes and debentures.
5016. Convertible shares, capital notes and debentures.

§ 5001. Authorized shares. 1. Every corporation shall have power to create and issue the number of shares stated in its organization certificate. Such shares may be all of one class or may be divided into two or more classes. Each class shall consist of shares with par value, having such designation and such relative voting, dividend, liquidation and other rights, preferences and limitations, consistent with this chapter, as shall be stated in the organization certificate. The organization certificate may deny, limit or otherwise define the voting rights and may limit or otherwise define the dividend or liquidation rights or shares of any class, but no such denial, limitation or definition of voting rights shall be effective unless at the time one or more classes of outstanding shares, singly or in the aggregate, are entitled to full voting rights, and no such limitation or definition of

dividend or liquidation rights shall be effective unless at the time one or more classes of outstanding shares, singly or in the aggregate, are entitled to unlimited dividend and liquidation rights.

2. If the shares are divided into two or more classes, the shares of each class shall be designated to distinguish them from the shares of all other classes. Shares which are entitled to preference in the distribution of dividends or assets shall not be designated as common shares. Shares which are not entitled to preference in the distribution of dividends or assets shall not be designated as preferred shares.

3. Subject to the designations, relative rights, preferences and limitations applicable to separate series and except as otherwise permitted by subdivision two of section five thousand five of this chapter, each share shall be equal to every other share of the same class.

§ 5002. Issue of any class of preferred shares in series. 1. If the organization certificate so provides, a corporation may issue any class of preferred shares in series. Shares of each such series, when issued, shall be designated to distinguish them from the shares of all other series.

2. The number of shares included in any or all series of any classes of preferred shares and any or all of the designations, relative rights, preferences and limitations of any or all such series may be fixed in the organization certificate, subject to the limitation that, if the stated dividends and amounts payable on liquidation are not paid in full, the shares of all series of the same class shall share ratably in the payment of dividends including accumulations, if any, in accordance with the sums which would be payable on such shares if all dividends were declared and paid in full, and in any distribution of assets other than by way of dividends in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full.

3. If any such number of shares or any such designation, relative right, preference or limitation of the shares of any series is not fixed in the organization certificate, it may be fixed by the board, to the extent authorized by the organization certificate.

4. Before the issue of any shares of a series established by the board, a certificate of amendment shall be filed as provided in section eight thousand five. Such certificate shall set forth:

(a) The name of the corporation and, if it has been changed, the name under which it was formed.

(b) The date the organization certificate was filed by the superintendent.

(c) That the organization certificate is thereby amended by the addition of a provision stating the number, designation, relative rights, preferences, and limitations of the shares of the series as fixed by the board, setting forth in full the text of such provision.

§ 5003. Subscription for shares; time of payment, forfeiture for default. 1. Unless otherwise provided by the terms of the subscription, a subscription for shares of a corporation to be formed shall be irrevocable, except with the consent of all other subscribers or the corporation, for a period of seven months from its date.

2. A subscription, whether made before or after the formation of a corporation, shall not be enforceable unless in writing and signed by the subscriber.

3. Unless otherwise provided by the terms of the subscription, subscriptions for shares, whether made before or after the formation of a corporation, shall be paid in full at such time, or in such instalments and at such times, as shall be determined by the board. Any call made by the board for payment on subscriptions shall be uniform as to all shares of the same class or of the same series. If the superintendent has taken possession of the business and property of the corporation, all unpaid subscriptions shall be paid at such times and in such instalments as the superintendent may direct.

4. In the event of default in the payment of any instalment or call when due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation or the board may declare a forfeiture of the subscriptions. The subscription agreement may prescribe other penalties, not amounting to forfeiture, for failure to pay instalments or calls that may become due. No forfeiture of the subscription shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with postage thereon prepaid. Upon forfeiture of the subscription, if at least fifty percent of the subscription price has been paid, the shares subscribed for shall be offered for sale for cash at a price at least sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, and any excess of net proceeds realized over the amount owed on such shares shall be paid to the delinquent subscriber or to his legal representative. If no prospective purchaser offers a cash price sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, or if less than fifty percent of the subscription price has been paid, the shares subscribed for shall be cancelled and restored to the status of authorized but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to surplus.

§ 5004. Consideration and payment for shares. 1. Consideration for the issue of shares shall consist of money or (except as otherwise required by subdivision a of subdivision one of section four thousand four) other property tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or stockholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

2. Neither obligations of the subscriber for future payments nor future services shall constitute payment or part payment for shares of a corporation.

3. Shares may be issued for such consideration, not less than the par value thereof, as is fixed from time to time by the board.

4. Treasury shares may be disposed of by a corporation on such terms and conditions as are fixed from time to time by the board.

5. Upon distribution of authorized but unissued shares to stockholders, that part of the undivided profits or surplus of a corporation which is concurrently transferred to capital stock shall be the consideration for the issue of such shares.

6. In the event of a conversion of capital notes, debentures or shares into shares, or in the event of an exchange of capital notes, debentures or shares for shares, the consideration for the shares so issued in exchange or conversion shall be the sum of (a) either the principal sum of, and accrued interest on, the capital notes or debentures so exchanged or converted, or the par value of the shares so exchanged or converted, plus (b) any additional consideration paid to the corporation for the new shares, plus (c) any undivided profits or surplus transferred to capital stock in respect of the new shares.

7. Certificates for shares may not be issued until the full amount of the consideration therefor has been paid.

8. When the consideration for shares has been paid in full, the subscriber shall be entitled to all the rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be fully paid and, subject to sections one hundred thirteen-a, one hundred thirteen-b, one hundred fourteen, three hundred five, three hundred five-a, three hundred six, three hundred twenty-two, three hundred twenty-two-a and three hundred twenty-three of this chapter, shall be nonassessable.

§ 5005. Transferable rights to purchase shares; imposition of restrictions or conditions thereon. 1. Except as otherwise provided in this section or in the organization certificate, a corporation may create and issue, whether or not in connection with the issue and sale of any of its capital notes, debentures or shares, rights or options entitling the holders thereof to purchase from the corporation, upon such consideration, terms and conditions as may be fixed by the board, shares of any class or series, whether authorized but unissued shares, treasury shares or shares to be purchased or acquired.

2. (a) In the case of a corporation that has a class of voting stock registered pursuant to section twelve of the Exchange Act, the terms and conditions of such rights or options may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt of such rights or options by an interested shareholder or any transferee of any such interested shareholder or that invalidate or void such rights or options held by any such interested shareholder or any such transferee. For the purposes of this subdivision, the terms "voting stock", "Exchange Act" and "interested shareholder" shall have the same respective meanings as are set forth in section nine hundred twelve of the business corporation law except that for this purpose references in said section of the business corporation law to a "resident business corporation" shall be read instead to refer to a "corporation" as defined by section one thousand one of this chapter.

(b) Determinations of the board of directors whether to impose, enforce or waive or otherwise render ineffective such limitations or conditions as are permitted by paragraph (a) of this subdivision shall be subject to judicial review in an appropriate proceeding in which the courts formulate or apply appropriate standards in order to insure that such limitations or conditions are imposed, enforced or waived in the best long-term interests and short-term interests of the corporation and its stockholders considering, without limitation, the prospects for potential growth, development, productivity and profitability of the corporation.

3. The consideration for shares to be purchased under any such right or option shall comply with the requirements of section five thousand four of this chapter.

4. The terms and conditions of such rights or options, including the time or times at or within which and the price or prices at which they may be exercised and any limitations upon transferability, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options.

5. If there is shareholder approval for the issue of rights and options, such approval may provide that the board is authorized by certificate of amendment under section eight thousand five of this chapter to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy any such rights or options entitling the holders thereof to purchase from the corporation authorized but unissued shares of such class or series.

6. In the absence of fraud in the transaction, the judgment of the board shall be conclusive as to the adequacy of the consideration, tangible or intangible, received or to be received by the corporation for the issue of rights or options for the purchase from the corporation of its shares.

7. The provisions of this section are inapplicable to the rights of the holders of convertible shares, capital notes or debentures to acquire shares upon the exercise of conversion privileges under section five thousand sixteen of this chapter.

8. The provisions of this section are inapplicable to the rights of officers, directors and employees of a corporation who have been issued options to purchase authorized and unissued shares of its capital stock under or by reference to section one hundred forty-a of this chapter.

§ 5006. Compensation for formation, reorganization and financing. The

reasonable charges and expenses of formation or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby impairing the fully paid and nonassessable status of such shares as provided in subdivision eight of section five thousand four.

§ 5007. Certificates representing shares. 1. The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or a vice-chairman of the board or the president or a vice-president and the secretary or an assistant secretary or, in the case of a corporation which does not have a secretary or an assistant secretary, by the cashier or an assistant cashier, or the treasurer or an assistant treasurer of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if (i) the shares are listed on a registered national security exchange, or (ii) the certificate is countersigned by a transfer agent or registered by a registrar which, unless the corporation is a trust company, shall be a person other than the corporation itself or its employee. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer at the date of issue.

2. Each certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any stockholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of the shares of each class authorized to be issued and, if the corporation is authorized to issue any class of preferred shares in series, the designation, relative rights, preferences and limitations of each such series so far as the same have

been fixed and the authority of the board to designate and fix the relative rights, preferences and limitations of other series.

3. Each certificate representing shares shall when issued state upon the face thereof:

(a) That the corporation is formed under the laws of this state.

(b) The name of the person or persons to whom issued.

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) The par value of each share represented by such certificate.

4. Shares shall be transferable in the manner provided by law and in the by-laws.

5. The corporation may issue a new certificate for shares in place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate or the issuance of any such new certificate.

6. Unless otherwise provided by the articles of incorporation or by-laws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subdivisions two and three of this section. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

§ 5008. Fractions of a share or scrip authorized. 1. a. A corporation may, but shall not be obliged to, issue fractions of a share either represented by a certificate or uncertificated, which may entitle the holder, in proportion to his or her fractional holdings, to exercise voting rights, receive dividends and participate in liquidating distributions.

b. As an alternative, a corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined.

2. As an alternative, a corporation may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided. Such scrip may be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board may determine.

3. Subject to subdivision six of section one hundred three and subdivision three of section five hundred nine of this chapter, a corporation may provide reasonable opportunity for persons entitled to fractions of a share or scrip to sell such fractions of a share or scrip or to purchase such additional fractions of a share or scrip as may be needed to acquire a full share.

§ 5009. Dividends or other distributions in cash or property. Subject to sections one hundred ten, one hundred twelve and five hundred seventeen of this chapter, a corporation may declare and pay dividends or make other distributions in cash or property, including the shares or

bonds of other corporations, on its outstanding shares, out of net profits or surplus, except when there is any impairment of capital stock, or when the declaration, payment, or distribution would be contrary to any restrictions contained in the organization certificate.

§ 5010. Share distributions and changes. 1. A corporation may make pro rata distributions of its authorized but unissued shares to holders of any class or series of its outstanding shares, subject to the following conditions:

(a) Such shares shall be issued at not less than the par value thereof and there shall be transferred to capital stock at the time of such distribution an amount of undivided profits or surplus equal to the aggregate par value of such shares.

(b) A distribution of shares of any class or series may be made only to holders of the same class or series of shares unless the organization certificate permits distribution, subject to the preemptive rights of holders of any outstanding shares, to holders of another class or series or unless such distribution is authorized, when there are no outstanding preemptive rights, by the affirmative vote or the written consent of the holders of a majority of the outstanding shares of the class or series to be distributed.

2. A corporation making a pro rata distribution of authorized but unissued shares to the holders of any class or series of outstanding shares may at its option make an equivalent distribution upon treasury shares of the same class or series, and any shares so distributed shall be treasury shares.

3. A change of issued shares of any class which increases the aggregate par value of those shares may be made if the sum of the undivided profits and surplus of the corporation is sufficient to permit the transfer, and a transfer is concurrently made, from undivided profits or surplus to capital stock, of an amount equal to such increase.

§ 5011. Redeemable shares. 1. A corporation may provide in its organization certificate for a class of common shares in relation to an incentive stock option plan pursuant to section one hundred forty-a of this chapter and for one or more classes or series of preferred shares which are redeemable, in whole or in part, at the option of the corporation at such price or prices, within such period or periods and under such conditions as are stated in the organization certificate.

2. A corporation shall not issue redeemable or other shares which purport by their terms to grant to any holder thereof the right to compel the corporation to redeem such shares.

3. Nothing in this section shall prevent a corporation from creating sinking funds for the redemption or purchase of its preferred shares to the extent permitted by section five thousand twelve.

§ 5012. Purchase or redemption by a corporation of its own shares. 1. A corporation may purchase its own shares, or pay stockholders entitled to receive payment for their shares, when permitted or required under any other provision of this chapter.

2. To effect retirement of its common shares reacquired under section one hundred forty-a of this chapter, or of its preferred shares in accordance with any provision in its organization certificate, a corporation may, with the written approval of the superintendent, purchase or redeem such shares out of undivided profits or surplus or, to the extent of the par value of such shares, out of capital stock.

3. Nothing in this title shall prevent a corporation from returning to stockholders any amounts made available for such purpose by a reduction of capital stock in accordance with section eight thousand two.

§ 5013. Agreements for purchase by a corporation of its own shares. 1. An agreement for the purchase by a corporation of its own shares shall be enforceable by the stockholder and the corporation to the extent such

purchase is permitted at the time of purchase by section five thousand twelve.

2. The possibility that a corporation may not be able to purchase its shares under section five thousand twelve shall not be a ground for denying to either party specific performance of an agreement for the purchase by a corporation of its own shares, if at the time for performance the corporation can purchase all or part of such shares under section five thousand twelve.

§ 5014. Reacquired shares. 1. Shares that have been issued and have been reacquired under subdivision one of section five thousand twelve shall, subject to other applicable provisions of this chapter, be sold or otherwise disposed of or, with the written approval of the superintendent, may be retained or may be cancelled by the board.

2. Shares that have been issued and thereafter converted shall be cancelled.

3. Shares that have been issued and have been reacquired under subdivision two of section five thousand twelve shall be cancelled.

4. Neither the retention of reacquired shares as treasury shares nor their subsequent distribution to stockholders or disposition for a consideration shall change the capital stock.

5. When reacquired shares other than converted shares are cancelled, the capital stock of the corporation shall be reduced by the amount of capital stock represented by such shares.

6. Within ninety days after any shares are cancelled under this section, (a) the corporation by action of the board shall file a certificate of amendment under section eight thousand five eliminating such shares from the number of authorized shares, except that if the organization certificate does not prohibit the reissue of such shares, such shares may with the written approval of the superintendent be

restored to the status of authorized but unissued shares, and (b) unless stated in a certificate of amendment so filed, a certificate of the corporation shall be signed, verified and filed as provided in section one thousand three stating the number of shares of each class or series thereof so cancelled, the manner of reacquisition thereof and, if converted shares, the number of shares of each class or series thereof into which the same were converted, and such other information with respect thereto as the superintendent may require.

§ 5015. Capital notes and debentures. No corporation shall issue capital notes or debentures except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received shall be conclusive.

§ 5016. Convertible shares, capital notes and debentures. 1. When so provided in the organization certificate, and subject to the restrictions in subdivision four of this section, a bank, trust company, stock-form savings bank, or stock-form savings and loan association may issue preferred shares convertible, at the option of the holder only, into common shares of any class. Authorized shares, whether issued or unissued, may be made so convertible within such period and upon such terms and conditions as are stated in the organization certificate.

2. Unless otherwise provided in the organization certificate, and subject to subdivision four of section ninety-six and subdivision five-b of section two hundred thirty-four of this chapter, and to the restrictions in subdivision four of this section, a bank, trust company, stock-form savings bank, or stock-form savings and loan association may issue its capital notes or debentures convertible into shares of the corporation within such period and upon such terms and conditions as are fixed by the board.

3. If there is stockholder approval for the issue of capital notes, debentures or shares convertible into shares of the corporation, such approval may provide that the board is authorized by certificate of amendment under section eight thousand five to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy the conversion privileges of any such capital notes, debentures or shares convertible into shares of such class or series.

4. No issue of capital notes, debentures or shares convertible into shares of the corporation shall be made unless:

(a) A sufficient number of authorized but unissued shares of the appropriate class or series are reserved by the board to be issued only in satisfaction of the conversion privileges of such convertible capital notes, debentures or shares when issued; or

(b) The aggregate conversion privileges of such convertible capital notes, debentures or shares when issued do not exceed the aggregate of any shares reserved under paragraph (a) and any additional shares which may be authorized by the board under subdivision three of this section.

5. No privilege of conversion may be conferred upon, or altered in respect to, any shares or capital notes or debentures that would result in the receipt by the corporation of less than the minimum consideration required to be received upon the issue of new shares. The consideration for shares issued upon the exercise of a conversion privilege shall be that provided in subdivision six of section five thousand four.

6. Within ninety days after any capital notes or debentures are converted into shares of the corporation, a certificate of the corporation shall be signed, verified and filed as provided in section one thousand three stating the amount of capital notes or debentures so converted, the number of shares of each class or series into which the same were converted, and such other information with respect thereto as the superintendent may require.

Limited Liability Investment Company or Limited Liability Trust Company Finance

Section 5050. Company finance.

§ 5050. Company finance. Notwithstanding the provisions of title five of this article, the allocation of profits and losses, and the distribution of cash or other assets of a limited liability investment company or limited liability trust company shall be in accordance with article five of the limited liability company law.

TITLE 6

Stockholders

Section 6001. By-laws.
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payment for shares.
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6026. Security for expenses in stockholders' derivative action brought in the right of the corporation to procure a judgment in its favor.
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§ 6001. By-laws. 1. The initial by-laws of a corporation shall be adopted by its incorporators. Except as otherwise provided in the organization certificate under section six thousand thirteen, by-laws may be amended, repealed or adopted by vote of the holders of the shares at the time entitled to vote in the election of any directors. When so provided in the organization certificate, a by-law adopted by the stockholders or a by-law validly adopted prior to the effective date of this article, by-laws may also be amended, repealed or adopted by the board, but any by-law adopted by the board may be amended or repealed by the stockholders entitled to vote thereon as herein provided. Any reference in this article to a "by-law adopted by the stockholders" shall include a by-law adopted by the incorporators.

2. If any by-law regulating an impending election of directors is adopted, amended or repealed by the board, there shall be set forth in the notice of the next meeting of stockholders for the election of directors the by-law so adopted, amended or repealed, together with a concise statement of the changes made.

3. The by-laws may contain any provision relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its stockholders, directors, committees or officers, not inconsistent with this chapter or any other statute of this state or the organization certificate.

§ 6002. Meetings of stockholders. 1. Meetings of stockholders may be held at such place, within or without this state, as may be fixed by or under the by-laws, or if not so fixed, at the office of the corporation in this state except that the annual meetings of stockholders of banks and trust companies, stock-form savings banks, and stock-form savings and loan associations shall be held in the city or village in which the office of the bank or trust company, stock-form savings bank, or stock-form savings and loan association is located.

2. A meeting of stockholders shall be held annually for the election of directors and the transaction of other business within the first four months of each institution's fiscal year in the case of banks, trust companies, stock-form savings banks, stock-form savings and loan associations, and safe deposit companies and on a date fixed by or under the by-laws in the case of investment companies. A failure to hold the annual meeting on the date so fixed or to elect a sufficient number of directors to conduct the business of the corporation shall not work a forfeiture or give cause for dissolution of the corporation.

3. Special meetings of the stockholders may be called by the board and by such person or persons as may be so authorized by the organization certificate or the by-laws.

§ 6003. Special meeting for election of directors. 1. If, for a period of one month after the date fixed by or under section six thousand two or the by-laws for the annual meeting of stockholders, or if no date has been so fixed, for a period of thirteen months after the formation of the corporation or the last annual meeting, there is a failure to elect a sufficient number of directors to conduct the business of the corporation, the board shall call a special meeting for the election of directors. If such special meeting is not called by the board within two weeks after the expiration of such period or if it is so called but there is a failure to elect such directors for a period of two months after the expiration of such period, holders of ten percent of the

shares entitled to vote in an election of directors may, in writing, demand the call of a special meeting for the election of directors specifying the date and month thereof, which shall not be less than two nor more than three months from the date of such call. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if he fails to do so within five business days thereafter, any stockholder signing such demand may give such notice. The meeting shall be held at the place fixed in the by-laws or, if not so fixed, at the office of the corporation.

2. At any such special meeting called on demand of stockholders, notwithstanding section six thousand eight, the stockholders attending, in person or by proxy, and entitled to vote in an election of directors shall constitute a quorum for the purpose of electing directors, but not for the transaction of any other business.

§ 6004. Fixing record date. 1. For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining stockholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the by-laws may provide for fixing or, in the absence of such provision, the board may fix, in advance, a date as the record date for any such determination of stockholders. Such date shall not be more than fifty nor less than ten days before the date of such meeting, nor more than fifty days prior to any other action.

2. If no record date is fixed:

(a) The record date for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held.

(b) The record date for determining stockholders for any purpose other than that specified in paragraph (a) shall be at the close of business on the day on which the resolution of the board relating thereto is

adopted.

3. When a determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the board fixes a new record date under this section for the adjourned meeting.

§ 6005. Notice of meetings of stockholders. 1. Whenever under the provisions of this chapter stockholders are required or permitted to take any action at a meeting, written notice shall state the place, date and hour of the meeting and unless it is the annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. If, at any meeting, action is proposed to be taken which would, if taken, entitle stockholders fulfilling the requirements of section six thousand twenty-two to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect. A copy of the notice of any meeting shall be given, personally or by mail, not less than ten nor more than fifty days before the date of the meeting, to each stockholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the stockholder at his address as it appears on the record of stockholders, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address. An affidavit of the secretary or other persons giving the notice or of the transfer agent of the corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

2. When a meeting is adjourned to another time or place, it shall not be necessary, unless the by-laws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is

taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record on the new record date entitled to notice under subdivision one.

3. To the extent that any provision of this section conflicts with any other provision of this chapter relating to a notice of a meeting of stockholders, the latter shall prevail.

§ 6006. Waivers of notice. Notice of meeting need not be given to any stockholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any stockholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

§ 6007. List of stockholders at meetings. A list of stockholders as of the record date, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of stockholders upon the request thereat or prior thereto of any stockholder. If the right to vote at any meeting is challenged, the inspectors of election, or person presiding thereat, shall require such list of stockholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be stockholders entitled to vote thereat may vote at such meeting.

§ 6008. Quorum of stockholders. 1. The holders of a majority of the shares entitled to vote thereat shall constitute a quorum at a meeting of stockholders for the transaction of any business, provided that when a specified item of business is required to be voted on by a class or series, voting as a class, the holders of a majority of the shares of

such class or series shall constitute a quorum for the transaction of such specified item of business.

2. The organization certificate or by-laws may provide for any lesser quorum not less than one-third of the shares entitled to vote, and the organization certificate may, under section six thousand sixteen, provide for a greater quorum.

3. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any stockholders.

4. The stockholders present may adjourn the meeting despite the absence of a quorum.

§ 6009. Proxies. 1. Every stockholder entitled to vote at a meeting of stockholders or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy.

2. Every proxy must be signed by the stockholder or his attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the stockholder executing it, except as otherwise provided in this section.

3. The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the stockholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of stockholders.

4. Except when other provision shall have been made by written agreement between the parties, the record holder of shares which are held by a pledgee as security or which belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to the pledgor or to such owner of such shares a proxy to vote or take other action thereon.

5. A stockholder shall not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as authorized in this section and section six thousand twenty.

6. A proxy which is entitled "irrevocable proxy" and which states that it is irrevocable, is irrevocable when it is held by any of the following or a nominee of any of the following:

(a) A pledgee;

(b) A person who has purchased or agreed to purchase the shares.

7. Notwithstanding a provision in a proxy, stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed. This paragraph does not affect the duration of a proxy under subdivision two.

8. A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability is noted conspicuously on the face or back of the certificate representing such shares.

9. No director, officer, clerk, teller or bookkeeper of a corporation shall act as proxy at any meeting of such corporation.

§ 6010. Selection of inspectors at stockholders' meetings. Unless otherwise provided in the by-laws, the board, in advance of any stockholders' meeting, may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a stockholders' meeting may, and on the request of any stockholder entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such

meeting with strict impartiality and according to the best of his ability. No director or officer of the corporation shall be eligible to act as an inspector of an election of directors of such corporation.

§ 6011. Duties of inspectors at stockholders' meetings. The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation.

§ 6012. Qualification of voters. 1. Every stockholder of record shall be entitled at every meeting of stockholders to one vote for every share standing in his name on the record of stockholders, unless otherwise provided in the organization certificate.

2. Treasury shares and shares held by another corporation of any type or kind, whether or not formed under any law of this state, if a majority of the shares entitled to vote in the election of directors of such other corporation is beneficially owned by the corporation, shall not be shares entitled to vote or to be counted in determining the total number of outstanding shares.

3. Shares held by an administrator, executor, guardian, conservator, committee, or other fiduciary, except a trustee, may be voted by him, either in person or by proxy, without transfer of such shares into his

name. Shares held by a trustee may be voted by him, either in person or by proxy, only after the shares have been transferred into his name as trustee or into the name of his nominee. Shares of its own stock held by a trust company as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner in the election of directors unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted, and shares of its own stock held by a trust company and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee.

4. Shares held by or under the control of a receiver may be voted by him without the transfer thereof into his name if authority so to do is contained in an order of the court by which such receiver was appointed.

5. A stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee.

6. Redeemable shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

7. Shares standing in the name of another corporation of any type or kind, whether or not formed under any law of this state, may be voted by such officer, agent or proxy as the by-laws of such corporation may provide, or, in the absence of such provision, as the board of such corporation may determine.

8. When shares are registered on the record of stockholders of a

corporation in the name of, or have passed by operation of law or by virtue of any deed of trust or other instrument to two or more fiduciaries, and dispute arises among them in respect to voting thereon, such shares may be voted by a majority of such fiduciaries, and in such manner and for such purpose as such majority shall direct, and if the fiduciaries shall be equally divided as to voting such shares, any court having jurisdiction of their accounts, upon petition by any of such fiduciaries or by any party in interest, may direct the voting of such shares for the best interest of the beneficiaries. This subdivision shall not apply in any case where the instrument or order of the court appointing such fiduciaries shall otherwise direct how such shares shall be voted. Nor shall this subdivision apply to any fiduciaries appointed by a court prior to May sixth, nineteen hundred eighteen, or by last will and testament of a decedent, whose death occurred prior to such date, or by deed of trust or other instrument made prior to May first, nineteen hundred fifty-six, nor to shares at any time transferred to or held by fiduciaries so appointed.

9. Notwithstanding the foregoing subdivisions, a corporation shall be protected in treating the persons in whose names shares stand on the record of stockholders as the owners thereof for all purposes.

§ 6013. Limitations on right to vote. The organization certificate may provide, except as limited by section five thousand one, either absolutely or conditionally, that the holders of any designated class or series of shares shall not be entitled to vote, or it may otherwise limit or define the respective voting powers of the several classes or series of shares, and, except as otherwise provided in this chapter, such provisions of such certificate shall prevail, according to their tenor, in all elections and in all proceedings, over the provisions of this chapter which authorize any action by the stockholders.

§ 6014. Vote of stockholders. 1. Directors shall, except as otherwise required by this article or by the organization certificate as permitted by this article, be elected by a plurality of the votes cast at a

meeting of stockholders by the holders of shares entitled to vote in the election.

2. Whenever any corporate action, other than the election of directors, is to be taken under this chapter by vote of the stockholders, it shall, except as otherwise required by this chapter or by the organization certificate as permitted by this article, be authorized by a majority of the votes cast at a meeting of stockholders by the holders of shares entitled to vote thereon.

§ 6015. Written consent of stockholders, subscribers or incorporators without a meeting. 1. Whenever under this chapter stockholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all outstanding shares entitled to vote thereon. This subdivision shall not be construed to alter or modify the provisions of any section or any provision in an organization certificate not inconsistent with this chapter under which the written consent of the holders of less than all outstanding shares is sufficient for corporate action.

2. Written consent thus given by the holders of all outstanding shares entitled to vote shall have the same effect as a unanimous vote of stockholders and any certificate with respect to the authorization or taking of any such action which is to be delivered to the superintendent shall recite that the authorization was by unanimous written consent.

3. When there are no stockholders of record, such action may be taken on the written consent signed by a majority in interest of the subscribers for shares whose subscriptions have been accepted or their successors in interest or, if no subscription has been accepted, on the written consent signed by a majority of the incorporators. If any incorporator dies or is for any reason unable to act, the other or others may act. If there is no incorporator able to act, any person for whom an incorporator was acting as agent may act in his stead, or if such other person also dies or is for any reason unable to act, his

legal representative may act.

§ 6016. Greater requirement as to quorum and vote of stockholders. 1. The organization certificate may contain provisions specifying either or both of the following:

(a) That the proportion of shares, or the proportion of shares of any class or series thereof, the holders of which shall be present in person or by proxy at any meeting of stockholders in order to constitute a quorum for the transaction of any business or of any specified item of business, including amendments to the organization certificate, shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(b) That the proportion of votes of the holders of shares, or of the holders of shares of any class or series thereof, that shall be necessary at any meeting of stockholders for the transaction of any business or of any specified item of business, including amendments to the organization certificate, shall be greater than the proportion prescribed by this chapter in the absence of such provision.

2. An amendment of the organization certificate which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorized at a meeting of stockholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares or class or series of shares, as may be provided specifically in the organization certificate for adding, changing or striking out a provision permitted by this section.

3. If the organization certificate of any corporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

§ 6017. Voting by class or classes of shares. 1. The organization certificate may contain provisions specifying that any class or classes

of shares or of any series thereof shall vote as a class in connection with the transaction of any business or of any specified item of business at a meeting of stockholders, including amendments to the organization certificate.

2. Where voting as a class is provided in the organization certificate, it shall be by the proportionate vote so provided or, if no proportionate vote is provided, in the election of directors, by a plurality of the votes cast at such meeting by the holders of shares of such class entitled to vote in the election, or for any other corporate action, by a majority of the votes cast at such meeting by the holders of shares of such class entitled to vote thereon.

3. Such voting by class shall be in addition to any other vote, including vote by class, required by this chapter and by the organization certificate as permitted by this article.

§ 6018. Cumulative voting. The organization certificate of any corporation may provide that in all elections of directors of such corporation each stockholder shall be entitled to as many votes as shall equal the number of votes which, except for such provisions as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit, which right, when exercised, shall be termed cumulative voting.

§ 6019. Powers of supreme court respecting elections. Upon the petition of any stockholder aggrieved by an election, and upon notice to the persons declared elected thereat, the corporation and such other persons as the court may direct, the supreme court at a special term held within the judicial district where the office of the corporation is located shall forthwith hear the proofs and allegations of the parties, and confirm the election, order a new election, or take such other

action as justice may require.

§ 6020. Agreements as to voting. An agreement between two or more stockholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

§ 6021. Preemptive rights. 1. As used in this section, the term:

(a) "Unlimited dividend rights" means the right without limitation as to amount either to all or to a share of the balance of current or liquidating dividends after the payment of dividends on any shares entitled to a preference.

(b) "Equity shares" means shares of any class, whether or not preferred as to dividends or assets, which have unlimited dividend rights.

(c) "Voting rights" means the right to vote for the election of one or more directors, excluding a right so to vote which is dependent on the happening of an event specified in the organization certificate which would change the voting rights of any class of shares.

(d) "Voting shares" means shares of any class which have voting rights.

(e) "Preemptive right" means the right to purchase shares or other securities to be issued, as such right is defined in this section.

(f) "New shares or securities" means new equity shares of any class or any shares or other securities convertible into equity shares of any class.

2. The preemptive rights provided for in subdivision three of this section shall not apply to new shares or securities of any corporation whose organization certificate is approved on or after the effective date of this subdivision, unless expressly provided for in the organization certificate of such corporation, which may incorporate by reference the preemptive rights set forth in this section, or further modify such preemptive rights.

3. Except as otherwise provided in the organization certificate, and except as provided in this section, in case of the proposed issuance by the corporation of new shares or securities:

(a) if the issuance of the new shares or securities would adversely affect the unlimited dividend rights of the holders of existing equity shares of any class, such holders shall have the right during a reasonable time and on reasonable conditions, both to be fixed by the board, to purchase such new shares or securities in such proportions as shall be determined as provided in this section; and

(b) if such new shares or securities are voting shares of any class and the issuance of the new shares or securities would adversely affect the voting rights of the holders of existing shares of any class, such holders shall have the right during a reasonable time and on reasonable conditions, both to be fixed by the board, to purchase such new shares or other securities in such proportions as shall be determined as provided in this section.

4. The preemptive right provided for in subdivision three of this section shall entitle stockholders having such rights to purchase the shares or other securities to be offered for sale as nearly as practicable in such proportions as would, if such preemptive right were exercised, preserve the relative unlimited dividend rights and voting rights of such holders and at a price or prices not less favorable than the price or prices at which such shares or other securities are proposed to be offered for sale to others, without deduction of such reasonable expenses of and compensation for the sale, underwriting or purchase of such shares or other securities by underwriters or dealers as may lawfully be paid by the corporation. In case each of the shares entitling the holders thereof to preemptive rights does not confer the same unlimited dividend right or voting right, the board shall apportion the shares or other securities to be offered for sale among the stockholders having preemptive rights to purchase them in such proportions as in the opinion of the board shall preserve as far as practicable the relative unlimited dividend rights and voting rights of the holders at the time of such offering. The apportionment made by the board shall, in the absence of fraud or bad faith, be binding upon all

stockholders.

5. Unless otherwise provided in the organization certificate, shares or other securities offered for sale shall not be subject to preemptive rights under subdivisions two and three of this section if they:

(a) Are to be issued by the board to effect a merger or offered for consideration other than cash;

(b) Are to be issued or subjected to options under section one hundred forty-a of this chapter;

(c) Are to be issued to satisfy conversion rights theretofore granted by the corporation;

(d) Are treasury shares; or

(e) Are part of the shares or other securities of the corporation authorized in its original organization certificate and are issued, sold or optioned within two years from the date of filing such certificate.

6. Stockholders of record entitled to preemptive rights on the record date fixed by the board under section six thousand four, or, if no record date is fixed, then on the record date determined under section six thousand four, and no others shall be entitled to the right defined in this section.

7. The board shall cause to be given to each stockholder entitled to purchase shares or other securities in accordance with this section, a notice directed to him in the manner provided in section six thousand five setting forth the time within which and the terms and conditions upon which the stockholder may purchase such shares or other securities and also the apportionment made of the right to purchase among the stockholders entitled to preemptive rights. Such notice shall be given personally or by mail at least fifteen days prior to the expiration of the period during which the stockholder shall have the right to purchase. All stockholders entitled to preemptive rights to whom notice shall have been given as aforesaid shall be deemed conclusively to have had a reasonable time in which to exercise their preemptive rights.

8. Shares or other securities which have been offered to stockholders having preemptive rights to purchase and which have not been purchased

by them within the time fixed by the board may thereafter, for a period of not exceeding one year following the expiration of the time during which stockholders might have exercised such preemptive rights, be issued or sold to any other person or persons at a price, without deduction of such reasonable expenses of and compensation for the sale, underwriting or purchase of such shares by underwriters or dealers as may lawfully be paid by the corporation, not less than that at which they were offered to such stockholders. Any such shares or other securities not so issued or sold to others during such one year period shall thereafter again be subject to the preemptive rights of stockholders.

9. Except as otherwise provided in the organization certificate and except as provided in this section, no holder of any shares of any class shall as such holder have any preemptive right to purchase any other shares or securities of any class which at any time may be sold or offered for sale by the corporation.

§ 6022. Procedure to enforce stockholder's right to receive payment for shares. 1. A stockholder intending to enforce his right under a section of this chapter to receive payment for his shares if the proposed corporate action referred to therein is taken shall file with the corporation, before the meeting of stockholders at which the action is submitted to a vote, or at such meeting but before the vote, written objection to the action. The objection shall include a statement that he intends to demand payment for his shares if the action is taken. Such objection is not required from any stockholder to whom the corporation did not give notice of such meeting in accordance with this chapter or where the proposed action is authorized by written consent of stockholders without a meeting.

2. Within ten days after the stockholders' authorization date, which term as used in this section means the date on which the stockholders' vote authorizing such action was taken, or the date on which such consent without a meeting was obtained from the requisite stockholders, the corporation shall give written notice of such authorization or

consent by registered mail to each stockholder who filed written objection or from whom written objection was not required, excepting any who voted for or consented in writing to the proposed action.

3. Within twenty days after the giving of notice to him, any stockholder to whom the corporation was required to give such notice and who elects to dissent shall file with the corporation a written notice of such election, stating his name and residence address, the number and classes of shares as to which he dissents and a demand for payment of the fair value of his shares.

4. A stockholder may not dissent as to less than all of the shares, held by him of record, that he owns beneficially. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner held of record by such nominee or fiduciary.

5. Upon filing a notice of election to dissent, the stockholder shall cease to have any of the rights of a stockholder except the right to be paid the fair value of his shares and any other rights under this section. Withdrawal of a notice of election shall require the written consent of the corporation. If a notice of election is withdrawn, or the proposed corporate action is abandoned or rescinded, or a court shall determine that the stockholder is not entitled to receive payment for his shares, or the stockholder shall otherwise lose his dissenter's rights, he shall not have the right to receive payment for his shares and he shall be reinstated to all his rights as a stockholder as of the filing of his notice of election, including any intervening preemptive rights and the right to payment of any intervening dividend or other distribution or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the corporation, the fair value thereof in cash as determined by the board as of the time of such expiration or completion, but without prejudice otherwise to any corporate proceedings that may have been taken in the interim.

6. At the time of filing the notice of election to dissent or within one month thereafter the stockholder shall submit the certificates

representing his shares to the corporation, or to its transfer agent, which shall forthwith note conspicuously thereon that a notice of election has been filed and shall return the certificates to the stockholder or other person who submitted them on his behalf. Any stockholder who fails to submit his certificates for such notation as herein specified shall, at the option of the corporation exercised by written notice to him within forty-five days from the date of filing of such notice of election to dissent, lose his dissenter's rights unless a court, for good cause shown, shall otherwise direct. Upon transfer of a certificate bearing such notation, each new certificate issued therefor shall bear a similar notation together with the name of the original dissenting holder of the shares and a transferee shall acquire no rights in the corporation except those which the original dissenting stockholder had after filing his notice of election.

7. Within seven days after the expiration of the period within which stockholders may file their notices of election to dissent, or within seven days after the proposed corporate action is consummated, whichever is later, the corporation or, in the case of a merger, the receiving corporation, shall make a written offer by registered mail to each stockholder who has filed such notice of election to pay for his shares at a specified price which the corporation considers to be their fair value. Such offer shall be made at the same price per share to all dissenting stockholders of the same class, or if divided into series, of the same series and shall be accompanied by a balance sheet of the corporation whose shares the dissenting stockholder holds as of the latest available date, which shall not be earlier than twelve months before the making of such offer, and a profit and loss statement or statements for not less than a twelve month period ended on the date of such balance sheet or, if the corporation was not in existence throughout such twelve month period, for the portion thereof during which it was in existence. If within thirty days after the making of such offer, the corporation making the offer and any stockholder agree upon the price to be paid for his shares, payment therefor shall be made within sixty days after the making of such offer upon the surrender of the certificates representing such shares.

8. The following procedure shall apply if the corporation fails to make such offer within such period of seven days, or if it makes the offer and any dissenting stockholder or stockholders fail to agree with it within the period of thirty days thereafter upon the price to be paid for their shares:

(a) The corporation or, in the case of a merger, the receiving corporation shall, within twenty days after the expiration of whichever is applicable of the two periods last mentioned, institute a special proceeding in the supreme court in the judicial district in which the office of the corporation is located to determine the rights of dissenting stockholders and to fix the fair value of their shares.

(b) If the corporation fails to institute such proceeding within such period of twenty days, any dissenting stockholder may institute such proceeding for the same purpose not later than thirty days after the expiration of such twenty day period. If such proceeding is not instituted within such thirty day period, all dissenter's rights shall be lost unless the supreme court, for good cause shown, shall otherwise direct.

(c) All dissenting stockholders, excepting those who, as provided in subdivision seven, have agreed with the corporation upon the price to be paid for their shares, shall be made parties to such proceeding, which shall have the effect of an action quasi in rem against their shares. The corporation shall serve a copy of the petition in such proceeding upon each dissenting stockholder who is a resident of this state in the manner provided by law for the service of a summons, and upon each nonresident dissenting stockholder either by registered mail and publication, or in such other manner as is permitted by law. The jurisdiction of the court shall be plenary and exclusive.

(d) The court shall determine whether each dissenting stockholder, as to whom the corporation requests the court to make such determination, is entitled to receive payment for his shares. If the corporation does not request any such determination or if the court finds that any dissenting stockholder is so entitled, it shall proceed to fix the value of the shares, which, for the purposes of this section, shall be the fair value as of the close of business on the day prior to the stockholders' authorization date, excluding any appreciation or depreciation directly or indirectly induced by such corporate action or

its proposal. The court may, if it so elects, appoint an appraiser to receive evidence and recommend a decision on the question of fair value. Such appraiser shall have the power, authority and duties specified in the order appointing him, or any amendment thereof.

(e) The final order in the proceeding shall be entered against the corporation in favor of each dissenting stockholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined.

(f) The final order shall include an allowance for interest at such rate as the court finds to be equitable, from the stockholders' authorization date to the date of payment. If the court finds that the refusal of any stockholder to accept the corporate offer of payment for his shares was arbitrary, vexatious or otherwise not in good faith, no interest shall be allowed to him.

(g) The costs and expenses of such proceeding shall be determined by the court and shall be assessed against the corporation, or, in the case of a merger, the receiving corporation, except that all or any part of such costs and expenses may be apportioned and assessed, as the court may determine, against any or all of the dissenting stockholders who are parties to the proceeding if the court finds that their refusal to accept the corporate offer was arbitrary, vexatious or otherwise not in good faith. Such expenses shall include reasonable compensation for and the reasonable expenses of the appraiser, but shall exclude the fees and expenses of counsel for and experts employed by any party unless the court, in its discretion, awards such fees and expenses. In exercising such discretion, the court shall consider any of the following: (A) that the fair value of the shares as determined materially exceeds the amount which such corporation offered to pay; (B) that no offer was made by such corporation; and (C) that such corporation failed to institute the special proceeding within the period specified therefor.

(h) Within sixty days after final determination of the proceeding, the corporation or, in the case of a merger, the receiving corporation shall pay to each dissenting stockholder the amount found to be due him, upon surrender of the certificates representing his shares.

9. Shares acquired by the corporation upon the payment of the agreed value therefor or of the amount due under the final order, as provided

in this section, shall be dealt with as provided in section five thousand fourteen, except that, in the case of a merger, they shall be disposed of as provided in the plan of merger or consolidation.

10. The enforcement by a stockholder of his right to receive payment for his shares in the manner provided herein shall exclude the enforcement by such stockholder of any other right to which he might otherwise be entitled by virtue of share ownership, except as provided in subdivision five, and except that this section shall not exclude the right of such stockholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is illegal or fraudulent as to him.

11. Except as otherwise expressly provided in this section, any notice to be given by a corporation to a stockholder under this section shall be given in the manner provided in section six thousand five.

§ 6023. Books and records; right of inspection, prima facie evidence. 1. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its stockholders, board and executive committee, if any, and shall keep at the office of the corporation in this state or at the office of its transfer agent or registrar in this state, a record containing the names and addresses of all stockholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof. Any of the foregoing minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time.

2. Any person who shall have been a stockholder of record of a corporation for at least six months immediately preceding his demand, or any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares, upon at least five days' written demand shall have the right to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its stockholders and record of stockholders and to

make extracts therefrom. If an investment company has failed to pay wages as defined in subdivision two of section six thousand twenty-nine, any person to whom a stockholder may be liable thereunder upon at least five days' written demand shall have the right to examine in person or by agent or attorney during usual business hours, the record of stockholders and to make extracts therefrom.

3. An inspection authorized by subdivision two may be denied to such stockholder or other person upon his refusal to furnish to the corporation, its transfer agent or registrar an affidavit that such inspection is not desired for a purpose which is in the interest of a business or object other than the business of the corporation and that he has not within five years sold or offered for sale any list of stockholders of any corporation of any type or kind, whether or not formed under any law of this state, or aided or abetted any person in procuring any such record of stockholders for any such purpose. The enforcement of liability of an investment company under section six thousand twenty-nine shall not be an object other than the business of the corporation.

4. Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the minutes of the proceedings of its stockholders or the record of stockholders as herein provided, the person making the demand for inspection may apply to the supreme court in the judicial district where the office of the corporation is located, upon such notice as the court may direct, for an order directing the corporation, its officer or agent to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper.

5. Nothing in this section contained shall impair the power of courts to compel the production for examination of the books and records of a corporation when not inconsistent with any other provision of this

chapter.

6. The minutes of the proceedings of stockholders, record of stockholders and the books and records of account of the corporation specified in subdivision one shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any action or special proceeding against such corporation or any of its officers, directors or stockholders.

§ 6024. Infant securityholders. 1. A corporation may treat an infant who holds shares, capital notes or debentures of such corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments and distributions, to vote or express consent or dissent, in person or by proxy, and to make elections and exercise rights relating to such shares, capital notes or debentures, unless, in the case of shares, the corporate officer responsible for maintaining the list of stockholders or the transfer agent of the corporation or, in the case of capital notes or debentures, the paying officer or agent has received written notice that such holder is an infant.

2. An infant holder of shares, capital notes or debentures of a corporation who has received or empowered others to receive payments or distributions, voted or expressed consent or dissent, or made an election or exercised a right relating thereto, shall have no right thereafter to disaffirm or avoid, as against the corporation, any such act on his part, unless prior to such receipt, vote, consent, dissent, election or exercise, as to shares, the corporate officer responsible for maintaining the list of stockholders or its transfer agent, or in the case of capital notes or debentures, the paying officer or agent had received written notice that such holder was an infant.

3. This section does not limit any other statute which authorizes any corporation to deal with an infant or limits the right of an infant to disaffirm his acts.

§ 6025. Stockholders' derivative action brought in the right of the corporation to procure a judgment in its favor. 1. An action may be brought in the right of a corporation to procure a judgment in its favor, by a holder of shares or of a beneficial interest in such shares.

2. In any such action, it shall be made to appear that the plaintiff is such a holder at the time of bringing the action and that he was such a holder at the time of the transaction of which he complains, or that his shares or his interest therein devolved upon him by operation of law.

3. In any such action, the complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reasons for not making such effort.

4. Such action shall not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action. If the court shall determine that the interest of the stockholders of any class or classes thereof will be substantially affected by such discontinuance, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the stockholders or class or classes thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

5. If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as the result of a judgment, compromise or settlement of an action or a claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney's fees, and shall direct him or them to account to the corporation for the remainder of the proceeds so received by him or

them. This subdivision shall not apply to any judgment rendered for the benefit of injured stockholders only and limited to a recovery of the loss or damage sustained by them.

§ 6026. Security for expenses in stockholders' derivative action brought in the right of the corporation to procure a judgment in its favor. In any action specified in section six thousand twenty-five, if the plaintiff or plaintiffs hold less than five percent of any class of the outstanding shares or hold a beneficial interest in shares representing less than five percent of any class of such shares, then unless the shares and beneficial interest of such plaintiff or plaintiffs have a fair value in excess of fifty thousand dollars, the corporation in whose right such action is brought shall be entitled at any stage of the proceedings before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorney's fees, which may be incurred by it in connection with such action and by the other parties defendant in connection therewith for which the corporation may become liable under this article, under any contract or otherwise under law, to which the corporation shall have recourse in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or excessive.

§ 6029. Liability of stockholders for wages due to laborers, servants or employees. 1. The ten largest stockholders, as determined by the fair value of their beneficial interest as of the beginning of the period on which the unpaid services referred to in this section are performed, of every investment company, the shares of which are not listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, shall jointly and severally be personally liable for all debts, wages or salaries due and owing to any of its laborers, servants

or employees other than contractors, for services performed by them for such investment company. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give notice in writing to such stockholder that he intends to hold him liable under this section. Such notice shall be given within ninety days after termination of such services, except that if, within such period, the laborer, servant or employee demands an examination of the record of stockholders under subdivision two of section six thousand twenty-three, such notice may be given within sixty days after he has been given the opportunity to examine the record of stockholders. An action to enforce such liability shall be commenced within ninety days after the return of an execution unsatisfied against the investment company upon a judgment recovered against it for such services.

2. For the purposes of this section, wages or salaries shall mean all compensation and benefits payable by an employer to or for the account of the employee for personal services rendered by such employee. These shall specifically include but not be limited to salaries, overtime, vacation, holiday and severance pay; employer contributions to or payments of insurance or welfare benefits; employer contributions to pension or annuity funds; and any other moneys properly due or payable for services rendered by such employee.

3. A stockholder who has paid more than his pro rata share under this section shall be entitled to contribution pro rata from the other stockholders liable under this section with respect to the excess so paid, over and above his pro rata share, and may sue them jointly or severally or any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this subdivision, "pro rata" means in proportion to beneficial share interest. Before a stockholder may claim contribution from other stockholders under this subdivision, he shall, unless they have been given notice by a laborer, servant or employee under subdivision one, give them notice in writing that he intends to hold them so liable to him. Such notice shall be given by him within twenty days after the date that notice was given to him by a laborer, servant or employee under subdivision one.

TITLE 6-A

Membership In A Limited Liability Investment Company Or A Limited Liability Trust Company

Section 6050. Company membership.

§ 6050. Company membership. The members of a limited liability investment company or limited liability trust company shall have all of the rights and obligations as set forth in the limited liability company law, except as otherwise provided in this chapter.

TITLE 7

Directors and Officers

Section 7001. Board of directors; qualifications and disqualifications.
7002. Number of directors; definition of "entire board".
7003. Election and tenure of directors.
7004. Classification of directors.
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7011. Notice of board meetings; waiver; adjournment.
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7018. Nonexclusivity of statutory provisions for indemnification of directors and officers.
7019. Authorization for indemnification of directors and officers.

7020. Payment of indemnification other than by court award.
7021. Indemnification of directors and officers by a court.
7022. Other provisions affecting indemnification of directors and officers.
7023. Insurance for indemnification of directors and officers.

§ 7001. Board of directors; qualifications and disqualifications. 1. The affairs of every corporation shall be managed by a board of directors, each of whom shall be at least eighteen years of age.

2. (a) At least one-half of the directors of a bank or trust company, stock-form savings bank, or stock-form savings and loan association must be citizens of the United States at the time of their election and during their continuance in office.

(b) At least one-third of the directors of a safe deposit company must be citizens of the United States and domiciliaries of this state at the time of their election and during their continuance in office.

(c) At least one of the directors of an investment company shall be a citizen of the United States and a resident of this state.

3. Each director of an investment company shall be a stockholder of such company unless otherwise provided in the organization certificate, or in a by-law adopted by a stockholders' meeting.

4. No more than one-third of the directors of any bank or trust company, stock-form savings bank, or stock-form savings and loan association with capital stock, surplus fund and undivided profits in an amount in excess of that determined by regulation of the superintendent pursuant to this subdivision shall be active officers or employees of the corporation. Each person lawfully serving as director of such a corporation at the time such regulation takes effect, or any amount as determined therein is modified, and who is then an active officer or employee of the corporation, may continue to serve as a director until the expiration of the term for which such person was elected, notwithstanding the fact that by reason thereof more than one-third of the directors of the corporation are active officers or employees

thereof.

5. Every person lawfully serving as a director of a bank or trust company, stock-form savings bank, or stock-form savings and loan association at the time this act takes effect, who is not a citizen of the United States, may continue to serve as a director until the expiration of the term for which he was elected notwithstanding such lack of citizenship, and if otherwise qualified shall be eligible for re-election as a director of the bank or trust company, stock-form savings bank, or stock-form savings and loan association of which he is a director at the time this act takes effect.

6. The organization certificate or the by-laws of a corporation may prescribe other qualifications for directors.

§ 7002. Number of directors; definition of "entire board". 1. (a) The number of directors constituting the entire board of every bank and trust company, stock-form savings bank, and stock-form savings and loan association shall be not less than five nor more than fifteen, except that any such corporation with capital stock, surplus funds and undivided profits of two million dollars or more may have not less than seven nor more than twenty, and any such corporation with capital stock, surplus funds and undivided profits of five million dollars or more may have not less than seven nor more than thirty directors. The superintendent may in his or her discretion permit (i) a bank or trust company, stock-form savings bank, or stock-form savings and loan association having less than five million dollars capital stock, surplus funds and undivided profits, to have not more than thirty directors, and (ii) a bank or trust company, stock-form savings bank, or stock-form savings and loan association which is a subsidiary, as defined in subdivision five of section one hundred forty-one of this chapter, to have less than the minimum number of directors provided herein.

(b) The number of directors constituting the entire board shall be not less than five nor more than thirteen in the case of a safe deposit company, and not less than five in the case of an investment company.

2. If the organization certificate does not specify the number of directors, the by-laws may prescribe the manner in which the number is to be determined and the manner in which the number may be changed within the maximum and minimum limitations prescribed in the organization certificate or an amendment thereof.

3. As used in this article, the term "entire board" means the total number of directors which a corporation would have if there were no vacancies.

§ 7003. Election and tenure of directors. 1. At each annual meeting of stockholders of a corporation, the stockholders shall elect directors to hold office until the next annual meeting except as authorized by section seven thousand four of this article. The organization certificate may provide for the election of one or more directors by the holders of the stock of any class or series, voting as a class.

2. Each director shall, unless sooner removed or disqualified, hold office until the expiration of the term for which he is elected, and until his successor has been elected and qualified.

§ 7004. Classification of directors. 1. The board of directors of any bank or trust company, stock-form savings bank, or stock-form savings and loan association may be classified into three classes as nearly equal as may be, with the terms of office of one class expiring each year, and such corporations may make provisions for such classification in their by-laws.

2. In the case of corporations other than banks and trust companies, stock-form savings banks, and stock-form savings and loan associations:

(a) The organization certificate or the specific provisions of a by-law adopted by the stockholders may provide that the directors be divided into either two, three or four classes. All classes shall be as nearly equal in number as possible, and no class shall include less than three directors. The terms of office of the directors initially

classified shall be as follows: that of the first class shall expire at the next annual meeting of stockholders, the second class at the second succeeding annual meeting, the third class, if any, at the third succeeding annual meeting, and the fourth class, if any, at the fourth succeeding annual meeting.

(b) At each annual meeting after such initial classification, directors to replace those whose terms expire at such annual meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, the third succeeding annual meeting if there are three classes, or the fourth succeeding annual meeting if there are four classes.

(c) If directors are classified and the number of directors is thereafter changed:

(1) Any newly created directorships or any decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

(2) When the number of directors is increased by the board and any newly created directorships are filled by the board, there shall be no classification of the additional directors until the next annual meeting of stockholders.

§ 7005. Vacancies and newly created directorships. 1. In the case of banks and trust companies, stock-form savings banks, and stock-form savings and loan associations:

(a) The persons named in the organization certificate as the first board may elect such additional number of directors as is provided for by the organization certificate.

(b) All vacancies in the office of director, including newly created directorships resulting from an increase in the number of directors, shall be filled by election by the stockholders except as hereinafter provided in this paragraph. Vacancies not exceeding one-third of the entire board may be filled by the affirmative vote of a majority of the directors then in office, and the directors so elected shall hold office for the balance of the unexpired term; provided, however, the superintendent shall have the power to determine by regulation the conditions under which vacancies in the office of director may be left

unfilled until the next annual election. Such regulations shall specify the maximum number of vacancies which may be left unfilled with the superintendent's permission, and shall require the superintendent, in granting such permission, to take into account (i) whether such banking organization is subject to adequate supervisory oversight by a bank holding company (as defined in section one hundred thirty or one hundred forty-one of this chapter), parent bank, or similar entity, (ii) the financial condition of such banking organization, (iii) whether it holds insured deposits, and (iv) the provisions of section ten of this chapter.

(c) Each vacancy, including newly created but unfilled directorships resulting from an increase in the number of directors, in the office of director and each reduction in the number of directors shall be reported to the superintendent within ten days after such vacancy occurs or such reduction is effected. Each election by the board to fill any such vacancy shall be likewise reported together with the name, address and occupation of the person so elected.

2. In the case of corporations other than banks and trust companies, stock-form savings banks, and stock-form savings and loan associations:

(a) Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors without cause may be filled by vote of a majority of the directors then in office, although less than a quorum exists, unless the organization certificate or the by-laws provide that such newly created directorships or vacancies shall be filled by vote of the stockholders.

(b) Unless the organization certificate or the specific provisions of a by-law adopted by the stockholders provide that the board shall fill vacancies occurring in the board by reason of the removal of directors without cause, such vacancies may be filled only by vote of the stockholders.

(c) A director elected to fill a vacancy shall be elected to hold office for the unexpired term of his predecessor.

(d) Vacancies in its board occasioned by resignations, deaths or other causes, including newly created but unfilled directorships resulting from an increase in the number of directors, shall be reported by each

corporation to the superintendent within ten days after the event; and the corporation shall likewise report each election by the board to fill such vacancy with the name, address and occupation of the person elected and the name of the person whose place he has been elected to fill.

§ 7006. Removal of directors. 1. Any or all of the directors may be removed for cause by vote of the stockholders. The organization certificate or the specific provisions of a by-law adopted by the stockholders may provide for such removal by action of the board, except in the case of any director elected by cumulative voting, or by the holders of the shares of any class or series, voting as a class, when so entitled by the provisions of the organization certificate.

2. If the organization certificate or the by-laws so provide, any or all of the directors may be removed without cause by vote of the stockholders.

3. The removal of directors, with or without cause, as provided in subdivisions one and two, is subject to the following:

(a) In the case of a corporation having cumulative voting, no director may be removed when the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board, or the entire class of directors of which he is a member, were then being elected; and

(b) When by the provisions of the organization certificate the holders of the shares of any class or series, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series, voting as a class.

4. This section does not affect the powers of the superintendent under section forty-one of this chapter.

§ 7007. Quorum of directors. 1. Subject to subdivision two of this

section, unless a greater proportion is required by the organization certificate, a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business, except that the organization certificate or the by-laws may fix the quorum at less than a majority of the entire board but not less than one-third thereof.

2. Notwithstanding any provision contained in its organization certificate, a bank or trust company, stock-form savings bank, or stock-form savings and loan association may provide in its by-laws the number of directors necessary to constitute a quorum at meetings of its board. Such number shall not be less than five nor less than one-third of the entire board except that a bank or trust company, stock-form savings bank, or stock-form savings and loan association having not more than seven directors may provide for a quorum of not less than a majority of such directors.

§ 7008. Action by the board. 1. Any reference in this chapter to corporate action to be taken by the board, other than the approval required by section five hundred eleven of this chapter, shall mean such action at a meeting of the board. Except as otherwise provided in this chapter, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board.

2. When authorized by the organization certificate of incorporation or the by-laws, any one or more members of the board or any committee thereof may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

3. The superintendent shall have the power to determine by regulation the circumstances under which any action required or permitted to be taken at any meeting of the board of directors of a banking organization

may be taken without a meeting if all members of the board consent thereto in writing and the resolution and written consents thereto are filed with the minutes of the proceedings of the board.

§ 7009. Greater requirement as to quorum and vote of directors. Subject to subdivision two of section seven thousand seven with respect to banks and trust companies, stock-form savings banks, and stock-form savings and loan associations:

1. The organization certificate may contain provisions specifying either or both of the following:

(a) That the proportion of directors that shall constitute a quorum for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(b) That the proportion of votes of directors that shall be necessary for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by this chapter in the absence of such provision.

2. An amendment of the organization certificate which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorized at a meeting of stockholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or of such greater proportion of shares, or class or series of shares, as may be provided specifically in the organization certificate for adding, changing or striking out a provision permitted by this section.

3. If the organization certificate of any corporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

§ 7010. Place and time of meetings of the board. 1. Meetings, regular

or special, of the board may be held at any place within or without this state, unless otherwise provided by the organization certificate or the by-laws.

2. The board of every bank and trust company, stock-form savings bank, and stock-form savings and loan association shall, after their due qualification, hold an annual meeting for the election of officers within twenty-five days after the annual meeting of stockholders. The board of every such corporation shall hold a regular monthly meeting at least ten times a year provided, however, that during any three consecutive calendar months the board shall meet at least twice. The executive committee shall meet at least once in each thirty day period during which the board does not meet.

3. Subject to subdivisions one and two, the time and place for holding meetings of the board may be fixed by or under the by-laws, or, if not so fixed, by the board.

§ 7011. Notice of board meetings; waiver; adjournment. 1. Unless otherwise provided by the by-laws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the by-laws or the board. Special meetings of the board shall be held upon notice to the directors.

2. The by-laws may prescribe what shall constitute notice of meeting of the board. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board, unless required by the by-laws.

3. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

4. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the

by-laws so provide, notice of any adjournment of a meeting of the board to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

§ 7012. Executive committee and other committees. 1. If the organization certificate or the by-laws so provide, the board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee consisting of at least five directors in the case of banks, trust companies, stock-form savings banks, and stock-form savings and loan associations and of at least three directors in the case of other corporations, and other committees each consisting of three or more directors, and each of which, to the extent provided in the resolution or in the organization certificate or by-laws, shall have all the authority of the board, except that no such committee shall have authority as to the following matters:

(a) The submission to stockholders of any action that needs stockholders' authorization under this chapter.

(b) The filling of vacancies in the board of directors or in any such committee.

(c) The fixing of compensation of the directors for serving on the board or on any committee.

(d) The amendment or repeal of the by-laws, or the adoption of new by-laws.

(e) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

(f) The taking of action which is expressly required by any provision of this chapter to be taken at a meeting of the board or by a specified proportion of the directors.

The board may designate one or more directors as alternate members of any such committee, who may replace any absent member or members at any meeting of such committee.

2. The board may appoint or provide for such other committees consisting of such directors, officers or other persons and having such

powers and functions in the management of the corporation as may be provided in the by-laws or, to the extent not so provided, by the board.

3. Each such committee shall serve at the pleasure of the board. The designation or appointment of, or making of provision for, any such committee and the delegation thereto of authority shall not alone relieve any director of his duty to the corporation under section seven thousand fifteen of this article.

§ 7013. Officers. 1. The board of every corporation, at the annual meeting of such board following each annual meeting of stockholders, shall elect a president (who, in the case of a bank or trust company, stock-form savings bank, or stock-form savings and loan association, shall be from its own number) and shall also elect one or more vice presidents and such other officers as are required by the by-laws to be elected annually. It may from time to time fill vacancies in the offices of any officers so elected, and elect or appoint such other officers as it may determine or as may be provided in the by-laws. Where a corporation shall elect a chief executive officer in lieu of a president, whose duties and functions are substantially the same as those of a president, such chief executive officer shall be deemed to be a president for purposes of this chapter.

2. Each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified.

3. Any two or more offices may be held by the same person, except the offices of president and secretary.

4. The board may require any officer to give security for the faithful performance of his duties.

5. All officers as between themselves and the corporation shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws or, to the extent not so

provided, by the board.

§ 7014. Removal of officers. 1. Any officer elected or appointed by the board may be removed by the board, or his authority suspended by it, with or without cause. Such removal or suspension without cause, however, shall be without prejudice to his contract rights. The election or appointment of an officer shall not be deemed of itself to create contract rights.

2. This section does not affect the powers of the superintendent under section forty-one of this chapter.

§ 7015. Duty of directors and officers; oath of directors. 1. Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. In discharging their duties, directors and officers, when acting in good faith, may rely upon (a) financial statements of the corporation represented to them to be correct by the president or the officer of the corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, and (b) reports required to be submitted to them by any provision of this chapter or prepared in the ordinary course of business by an officer or committee charged with the responsibility therefor. Nothing in this section shall be deemed to require the directors to perform functions vested in any committee, officer or other person pursuant to the provisions of any other section of this chapter.

2. In taking action, including, without limitation, action which may involve or relate to a change or potential change in the control of the banking institution, a director shall be entitled to consider, without limitation, (1) both the long-term and the short-term interests of the corporation and its shareholders and (2) the effects that the

corporation's actions may have in the short-term or in the long-term upon any of the following:

(i) the prospects for potential growth, development, productivity and profitability of the corporation;

(ii) the corporation's current employees;

(iii) the corporation's retired employees and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the corporation;

(iv) the corporation's customers and creditors; and

(v) the ability of the corporation to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it does business.

Nothing in this subdivision shall create any duties owed by any director to any person or entity to consider or afford any particular weight to any of the foregoing or abrogate any duty of the directors, either statutory or recognized by common law or court decisions. For purposes of this subdivision, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a banking institution whether through the ownership of voting stock of such banking institution, the ownership of voting stock of any company which possesses such power or otherwise.

3. Each director of a bank or trust company, stock-form savings bank, or stock-form savings and loan association, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent.

4. Each director of a safe deposit company, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation, and

will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable thereto. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent.

§ 7016. Liability of directors in certain cases. 1. Directors of a corporation, who vote for or concur in the declaration of any dividend or other distribution to stockholders which impairs its capital stock or while its capital stock is impaired, impairs any surplus fund or reserve which is not available for dividends under section one hundred ten, section three hundred nine-a or section five hundred seventeen of this chapter, or is contrary to any restrictions contained in its organization certificate, shall be jointly and severally liable to the corporation for the benefit of its creditors and stockholders, to the extent of any injury suffered by such persons, respectively, as a result of such action.

2. A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision one of this section is taken shall be presumed to have concurred in the action unless his dissent thereto shall be entered in the minutes of the meeting, or unless he shall submit his written dissent to the person acting as the secretary of the meeting before the adjournment thereof, or shall deliver or send by registered mail such dissent to the secretary of the corporation promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. A director who is absent from a meeting of the board, or any committee thereof, at which such action is taken shall be presumed to have concurred in the action unless he shall deliver or send by registered mail his dissent thereto to the secretary of the corporation or shall cause such dissent to be filed with the minutes of the proceedings of the board or committee within a reasonable time after learning of such action.

3. Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors

who voted for or concurred in the action upon which the claim is asserted.

4. Directors against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the corporation as a result of such claims, upon payment to the corporation of any amount of an improper dividend or distribution, to be subrogated to the rights of the corporation against stockholders who received such dividend or distribution with knowledge of facts indicating that it was within the scope of subdivision one of this section, in proportion to the amounts received by them respectively, unless such amount has been returned by the stockholder to the corporation.

5. A director shall not be liable under this section if, in the circumstances, he discharged his duty to the corporation under section seven thousand fifteen.

6. This section shall not affect any liability otherwise imposed by law upon any director.

§ 7017. Actions against directors and officers for misconduct. 1. An action may be brought against one or more directors or officers of a corporation to procure a judgment for the following relief:

(a) To compel the defendant to account for his official conduct in the following cases:

(1) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.

(2) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

(b) To set aside an illegal conveyance, assignment or transfer of corporate assets, where the transferee knew of its illegality.

(c) To enjoin a proposed illegal conveyance, assignment or transfer of corporate assets, where there is sufficient evidence that it will be

made.

2. Subject to section six hundred thirty-one of this chapter, an action may be brought for the relief provided in this section and in subdivision one of section seven thousand sixteen by a corporation, or a receiver, trustee in bankruptcy, officer, director or judgment creditor thereof, or, under section six thousand twenty-five, by a stockholder or the owner of a beneficial interest in shares thereof.

3. This section shall not affect any liability otherwise imposed by law upon any director or officer.

§ 7018. Nonexclusivity of statutory provisions for indemnification of directors and officers. The indemnification and advancement of expenses granted pursuant to, or provided by, this article shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the organization certificate or the by-laws or, when authorized by such certificate of incorporation or by-laws, (i) a resolution of shareholders, (ii) a resolution of directors, or (iii) an agreement providing for such indemnification, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled. Nothing contained in this article shall affect any rights to indemnification to which corporate personnel other than directors and officers may be entitled by contract or otherwise under law.

§ 7019. Authorization for indemnification of directors and officers. 1. A corporation may indemnify any person, made, or threatened to be made, a party to an action or proceeding (other than one by or in the right of the corporation to procure a judgment in its favor), whether

civil or criminal, including an action by or in the right of any other corporation of any type or kind, whether or not formed under any law of this state, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the corporation served in any capacity at the request of the corporation, by reason of the fact that he, his testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

2. The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service to any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation or that he had reasonable cause to believe that his conduct was unlawful.

3. A corporation may indemnify any person made, or threatened to be made, a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of any other corporation of any type or kind, whether or not formed under any law of this state, of any partnership, joint venture, trust, employee benefit plan or other enterprise, against

amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation, except that no indemnification under this subdivision shall be made in respect of (a) a threatened action, or a pending action which is settled or otherwise disposed of, or (b) any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action was brought, or, if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

4. For the purpose of this section, a corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be considered fines; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

§ 7020. Payment of indemnification other than by court award. 1. A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in section seven thousand nineteen shall be entitled to indemnification as authorized in such section.

2. Except as provided in subdivision one, any indemnification under section seven thousand nineteen or otherwise permitted by section seven thousand eighteen, unless ordered by a court under section seven thousand twenty-one, shall be made by the corporation, only if authorized in the specific case:

(a) By the board acting by a quorum consisting of directors who are not parties to such action or proceeding upon a finding that the director or officer has met the standard of conduct set forth in section seven thousand nineteen or established pursuant to section seven thousand eighteen, as the case may be, or,

(b) If a quorum under paragraph (a) is not obtainable or, even if obtainable, a quorum of disinterested directors so directs:

(i) By the board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in such sections has been met by such director or officer, or

(ii) By the stockholders upon a finding that the director or officer has met the applicable standard of conduct set forth in such sections.

3. Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount as, and to the extent, required by subdivision one of section seven thousand twenty-two.

§ 7021. Indemnification of directors and officers by a court. 1. Notwithstanding the failure of a corporation to provide indemnification, and despite any contrary resolution of the board of directors or of the stockholders in the specific case under section seven thousand twenty, indemnification shall be awarded by a court to the extent authorized under section seven thousand nineteen and subdivision one of section seven thousand twenty. Application therefor may be made, in every case, either:

(a) In the civil action or proceeding in which the expenses were

incurred or other amounts were paid, or

(b) To the supreme court in a separate proceeding, in which case the application shall set forth the disposition of any previous application made to any court for the same or similar relief and also reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were incurred or other amounts were paid.

2. The application shall be made in such manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of a court to which it is made. Such application shall be upon notice to the corporation. The court may also direct that notice be given at the expense of the corporation to the stockholders and such other persons as it may designate in such manner as it may require.

3. Where indemnification is sought by judicial action, the court may allow a person such reasonable expenses, including attorneys' fees, during the pendency of the litigation as are necessary in connection with his defense therein, if the court shall find that the defendant has by his pleadings or during the course of the litigation raised genuine issues of fact or law.

§ 7022. Other provisions affecting indemnification of directors and officers. 1. All expenses incurred in defending a civil or criminal action or proceeding which are advanced by the corporation under subdivision three of section seven thousand twenty or allowed by a court under subdivision three of section seven thousand twenty-one shall be repaid in case the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this article, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the corporation or allowed by the court exceed the indemnification to which he is entitled.

2. No indemnification, advancement or allowance shall be made under this article in any circumstance where it appears:

(a) That the indemnification would be inconsistent with a provision of

the organization certificate, a by-law, a resolution of the board or of the stockholders, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) If there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

3. If any expenses or other amounts are paid by way of indemnification otherwise than by court order or action by the stockholders, the corporation shall, not later than the next annual meeting of stockholders unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months from the date of such payment, mail to its stockholders of record at the time entitled to vote for the election of directors a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

4. If any action with respect to indemnification of directors and officers is taken by way of amendment of the by-laws, resolution of directors, or by agreement, then the corporation shall, not later than the next annual meeting of shareholders, unless such meeting is held within three months from the date of such action and, in any event within fifteen months from the date of such action, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the action taken.

5. No payment of indemnification, advancement or allowance under this article shall be made unless a notice has been filed with the superintendent, not less than thirty days prior to such payment, specifying the persons to be paid, the amounts to be paid, the manner in which such payment was authorized, and the nature and status at the time of the notice of the litigation or threatened litigation.

§ 7023. Insurance for idemnification of directors and officers. (a) Subject to subdivision (b), a corporation shall have power to purchase and maintain insurance:

(1) To indemnify the corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this article, and

(2) To indemnify directors and officers in instances in which they may be indemnified by the corporation under the provisions of this article, and

(3) To idemnify directors and officers in instances in which they may not otherwise be indemnified by the corporation under the provisions of this article provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the superintendent of financial services, for a retention amount and for co-insurance.

(b) No insurance under subdivision (a) may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

(1) if a judgement or other final adjudication adverse to the insured director or officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled, or

(2) in relation to any risk the insurance of which is prohibited under the insurance law of this state.

(c) Insurance under any or all paragraphs of subdivision (a) may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

(d) The corporation shall, within the time and to the persons provided in subdivision three of section seven thousand twenty-two, mail a statement in respect of any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to shareholders, paid under any indemnification insurance contract.

(e) This section is the public policy of this state to spread the risk of corporate management, notwithstanding any other general or special law of this state or of any other jurisdiction including the federal

government.

TITLE 8
Amendments and Changes

Section 8001. Right to amend organization certificate.
8002. Reduction of capital stock by amendment.
8003. Authorization of amendment or change.
8004. Class voting on amendment.
8005. Certificate of amendment or of change; contents.
8006. Provisions as to certain proceedings.
8007. Restated organization certificate.

§ 8001. Right to amend organization certificate. 1. A corporation may amend its organization certificate, from time to time, in any and as many respects as may be desired, if such amendment contains only such provisions as might be lawfully contained in an original organization certificate filed at the time of making such amendment.

2. In particular, and without limitation upon such general power of amendment, a corporation may amend its organization certificate, from time to time, so as:

(a) To change its corporate name.

(b) In the case of a bank or trust company, to change its corporate powers in accordance with section ninety-four.

(c) To extend the duration of the corporation or, if the corporation ceased to exist because of the expiration of the duration specified in its organization certificate, to revive its existence.

(d) To increase or decrease the number of its directors, or to provide that the number of its directors shall be not less than a stated minimum nor more than a stated maximum; provided that in either case the number of directors shall not be less than the minimum prescribed in this chapter, and provided further that the number of the directors may be increased notwithstanding any maximum number prescribed by any special law.

(e) To increase or decrease the aggregate number of shares, or shares

of any class or series, which the corporation shall have authority to issue.

(f) To eliminate from authorized shares any class of shares, or any shares of any class, whether issued or unissued.

(g) To increase the par value of any authorized shares of any class, whether issued or unissued.

(h) To reduce the par value of any authorized shares of any class, whether issued or unissued.

(i) To change any authorized shares, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of any one or more classes or any series thereof.

(j) To fix, change or abolish the designation of any authorized class or any series thereof, or any of the relative rights, preferences and limitations of any shares of any authorized class or any series thereof, whether issued or unissued, including any provisions in respect of any undeclared dividends, whether or not cumulative or accrued, or the redemption of any shares, or any preemptive right to acquire shares or other securities.

(k) As to the shares of any preferred class, then or theretofore authorized, which may be issued in series, to grant authority to the board or to change or revoke the authority of the board to establish and designate series and to fix the number of shares and the relative rights, preferences and limitations as between series.

(l) To strike out, change or add any provision, not inconsistent with this chapter or any other statute, relating to the business of the corporation, its affairs, its rights or powers, or the rights or powers of its stockholders, directors or officers, including any provision which under this chapter is required or permitted to be set forth in the by-laws.

3. A corporation created by special act may accomplish any or all amendments permitted in this title, in the manner and subject to the conditions provided in this subarticle.

4. A corporation may not change the location of its office under this section.

§ 8002. Reduction of capital stock by amendment. A corporation may reduce its capital stock by an amendment of its organization certificate under section eight thousand one which:

1. Reduces the par value of any issued shares.

2. Changes issued shares under subdivision two (i) of section eight thousand one and results in a reduction of capital stock.

3. Eliminates from authorized shares, shares that have been issued and reacquired by the corporation.

§ 8003. Authorization of amendment or change. 1. Amendment of the organization certificate may be authorized by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of stockholders.

2. This section shall not alter the vote required by section six thousand sixteen or seven thousand nine for the adoption of an amendment referred to therein, nor alter the authority of the board to authorize amendments under section five thousand two, subdivision six of section five thousand fourteen, or section five thousand sixteen.

§ 8004. Class voting on amendment. 1. Notwithstanding any provision in the organization certificate, the holders of shares of a class or series, shall be entitled to vote and to vote as a class upon the authorization of an amendment and, in addition to the authorization of the amendment by vote of the holders of a majority of all outstanding shares entitled to vote thereon, the amendment shall be authorized by vote of the holders of a majority of all outstanding shares of the class or series when a proposed amendment would:

(a) Exclude or limit their right to vote on any matter, except as such right may be limited by voting rights given to new shares then being

authorized of any existing or new class or series;

(b) Change their shares under subdivision two (h), (i) or (j) of section eight thousand one or provide that their shares may be converted into shares of any other class or into shares of any other series of the same class, or alter the terms or conditions upon which their shares are convertible or change the shares issuable upon conversion of their shares, if such action would adversely affect such holders; or

(c) Subordinate their rights, by authorizing shares having preferences which would be in any respect superior to their rights.

2. If any proposed amendment referred to in subdivision one would adversely affect or subordinate the rights of the holders of shares of only one or more series of any class, but not the entire class, then only the holders of each series whose rights would be adversely affected or subordinated shall be considered a separate class for the purposes of this section.

§ 8005. Certificate of amendment or of change; contents. 1. To accomplish any amendment or change, a certificate of amendment, entitled "Certificate of amendment of the organization certificate of ..... (name of corporation) under section 8005 of the Banking Law" shall be signed, verified and filed as provided in section one thousand three. It shall set forth:

(a) The name of the corporation and, if it has been changed, the name under which it was formed.

(b) The date its organization certificate was filed by the superintendent.

(c) Each amendment effected thereby.

(d) If any such amendment provides for a change or elimination of issued shares, and if the manner in which the same shall be effected is not set forth in such amendment, then a statement of the manner in which the same shall be effected.

(e) If any amendment reduces capital stock, then a statement of the manner in which the same is effected and the amounts from which and to which capital stock is reduced.

(f) The manner in which the amendment of the organization certificate

was authorized.

2. Any number of amendments or changes may be included in one certificate under this section. Such certificate may also include any amendments or changes permitted by other sections and in that case the certificate shall set forth any additional statement required by any other section specifying the contents of a certificate to effect such amendment or change.

3. In the case of a change of shares, the shares resulting from such change shall, upon the filing of the certificate of amendment under this section, be deemed substituted for the shares changed, in accordance with the stated terms of the change.

§ 8006. Provisions as to certain proceedings. 1. The superintendent shall not file a certificate of amendment reviving the existence of a corporation unless the consent of the state tax commission to the revival is delivered to the superintendent. If the name of the corporation being revived is not available under section three thousand one for use by a corporation then being formed under this chapter, the certificate of amendment shall change the name to one which is available for such use.

2. The following provisions shall apply to amendments and changes under this title:

(a) Any changes that may be made in the relative rights, preferences and limitations of the authorized shares of any class by any certificate of amendment which does not eliminate such shares from authorized shares or change them into shares of another class, shall not for the purpose of any statute or rule of law effect an issue of a new class of shares.

(b) No amendment or change shall affect any existing cause of action in favor of or against the corporation, or any pending suit to which it shall be a party, or the existing rights of persons other than stockholders; and in the event the corporate name shall be changed, no suit brought by or against the corporation under its former name shall abate for that reason.

(c) A holder of any adversely affected shares who does not vote for or consent in writing to the taking of such action shall, subject to and by complying with the provisions of section six thousand twenty-two, have the right to dissent and to receive payment for such shares, if the certificate of amendment (1) alters or abolishes any preferential right of any outstanding shares having preferences; or (2) creates, alters or abolishes any provision or right in respect of the redemption of any outstanding shares; or (3) alters or abolishes any preemptive right of such holder to acquire shares or other securities; or (4) excludes or limits the right of such holder to vote on any matter, except as such right may be limited by the voting rights given to new shares then being authorized of any existing or new class.

§ 8007. Restated organization certificate. 1. A corporation, when authorized by the board, may restate in a single certificate the text of its organization certificate, as amended theretofore, without making any further amendment or change thereby, except that it may include any one or more of the amendments or changes which may be authorized by the board without a vote of stockholders under this chapter. Alternatively, a corporation may restate in a single certificate the text of its organization certificate, as amended theretofore, and as further amended thereby to effect any one or more of the amendments or changes authorized by this chapter, when authorized by the required vote of the holders of shares entitled to vote thereon.

2. A restated organization certificate entitled "Restated organization certificate of ..... (name of corporation) under section 8007 of the Banking Law" shall be signed, verified and filed as provided in section one thousand three. It shall set forth:

(a) The name of the corporation and, if it has been changed, the name under which it was formed.

(b) The date its organization certificate was filed by the superintendent.

(c) If the restated certificate restates the text of the organization certificate, as amended theretofore, without making any further amendment or change, then a statement that the text of the organization

certificate, as amended theretofore, is thereby restated without further amendment or change to read as therein set forth in full.

(d) If the restated certificate restates the text of the organization certificate, as amended theretofore, and as further amended or changed thereby, then a statement that the organization certificate is amended or changed to effect one or more of the amendments or changes authorized by this chapter, specifying each such amendment or change and that the text of the organization certificate, as amended theretofore, is thereby restated as further amended or changed to read as therein set forth in full.

(e) If any such amendment, effected by the restated certificate, provides for a change or elimination of issued shares, and if the manner in which the same shall be effected is not set forth in such amendment, then a statement of the manner in which the same shall be effected.

(f) If the restated certificate contains an amendment which effects a reduction of capital stock, then a statement of the manner in which the same is effected and the amounts from which and to which capital stock is reduced.

(g) The manner in which the restatement of the organization certificate was authorized.

3. A restated certificate need not include statements as to the incorporators, the original subscribers for shares or the first directors.

4. Any amendment or change under this section shall be subject to any other section, not inconsistent with this section, which would be applicable if a separate certificate were filed to effect such amendment or change.

5. Upon filing by the superintendent, the original organization certificate, as amended theretofore, shall be superseded and the restated organization certificate, including any further amendments and changes made thereby, shall be the organization certificate of the corporation.

ARTICLE XVI

General Provisions Applicable to Banking Non-Stock Corporations

Section 9001. Definitions.
9001-a. Fingerprints.
9002. Application.
9003. Certificates; requirements, signing, filing, effectiveness.
9004. Certificates; corrections.
9005. Nonexclusivity of statutory provisions for indemnification of directors and officers.
9006. Authorization for indemnification of directors and officers.
9007. Payment of indemnification other than by court award.
9008. Indemnification of directors and officers by a court.
9009. Other provisions affecting indemnification of directors and officers.
9010-a. Insurance for indemnification of directors and officers.
9011. Certificates as evidence.
9012. Corporate seal as evidence.
9013. When notice or lapse of time unnecessary; notices dispensed with when delivery is prohibited.
9014. Corporate name; general.
9015. Corporate name; exceptions.
9016. Change of name.
9017. Place and time of meetings of the board; presence at.
9018. Effect of invalidity of part of article; severability.
9019. Certain provisions relating to the conversion of non-stock savings banks and savings and loan associations to stock form.

§ 9001. Definitions. In this article, unless the context otherwise requires:

1. "Corporation" means and includes all mutual savings banks, mutual savings and loan associations, mutual holding companies and credit

unions.

2. "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor or by any other title; the term "board" means "board of directors. "

3. "Organization certificate" includes (a) the original organization certificate or any other instrument filed or issued under any statute to form a corporation or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute; or (b) a special act or charter creating a corporation or foreign corporation, as amended, supplemented or restated by special acts or by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute.

4. "Foreign corporation" means a non-stock corporation which is licensed by the superintendent under the provisions of article two of this chapter to do business in this state or is applying for such license and a non-stock corporation authorized to conduct business in this state pursuant to article five-C of this chapter or is applying for such authorization.

§ 9001-a. Fingerprints. (a) Notwithstanding any other provision of law, every incorporator of a corporation shall, in addition to any other requirements which may be imposed by the superintendent, submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit the fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau

of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon.

(b) The superintendent shall also, concurrent with an investigation of an incorporator of a corporation pertaining to a violation of this chapter, submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon and through the division to the federal bureau of investigation for the purpose of a fingerprint check of such incorporator.

(c) For purposes of this section, "incorporator" shall include a natural person or such principal, officer, director, trustee or stockholder of any other entity as may be designated by the superintendent. Notwithstanding any other provision of this article, the superintendent shall not access criminal history data or information, unless any agency from which the superintendent receives directly criminal history data or information has entered into a use and dissemination agreement with the superintendent consistent with the provisions of this section.

(d) An applicant shall not be required to submit his or her fingerprints as required by subdivision (a) of this section if such applicant (i) is already subject to regulation by the department and the applicant has submitted such fingerprints to the department, such fingerprints have been submitted to the division of criminal justice services for the purpose of conducting a criminal history search, and a report of such search has been received by the department from such division; or (ii) is subject to regulation by a federal bank regulatory agency and has submitted such fingerprints to such agency which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; or (iii) is an officer or stockholder of a corporation whose common or preferred stock is registered on a national securities exchange, as provided in an act of congress of the United States entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended, or such other exchange or market system as the superintendent shall approve by regulation, and has submitted such fingerprints to such exchange or market system which has

had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; provided, however, that the superintendent may subsequently require such applicant to submit such fingerprints if the superintendent has a reasonable basis for updating the information or determination resulting from the report of the criminal history search conducted at the request of such federal banking agency, exchange or market system.

§ 9002. Application. 1. To the extent not inconsistent with articles six, ten, ten-B and eleven, this article applies to every corporation and, to the extent herein provided, to every foreign corporation.

2. The business corporation law shall not apply to any corporation or foreign corporation as defined in section nine thousand one of this article.

§ 9003. Certificates; requirements, signing, filing, effectiveness. 1. Every certificate or other instrument relating to a corporation or a foreign corporation which is delivered to the superintendent for filing under this chapter shall be in the English language, except that the corporate name may be in another language if written in English letters or characters.

2. Whenever such instrument is required to set forth an address, it shall include the street and number, or other particular description instead of a street and number. This requirement does not apply where a post office address is specified to be set forth.

3. Whenever such instrument is required to set forth the date when an organization certificate was filed by the superintendent, the original organization certificate is meant.

4. Every such instrument required under this chapter to be signed and delivered to the superintendent, except as otherwise provided in the

section providing for such instrument, shall be signed either (a) by the holders of all outstanding shares entitled to vote thereon, or (b) by the chairman of the board, the president or vice president and by the secretary or an assistant secretary or, in the case of a corporation which does not have a secretary or an assistant secretary, by the cashier or an assistant cashier, or (c) if there are no such officers, by a majority of the directors or such directors as are designated by the majority of the directors in office, or (d) if also there are no directors, by the holders, or such of them as are designated by the holders of record of a majority of all outstanding shares entitled to vote thereon, or (e) if also there is no shareholder of record, by a subscriber for shares whose subscription has been accepted or his successor in interest, or (f) if also no subscription for shares has been accepted, by an incorporator. His name and the capacity in which any person signs such instrument shall be stated beneath or opposite his signature. The person signing such instrument, or, if more than one person signs it, one of such persons shall verify or acknowledge the instrument if required by the section providing for such instrument.

5. No such instrument shall be filed unless it shall have endorsed thereon the approval of the superintendent. No certificate of authentication or conformity or other proof shall be required with respect to any verification, oath or acknowledgment of any instrument delivered to the superintendent under this chapter, if such verification, oath or acknowledgment purports to have been made before a notary public, or person performing the equivalent function, of one of the states, or any subdivision thereof, of the United States or the District of Columbia.

6. Except as otherwise provided in this chapter, such instrument shall become effective upon the filing thereof by the superintendent.

§ 9004. Certificates; corrections. Any certificate or other instrument relating to a corporation filed by the superintendent under this chapter may be corrected with respect to any informality or error apparent on the face or defect in the execution thereof, including the deletion of

any material not permitted to be stated therein. A certificate, entitled " Certificate of correction of ..... (correct title of certificate and name of corporation) " shall be signed, verified or acknowledged as provided in this chapter with respect to the instrument being corrected and delivered to the superintendent. It shall set forth the name of the corporation or foreign corporation, the date the instrument to be corrected was filed by the superintendent, the provision in the instrument as corrected or eliminated and if the execution was defective, the proper execution. The filing of the certificate by the superintendent shall not alter the effective time of the instrument being corrected, which shall remain as its original effective date, and shall not affect any right or liability accrued or incurred before such filing. The name of the corporation or foreign corporation may not be changed or corrected under this section.

§ 9005. Nonexclusivity of statutory provisions for indemnification of directors and officers. The indemnification and advancement of expenses granted pursuant to, or provided by, this article shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the organization certificate or the by-laws or, when authorized by such certificate of incorporation or by-laws, (i) a resolution of shareholders, (ii) a resolution of directors, or (iii) an agreement providing for such indemnification, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled. Nothing contained in this article shall affect any rights to indemnification to which corporate personnel other than directors and officers may be entitled by contract or otherwise under law.

§ 9006. Authorization for indemnification of directors and officers.

1. A corporation may indemnify any person, made, or threatened to be made, a party to an action or proceeding (other than one by or in the right of the corporation to procure a judgment in its favor), whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, whether or not formed under any law of this state, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the corporation served in any capacity at the request of the corporation, by reason of the fact that he, his testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

2. The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service to any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation or that he had reasonable cause to believe that his conduct was unlawful.

3. A corporation may indemnify any person made, or threatened to be made, a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a

director or officer of any other corporation of any type or kind, whether or not formed under any law of this state, of any partnership, joint venture, trust, employee benefit plan or other enterprise, against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation, except that no indemnification under this subdivision shall be made in respect of (a) a threatened action, or a pending action which is settled or otherwise disposed of, or (b) any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action was brought, or, if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

4. For the purpose of this section, a corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be considered fines; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

§ 9007. Payment of indemnification other than by court award. 1. A person who has been successful, on the merits or otherwise, in the

defense of a civil or criminal action or proceeding of the character described in section nine thousand six shall be entitled to indemnification as authorized in such section.

2. Except as provided in subdivision one, any indemnification under section nine thousand six or otherwise permitted by section nine thousand five, unless ordered by a court under section nine thousand eight, shall be made by the corporation, only if authorized in the specific case:

(a) By the board acting by a quorum consisting of directors who are not parties to such action or proceeding upon a finding that the director or officer has met the standard of conduct set forth in section nine thousand six or established pursuant to section nine thousand five, as the case may be, or,

(b) If a quorum under paragraph (a) is not obtainable or, even if obtainable, a quorum of disinterested directors so directs:

(1) By the board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in such sections has been met by such director or officer, or

(2) By the shareholders upon a finding that the director or officer has met the applicable standard of conduct set forth in such sections.

3. Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount as, and to the extent, required by subdivision one of section nine thousand nine.

§ 9008. Indemnification of directors and officers by a court. 1. Notwithstanding the failure of a corporation to provide indemnification, and despite any contrary resolution of the board or of the shareholders in the specific case under section nine thousand seven, indemnification shall be awarded by a court to the extent authorized under section nine thousand six and subdivision one of section nine thousand seven.

Application therefor may be made, in every case, either:

(a) In the civil action or proceeding in which the expenses were incurred or other amounts were paid, or

(b) To the supreme court in a separate proceeding, in which case the application shall set forth the disposition of any previous application made to any court for the same or similar relief and also reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were incurred or other amounts were paid.

2. The application shall be made in such manner and form as may be required by the applicable rules of court, or in the absence thereof, by direction of a court to which it is made. Such application shall be upon notice to the corporation. The court may also direct that notice be given at the expense of the corporation to the shareholders and such other persons as it may designate in such manner as it may require.

3. Where indemnification is sought by judicial action, the court may allow a person such reasonable expenses, including attorneys' fees, during the pendency of the litigation as are necessary in connection with his defense therein, if the court shall find that the defendant has by his pleadings or during the course of the litigation raised genuine issues of fact or law.

§ 9009. Other provisions affecting indemnification of directors and officers. 1. All expenses incurred in defending a civil or criminal action or proceeding which are advanced by the corporation under subdivision three of section nine thousand seven or allowed by a court under subdivision three of section nine thousand eight shall be repaid in case the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this article, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the corporation or allowed by the court exceed the indemnification to which he is entitled.

2. No indemnification, advancement or allowance shall be made under

this article in any circumstance where it appears:

(a) That the indemnification would be inconsistent with a provision of the organization certificate, a by-law, a resolution of the board or of the shareholders, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) If there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

3. If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the shareholders, the corporation shall, not later than the next annual meeting of shareholders unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months from the date of such payment, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

4. If any action with respect to indemnification of directors and officers is taken by way of amendment of the by-laws, resolution of directors, or by agreement, then the corporation shall, not later than the next annual meeting of shareholders, unless such meeting is held within three months from the date of such action and, in any event within fifteen months from the date of such action, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the action taken.

5. No payment of indemnification, advancement or allowance under this article shall be made unless a notice has been filed with the superintendent, not less than thirty days prior to such payment, specifying the persons to be paid, the amounts to be paid, the manner in which such payment was authorized, and the nature and status at the time

of the notice of the litigation or threatened litigation.

§ 9010-a. Insurance for indemnification of directors and officers. 1. Subject to the provisions of subdivision two of this section, a corporation shall have power to purchase and maintain insurance:

(a) To indemnify the corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this article, and

(b) To indemnify directors and officers in instances in which they may be indemnified by the corporation under the provisions of this article, and

(c) To indemnify directors and officers in instances in which they may not otherwise be indemnified by the corporation under the provisions of this article provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the superintendent of financial services, for a retention amount and for co-insurance.

2. No insurance under subdivision one of this section may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

(a) If a judgment or other final adjudication adverse to the insured director or officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled, or

(b) In relation to any risk the insurance of which is prohibited under the insurance law of this state.

3. Insurance under any or all paragraphs of subdivision one of this section may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

4. The corporation shall, within the time and to the persons provided in subdivision three of section nine thousand nine of this article, mail a statement in respect of any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the

contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to shareholders, paid under any indemnification insurance contract.

5. This section is the public policy of this state to spread the risk of corporate management, notwithstanding any other general or special law of this state or of any other jurisdiction including the federal government.

§ 9011. Certificates as evidence. 1. Any certificate or other instrument filed by the superintendent relating to a corporation or foreign corporation and containing statements of fact, required or permitted by law to be contained therein, shall be received in all courts, public offices and official bodies as prima facie evidence of such facts and of the execution of such instrument.

2. Whenever by the laws of any jurisdiction other than this state, any certificate by any officer in such jurisdiction or a copy of any instruments certified or exemplified by such officer, may be received as prima facie evidence of the incorporation, existence or capacity of any foreign corporation incorporated in such jurisdiction, or claiming so to be, such certificate when exemplified shall be received in all courts, public offices and official bodies of this state, as prima facie evidence with the same force as in such jurisdiction. Such certificate or certified copy of such instrument shall be so received, without being exemplified, if it is certified by the secretary of state, or officer performing the equivalent functions, as to corporate records of such jurisdiction.

§ 9012. Corporate seal as evidence. The presence of the corporate seal on a written instrument purporting to be executed by authority of a corporation or a foreign corporation shall be prima facie evidence that the instrument was so executed.

§ 9013. When notice or lapse of time unnecessary; notices dispensed with when delivery is prohibited. 1. Whenever, under articles six, ten, ten-B and eleven, the organization certificate and by-laws of any corporation or by the terms of any agreement or instrument, a corporation or the board or any committee thereof is authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken or, in the case of a shareholder, by his attorney-in-fact, submit a signed waiver of notice of such requirements.

2. Whenever any notice or communication is required to be given to any person or persons by articles six, ten, ten-B and eleven, the organization certificate and by-laws, or by the terms of any agreement or instrument, or as a condition precedent to taking any corporate action and communication with such person or persons is then unlawful under any statute of this state or of the United States or any regulation, proclamation or order issued under such statutes, then the giving of such notice or communication to such person or persons shall not be required and there shall be no duty to apply for a license or other permission to do so. Any affidavit, certificate or other instrument which is required to be made or filed as proof of giving of any notice or communication required under articles six, ten and eleven shall, if such notice or communication to any person is dispensed with under this subdivision, include a statement that such notice or communication was not given to any person with whom communication is unlawful. Such affidavit, certificate or other instrument shall be as effective for all purposes as though such notice or communication had been personally given to such person.

§ 9014. Corporate name; general. Except as otherwise provided in this chapter, the name of a corporation or a foreign corporation shall not be the same as the name of a corporation of any type or kind, as such name appears on the index of names of existing corporations of any type or

kind in the department of financial services or a name so similar to such name as to tend to confuse or deceive.

§ 9015. Corporate name; exceptions. 1. Any reference to a corporation in this section shall include both corporations and foreign corporations.

2. The provisions of section nine thousand fourteen:

(a) Shall not require any corporation existing or recognized under this chapter on the effective date of this article, to add to, modify or otherwise change its corporate name.

(b) Shall not prevent a corporation with which another corporation is merged or which is formed by the reorganization or consolidation of one or more other corporations or upon a sale, lease, exchange or other disposition of all or substantially all of the assets of another corporation, including its name, from having the same name as any of such corporations if at the time such other corporation was licensed or existing under this chapter.

§ 9016. Change of name. By resolution adopted by a vote of two-thirds of all its directors, at a meeting held for the purpose, a corporation may change its corporate name, but such change shall not be effective unless it shall have been approved by the superintendent. If the superintendent shall approve, he shall issue, under his hand and the official seal of the department, in triplicate, a certificate authorizing such change of name to become effective, and stating the time at which such change shall become effective, which certificates shall be transmitted and filed in the same manner as authorization certificates.

§ 9017. Place and time of meetings of the board; presence at. 1. Meetings of the board, regular or special, may be held at any place within or without this state, unless otherwise provided in the organization certificate or the by-laws.

2. Subject to articles six, ten, ten-B and eleven of this chapter, the time and place for holding meetings of the board may be fixed by or under the by-laws, or, if not so fixed, by the board.

3. When authorized by the organization certificate of incorporation or the by-laws, any one or more members of the board or any committee thereof may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

§ 9018. Effect of invalidity of part of article; severability. If any provision of this article or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared severable.

§ 9019. Certain provisions relating to the conversion of non-stock savings banks and savings and loan associations to stock form. No mutual savings bank and no mutual savings and loan association shall convert to stock form unless all depositors (in the case of such savings banks) and all shareholders (in the case of such savings and loan associations) of any such converting institution whose aggregate deposit or share balance, as the case may be, (as shown on the books and records of the converting institution) equals at least one hundred dollars as of a record date to be established in accordance with general regulations of the superintendent of financial services are provided with an opportunity to approve such conversion, either in person or by valid proxy, at a meeting duly convened in accordance with general regulations of the superintendent of financial services for the purpose of approving or disapproving such conversion. At such meeting, each depositor or shareholder shall be entitled to cast one vote for each full one hundred

dollars of deposits or shares of such depositor or shareholder shown on the books and records of the converting institution as of such record date. A depositor or shareholder shall not be entitled to cast any votes for any deposit or share balances in amounts of less than one hundred dollars. No such conversion shall be effective unless approved by the affirmative vote of at least seventy-five per centum of the aggregate dollar amount of the book value of deposits or shares, as the case may be, represented (either in person or by proxy) at such duly convened meeting and entitled to vote thereat.