

## **REAL PROPERTY LAW**

Laws 1909, Chap. 52

AN ACT relating to real property, constituting chapter fifty of the consolidated laws.

Became a law February 17, 1909, 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 50 OF THE CONSOLIDATED LAWS**

#### **REAL PROPERTY LAW**

- Article 1. Short title; definitions (§§ 1-2).
2. Tenure of real property (§§ 10-18).
4. Uses and trusts (§§ 119-123).
- 4-A. Trust indentures and interests therein (§§ 124--130-k).
6. Dower and curtesy (§§ 189-207).
- 6-A. Good cause eviction law. (§§ 210-218).
7. Landlord and tenant (§§ 220-238).
- 7-A. Portable kerosene heaters (§§ 239--239-g).
8. Conveyances and mortgages (§§ 240-282).
9. Recording instruments affecting real property (§§ 290-336).
- 9-A. Subdivided lands (§§ 337--339-c).
- 9-B. Condominium act (§§ 339-d--339-ll).
- 9-C. Solar rights act (§ 342).
- 9-D. Electric vehicle rights act (§ 343).
- 9-E. Conveyance and encumbrance of manufactured homes as real property (§§ 344-a--344-k).
10. Discharge of ancient mortgages (§ 345).
12. Registering title to real property (§§ 370-436).
- 12-A. Real estate brokers and real estate salesmen (§§ 440--443-a).
- 12-B. Home inspection professional licensing. (§§ 444-a--444-q).
- 12-C. Apartment information vendors (§§ 446-a--446-j).
- 12-D. Short-term rental units (§§ 447-a--447-g).
13. Cemetery lands (§§ 450-451).
14. Property condition disclosure in the sale of residential

- real property (§§ 460-466).
15. Prohibition and disclosure of private transfer fee obligations (§§ 470-476).
  16. Ninety-day waiting period for sale of single-family and two-family residences to certain purchasers (§§ 520-522).
  20. Laws repealed; construction; when to take effect (§§ 600-602).

## ARTICLE 1

### **SHORT TITLE; DEFINITIONS**

- Section 1. Short title.
2. Definitions.

**Section 1. Short title.** This chapter shall be known as the "Real Property Law."

**§ 2. Definitions.** 1. The terms "real property" and "lands" as used in the first eight articles of this chapter are co-extensive in meaning with lands, tenements and hereditaments.

2. The term "infant" or "minor" as used in this chapter means a person who has not attained the age of eighteen years.

## ARTICLE 2

### **TENURE OF REAL PROPERTY**

- Section 10. Capacity to hold real property.
11. Capacity to transfer real property.
  15. Title through noncitizen.
  16. Liabilities of noncitizen holders of real property.
  17. Heirs of patriotic Indian.
  18. Mines in Saint Lawrence county.

**§ 10. Capacity to hold real property.** 1. A citizen of the United States is capable of holding real property within this state, and of taking the same by descent, devise or purchase.

2. Noncitizens are empowered to take, hold, transmit, and dispose of real property within this state in the same manner as native-born citizens and their heirs and devisees take in the same manner as citizens.

3. For the purpose of maintaining offices and places of residence for its ambassadors and consular officers and for its representatives at the United Nations, a foreign government is empowered to hold, transmit and dispose of real property within this state. Title to such property may be taken either in the name of the foreign government or in the name of its ambassador or consul or in the name of its minister to the United Nations. If a conveyance of real property is made to an ambassador or consul or minister of a foreign government as such, or contains appropriate words showing the intention to vest the title in the holder of the office rather than in the named individual, the title to the real property shall pass from time to time without any further conveyance to the respective successors in such office, who shall have full power to dispose of such property.

**§ 11. Capacity to transfer real property.** A person other than a minor, a person with a developmental disability, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest.

**§ 15. Title through noncitizen.** The right, title or interest in or to real property in this state now held or hereafter acquired by any person entitled to hold the same can not be questioned or impeached by reason of the noncitizen status of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise.

**§ 16. Liabilities of noncitizen holders of real property.** Every noncitizen holding real property in this state is subject to duties, assessments, taxes and burdens as if such noncitizen were a citizen of the state.

**§ 17. Heirs of patriotic Indian.** The heirs of an Indian to whom real property was granted for military services rendered during the war of the Revolution may take and hold such real property by descent as if they were citizens of the state at the time of the death of their ancestors. A conveyance of such real property to a citizen of this state, executed by such Indian or his heirs after March seventh, eighteen hundred and nine, is valid, if executed with the approval of the surveyor-general or state engineer and surveyor prior to January first, nineteen hundred and twenty-seven, and thereafter with the approval of the commissioner of transportation indorsed thereon.

**§ 18. Mines in Saint Lawrence county.** The proprietors of any mines or veins of lead or copper in the county of Saint Lawrence, may demise, lease, or rent the same for a period not to exceed twenty-one years from the date of any such lease, to any foreign individual or company, and such lessee may take, hold, work, use or convey the same during the said term, in the same manner and subject to the same liabilities as if such lessee were a natural born citizen.

#### ARTICLE 4

##### USES AND TRUSTS

- Section 119. Purchase by mortgage trustee.
120. Operation and sale by mortgage trustee.
- 120-a. Liquidation of mortgage by trustee.
121. Reorganization of property covered by trust mortgage.
122. Procedure of reorganization and expenses in connection therewith.

122-a. Modification of trust mortgages given in prior re-organizations.

123. Preserving existing rights.

**§ 119. Purchase by mortgage trustee.** Any banking corporation, including corporations organized under the banking law and also national banking associations authorized to act as trustees within this state, which shall act as trustee, depository or in other representative or fiduciary capacity in respect to any mortgage upon real property within this state or upon some interest therein or in respect to any indenture relating to such real property against which bonds or certificates of parts or of shares have been issued to the public, may acquire such real property in any foreclosure action now or hereafter pending; and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the bond, mortgage or other obligation held by it, the net proceeds of sale after deducting therefrom the expenses of the sale and the costs of the action and any other sums which such trustee is authorized to deduct under the mortgage, deed of trust or indenture. The officer making such foreclosure sale shall accept such settlement without requiring the production of the bonds, notes, certificates of sharing, certificates of participation, or other security evidencing the pro rata interest of the holders thereof in the mortgage or indenture being foreclosed; and, without such production, there shall be deemed credited thereon the pro rata share of the net proceeds of sale ascertained and established as aforesaid.

**§ 120. Operation and sale by mortgage trustee.** Such banking corporation, upon acquiring such property, shall hold, lease, rent, operate and manage the same for the pro rata benefit of all parties interested in said mortgage, deed of trust or indenture and may, but shall not be required to, issue certificates of participation in said property and the rents, issues and profits thereof to those parties interested in said mortgage or indenture according to their respective interests. At any time thereafter with the consent of the holders of eighty-five per centum of the principal amount of the bonds or

certificates outstanding, or with the approval of the court after such notice to the bondholders or certificate holders as the court by order may direct, the court may make an order authorizing the trustee to sell such property for such price and upon such terms as to credit or otherwise or for such stocks, bonds or other securities as it deems best for those beneficially interested in said mortgage, deed of trust or indenture. The order directing the giving of notice to bondholders and certificate holders of the application of the trustee to sell such property shall provide for personal service of such notice not less than thirty days before the return date thereof, upon not less than ten specified bondholders or certificate holders and notice by mail to all other bond or certificate holders whose addresses are known to the trustee and publication of such notice once a week on a week day for three successive weeks preceding the return date thereof in one newspaper of general circulation published in the city or county where said real property is located.

**§ 120-a. Liquidation of mortgage by trustee.** Any banking corporation or individual acting as trustee in respect to any mortgage upon real property against which bonds shall have been issued to the public and which mortgage shall have been given to such trustee by a corporation organized under the provisions of section one hundred twenty-one hereof, pursuant to a plan of reorganization approved by the court and which became effective under section one hundred twenty-two hereof, or which mortgage shall have been given pursuant to a plan of reorganization heretofore or hereafter approved and confirmed under the bankruptcy acts of the United States, or which mortgage shall have been given to such trustee under a voluntary plan of reorganization by a corporation caused to be organized by a bondholders' committee for the purpose of acquiring the property secured by such mortgage at a sale under a judgment of foreclosure and sale of a prior mortgage given to secure bonds theretofore issued to the public, may, with the approval of the supreme court in the county where all or part of the property affected by such mortgage is situate, sell, assign, discharge or satisfy such mortgage upon such consideration in cash as the court shall deem fair and equitable to the bondholders and as the court by order shall direct.

Such order may be made upon the application of the trustee or the holder of twenty-five per cent of the bonds or of the mortgagor or owners of the property securing such mortgage. The court may approve a sale, assignment, discharge or satisfaction at such price as may appear to the court to be fair and in the best interests of the bondholders and not less than the cash value of said mortgage if sold at a public sale, unless duly acknowledged dissents thereto by holders of more than one-third of the principal amount of the bonds then outstanding have been filed. If the application for such sale shall be consented to by the holders of two-thirds of the principal amount of the bonds outstanding such consent shall constitute a presumption that it is fair and in the best interests of the bondholders that said mortgage be liquidated at the price fixed in such consent and the court may approve a sale at such amount unless it shall appear to the court that such amount is less than the cash value of said mortgage if sold at a public sale. If the application shall not be made by the trustee then notice shall be given to the trustee and in any event the order directing notice to the bondholders of the application to liquidate such mortgage shall provide for personal service of such notice not less than thirty days before the return date thereof upon not less than ten specified bondholders whose addresses are known to the applicant and notice by mail to all of the bondholders whose addresses are known and the publication of such notice once a week on a week day for three successive weeks preceding the return date thereof in one newspaper of general circulation published in the city or county where the real property securing said mortgage is located. Except as herein otherwise provided all proceedings hereunder and the rights of the parties hereto, shall be governed by section one hundred twenty-two hereof; except that if the order shall become effective it shall be without prejudice to the right of any particular bondholder who has filed a duly acknowledged dissent therefrom, within the time fixed in the order, to have the court determine the cash value of the mortgage securing such bond if sold at a public sale and providing for the payment or securing his ratable share of such amount as a condition for declaring the order effective.

If any provision of this section or of section one hundred twenty-two hereof or any clause, sentence, paragraph or any part of such section or

the application thereof to any person or circumstance shall be held unconstitutional or invalid, such decision or judgment shall not affect or impair the constitutionality or validity of the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in such decision or judgment.

**§ 121. Reorganization of property covered by trust mortgage.** Such banking corporation, under the direction of the court in the foreclosure action may, and if directed by the court shall, purchase or cause to be purchased said real property, pursuant to a reorganization plan, and cause to be formed a domestic business corporation, or a foreign corporation providing such foreign corporation is authorized to do business within this state, or utilize any other such corporation, providing the corporation so formed or utilized shall have provided in its certificate of incorporation the restriction set forth in section one hundred eleven of decedent estate law, and shall thereupon grant and release said property to such new corporation and its assigns forever, or by assignment of its bid to such new corporation, or otherwise, cause the referee's deed in foreclosure to be executed and delivered directly to such new corporation granting and releasing such property to it and its assigns forever, in exchange for the stocks, bonds and other securities of such new corporation except such of said securities as may be reserved for the adjustment of liens and claims against said property, or for other purposes as specified in the plan, including any provision made in a plan approved by the court and thereafter becoming effective as provided in section one hundred twenty-two for any interest, junior or subordinate to the mortgage foreclosed; provided, however, that such new corporation shall be authorized to raise money by mortgage, pledge, borrowing, sale of securities or otherwise to the extent which may be set forth in the plan of reorganization. The trustee, upon receiving such securities and any cash available from the new corporation, shall distribute the same and any other funds or property constituting part of the trust estate, ratably amongst those parties interested in such mortgage, deed of trust or indenture less such trustee's proper expenses and charges in connection therewith; and



thereupon the trustee upon the filing and approval of its accounts in the foreclosure action and upon assigning to such new corporation any deficiency judgment and any guarantees and insurance policies held by the trustee and any claim for waste or otherwise in connection with the mortgage estate, shall be discharged of any further obligation or liability under such mortgage or indenture or otherwise. Nothing herein contained shall affect or impair the liability of any guarantor or any right or remedy existing in favor of any holders of bonds, notes, certificates or other securities which are secured by or participate in such mortgages, deeds of trust or indentures.

**§ 122. Procedure of reorganization and expenses in connection therewith.** The reorganization plan may be presented to the court with the complaint for foreclosure, or thereafter by the trustee or by any persons owning or representing twenty-five per centum of the principal amount of the securities covered by such mortgage, deed of trust or indenture at any time prior to the foreclosure sale. The plan shall contain a statement of the minimum and maximum sums which the trustee shall bid for the property, which sums may be varied by the court upon its approval of the plan; and the trustee shall not incur any liability by reason of its failure to bid more than said maximum sum. The trustee shall not be liable for any action in executing the plan of reorganization approved by the court except for its wilful misconduct, fraud, bad faith or gross negligence. Hearings upon such reorganization plan shall be at such time and place and upon such notice by publication, mailing or otherwise, as the court shall fix in an order to show cause why the plan should not be approved. The trustee and any person beneficially interested in said mortgage, deed of trust or indenture, and any person whose rights may be affected by such reorganization, may appear upon the return day of the order to show cause or at any adjournment thereof, and submit objections to and modifications of the plan or an alternate plan, and the court shall hear the parties by affidavit or summarily or otherwise, as in its discretion it may direct, and thereupon finally determine the plan of reorganization and fix the time and method for persons affected by such reorganization to become parties thereto. Where neither the mortgage or

indenture, nor the statute relating to the particular class of securities nor any other statute, authorizes the purchase of the property on behalf of all the holders of bonds or certificates of parts or shares, then if any holder, within twenty days after the approval of the plan, shall file with the court a duly acknowledged dissent therefrom, the court shall determine the cash value of the property as if sold at a public sale and such dissenting holder shall be entitled to be secured for his ratable share of such amount as a condition for declaring the plan effective. In all other cases the reorganization plan shall be deemed binding on all holders of bonds or certificates of shares or parts unless within twenty days after the approval of the plan one-third in principal sum of such holders shall file with the court duly acknowledged dissents therefrom; in which event the plan may be abandoned or may be further modified as the court shall direct, with the same right of dissent as aforesaid as to any subsequently amended plan. Notice of the court's approval of the plan shall be given by publication, mailing or otherwise as the court may in particular cases or by general rule direct. Any person aggrieved by any determination hereunder shall have such rights of appeal as are granted to a party to a special proceeding. The expenses and compensation of the trustee and of any committee or person who shall have submitted a plan of reorganization or modifications thereof shall be fixed at such sum as the court may deem reasonable and shall be chargeable as a lien upon the property or collectible through their assumption by the new corporation or in such other manner as the court may approve. All proceedings and appeals in respect to the plan of reorganization shall be entitled to preference over all other civil causes next in order to actions or special proceedings in which the people of the state or any officer, board or political subdivision thereof shall be a party.

**§ 122-a. Modification of trust mortgages given in prior re-organizations.** Any such banking corporation or any individual acting as trustee in respect to any mortgage, deed of trust or indenture upon real property, or any leasehold interest therein, against which bonds, certificates, shares or any other evidence of interests therein (herein called "debts") shall have been issued to the public, and which mortgage

shall have been given to such trustee by a corporation organized under section one hundred twenty-one hereof, pursuant to a plan of reorganization approved by the court and which became effective under section one hundred twenty-two hereof, or which mortgage shall have been given to or is held by such trustee pursuant to, or by reason of, a plan of reorganization heretofore or hereafter approved and confirmed under the bankruptcy acts of the United States or which mortgage shall have been given to such trustee under a voluntary plan of reorganization by a corporation caused to be organized by a bondholders' committee for the purpose of acquiring the property secured by such mortgage, may, without foreclosure of such mortgage, and whether or not a default exists thereunder, present to the supreme court in the county where all or part of the real property affected by such mortgage is situated, a plan for the reorganization of such mortgage, deed of trust or indenture. The plan of reorganization may provide for: (1) the extension of the maturity of the mortgage, deed of trust or indenture and the debts secured thereby; (2) the modification of the provisions for interest, amortization or sinking funds; and (3) such other changes, modifications or amendments as may be fair and feasible and for the best interests of the security holders. Such plan may likewise be presented by holders or representatives of twenty-five per centum in principal amount of such securities. Such plan may cover one or more mortgages with respect to said property. If no default shall exist in the payment of principal or interest, such plan may be presented by the mortgagor or by the owner of the property covered by such mortgage. Hearing upon such reorganization plan shall be at such time and place and upon such notice by publication, mailing or otherwise as the court shall fix in an order to show cause why the plan should not be approved. No plan shall be approved unless the court, after such hearing shall determine that it is fair, feasible and for the best interests of the security holders. The affirmative consent of the holders of two-thirds of the principal amount of the outstanding securities shall constitute a presumption that the plan is fair, feasible and for the best interests of the security holders. All proceedings hereunder and the rights of the parties hereto, including the hearing, the final order determining the plan of reorganization embodying such modifications, the time and method for the persons affected by such plan becoming parties thereto and the right of

appeal from any order, shall be governed by section one hundred twenty-two hereof; except that if the reorganization shall become effective it shall be without prejudice to the right of any particular holder of such securities who has duly dissented therefrom to have the court determine the cash value of such securities as he may have owned on or before the date of the presentation of the plan of reorganization pursuant to this section, and providing for the payment or securing his ratable share of such amount as a condition for declaring the plan effective. Upon the order becoming effective the plan shall be binding upon all the security holders.

If any provision of this section or of section one hundred twenty-two hereof or any clause, sentence, paragraph or any part of such section or the application thereof to any person or circumstance shall be held unconstitutional or invalid, such decision or judgment shall not affect or impair the constitutionality or validity of the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in such decision or judgment.

**§ 123. Preserving existing rights.** Nothing in this act shall be deemed to prevent any bondholder or committee of bondholders from bidding at the foreclosure sale and in case he or they should be a successful bidder, from applying upon the purchase price the bonds held by him or them at the amount distributable thereon and reorganizing the property so purchased in any manner which was lawful prior to the enactment of this act, nor to impair any previously existing right of a trustee so to purchase and pay for the property, or to preclude any trustee which shall have purchased such property from submitting to the court a plan for its reorganization. The court may provide for the qualification of bidders other than the trustee by requiring them to deposit with the officer conducting the sale in advance of bidding up to ten per centum of the amount of their bid in cash or in bonds taken at the principal amount thereof. In any action now or hereafter pending for the foreclosure of any such mortgage or indenture, the property shall, on application of the trustee, be sold subject to the lien of any taxes,

assessments and water rates, any prior lien, or to any liens which may thereafter be established, which are the subject of litigation pending at the time of the sale, provided a brief statement thereof is contained in the notice of sale.

#### ARTICLE 4-A

##### **TRUST INDENTURES AND INTERESTS THEREIN**

- Section 124. Purpose and application of article.
- 125. Definitions.
  - 126. Trust indentures.
  - 127. Restrictions on trustees.
  - 128. Minimum bid of trustee at sale on foreclosure to be fixed by court.
  - 129. Deposit agreements.
  - 130-a. Restrictions on committees.
  - 130-b. Managing agents and management companies.
  - 130-c. Voting trustees and voting trust agreements.
  - 130-d. Fees and allowances.
  - 130-e. Removal of trustees, committees or depositaries.
  - 130-f. Actions for accounting by minority groups; expenses thereof.
  - 130-g. Violations and penalties.
  - 130-h. Construction of article.
  - 130-i. Separability.
  - 130-j. Right to appeal.
  - 130-k. Exemptions from restrictions on trustees and trust indentures.

**§ 124. Purpose and application of article.** It is the purpose of the legislature, in enacting this article, to provide for the regulation and supervision of the appointment, creation, agreements, acts, conduct, practices and proceedings of trustees, bondholders' protective committees, depositaries, management companies, voting trustees and other persons administering, holding in custody or otherwise concerned with real estate mortgages and interests therein to the end that such

interests will be properly conserved, administered and ultimately liquidated in the public interest. This article, except as otherwise expressly provided, shall apply, to the extent that the state has power to provide therefor, to all mortgage investments, as hereinafter defined, where the property constituting the underlying security therefor, or any part thereof, is located within the state or where the trustee, committee, depository, management company, voting trustee or other person administering, holding in custody, or otherwise concerned with such investments has an office for the transaction of business with respect thereto within the state or has obtained authority to do business in this state.

**§ 125. Definitions.** As used in this article, unless the context requires otherwise:

1. "Mortgage investments" shall mean and include any and all shares and interests, heretofore or hereafter acquired, in an issue of bonds, notes or other evidence of indebtedness of individuals, partnerships, associations or corporations, held by more than one person and secured by a mortgage or mortgages upon real property, or by a deed or deeds of trust, trust indenture or indentures or other evidence of interest in real property, the payment of which is not guaranteed by any title and mortgage guaranty corporation or investment company and shall include certificates of deposit issued by or on behalf of a bondholders' protective committee or similar group and also any bonds, notes or other evidences of indebtedness taken in lieu of such real property by foreclosure or otherwise, provided, however, that it shall not include industrial securities. The term "industrial securities" shall be construed to mean the bonds, debentures, notes or other evidences of indebtedness of individuals, partnerships, associations or corporations not engaged in the business of owning, improving or operating real property but whose ownership of such real property shall be merely incidental to the operation and conduct of its business and which real property shall be used as incidental and additional security for such bonds, notes, debentures or other evidences of indebtedness.

2. "Bondholder" shall mean and include any person, firm, association or corporation owning or holding a mortgage investment.

3. "Trustee" shall mean and include any person, firm, association or corporation named, appointed or designated as such in any deed of trust, trust indenture or other similar instrument or any successor of such trustee.

4. "Committee" shall mean and include a person or group of persons, however known or designated, appointed by agreement, assignment, proxy, consent, authorization, power of attorney, or other similar instrument to act as an agency to receive and hold mortgage investments deposited by bondholders and to administer or do any act in respect to the same for the bondholders.

5. "Deposit agreement" shall include any agreement, assignment, proxy, consent, authorization, power of attorney or other similar instrument whereby a mortgage investment is deposited with or assigned to a committee.

6. "Depository" shall mean and include any person, firm, association or corporation designated in any trust indenture, deed of trust, or deposit agreement as the custodian or depository of mortgage investments.

7. "Property" shall mean and include all of the real property or any incidental personal property constituting the underlying security for mortgage investments.

8. "Court," unless some other court has jurisdiction over the property or a plan of reorganization therefor, shall mean the supreme court of the state of New York in the county in which the property or the major portion thereof is located, or, if the property be located outside the state, in the county of the state in which the committee, trustee or other person dealing with the mortgage investment has or proposes to have his principal office for the transaction of business with respect to such mortgage investment.

**§ 126. Trust indentures.** No trustee shall hereafter accept a trust under any trust indenture or mortgage within the contemplation of this article or act as trustee thereunder unless the instrument creating the trust shall contain the following provisions, among others, which confer the following powers and impose the following duties upon the trustees:

1. In the case of an event of default (as such term is defined in such instrument), to exercise such of the rights and powers vested in the trustee by such instrument, and to use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

2. In considering what actions are or are not prudent in the circumstances, to consider whether or not:

(a) to take such action as may be necessary or proper to sequester the rents and income of the property;

(b) to procure from the owner of the property an assignment of rents and/or a consent to enter into possession of the property and to collect the rents therefrom;

(c) to apply to the court for the appointment of a receiver of the rents and income of the property;

(d) to declare due and payable forthwith any principal amount remaining due and unpaid and commence an action of foreclosure;

(e) to apply the moneys received as rents and income from the property as well as moneys received by the trustee from any receiver appointed for such property in his discretion, to the maintenance and operation of such property, the payment of taxes, water rents and assessments levied thereon and any arrears thereof, to the payment of underlying liens, and to the creation and maintenance of a reserve or sinking fund.

3. If the trustee can obtain the information without unreasonable effort or expense, to render annually to bondholders, after the occurrence of a default, unless such default be previously cured, a summarized statement of income and expenditures in connection with the property.



4. To distribute the proceeds of any sale or other disposition of the property ratably among the bondholders, subject to applicable mandatory provisions of law.

5. To permit the obligor or other person in possession or control of the property, or his successors in interest, to be free to select the insurance broker or agent through whom any insurance of any kind is to be placed or written on any property affected or covered by a mortgage held by such trustee.

**§ 127. Restrictions on trustees.** 1. No trustee shall accept a trust or act as trustee under a trust mortgage affecting any property in which he or any of the officers or directors of the trustee shall have, directly or indirectly, any financial interest.

2. No trustee nor any officer or director of a trustee, nor any employee of any company which is a subsidiary of, controlled by or affiliated with the trustee shall, either directly or indirectly, act as insurance broker or agent in connection with the placing or writing of any insurance of any kind on any property affected or covered by a mortgage held by such trustee under a trust indenture, deed of trust, or other similar instrument, nor shall such trustee be an officer, director, partner or employee of or otherwise connected with or have any financial interest in, directly or indirectly, in any firm, agency, business, association or corporation that shall act as broker or agent in connection with the placing or writing of such insurance; nor shall any trustee or any officer, director or employee of the trustee be an officer, director, partner or an employee of or have any financial interest in any firm, agency, association or corporation engaged by such trustee as his or its representative or agent in the management or supervision of, or the collection of rents and income from any property affected or covered by the mortgage held by the trustee under a trust indenture, deed of trust, or other similar instrument.

3. No trustee shall accept any trust or act as trustee under any other

trust indenture covering or affecting the same property.

4. No owner or mortgagor of any property covered by a trust indenture, deed of trust, or other similar instrument and no officer, director, stockholder or employee of such owner or mortgagor shall accept a trust or act as trustee with respect to such property.

5. The provisions of this section shall only apply to trust indentures or mortgages hereafter entered into.

**§ 128. Minimum bid of trustee at sale on foreclosure to be fixed by court.** Notwithstanding any inconsistent provision of law, on application for judgment of foreclosure and sale in an action brought to foreclose a trust indenture, deed of trust or mortgage upon real property, except where a plan of reorganization shall have been consented to by one hundred per centum of all the bondholders or where a minimum and maximum sum at which the trustee shall bid for the property has been set forth in a plan of reorganization and approved by the court in a proceeding for the reorganization of the property covered by trust indenture under sections one hundred and twenty-one and one hundred and twenty-two of this chapter, the court shall determine what is a fair upset price below which the property shall not be sold and the judgment directing the foreclosure and sale shall fix the minimum price which the trustee or his agent or nominee shall bid for the property.

**§ 129. No deposit agreement shall be valid or binding which does not set forth the following provisions for the protection of the bondholders:**

(a) That the fees of the members of the committee, the assignee or the other person or persons to whom the deposit agreement was given, as the case may be, shall be reasonable and subject to the approval of the court.

(b) That the deposit agreement may not be amended without the approval of the court.

(c) That the mortgage investments deposited thereunder may not be

sold, pledged or otherwise disposed of without the unanimous consent of the depositing bondholders or, in lieu thereof, the approval of the court.

(d) No deposit agreement shall be valid or binding or confer any rights whatever upon any member of a committee, assignee or other person to whom the agreement was given, who has any financial interest directly or indirectly in the depositary named or to be named by such committee, assignee or other person, and no person shall act for a bondholder or a deposit agreement who has such an interest.

**§ 130-a. Restrictions on committees.** No sale of mortgage investments by a committee shall be valid unless the fairness of the price received at such sale shall have first been approved by the court except that where an action to foreclose a mortgage on the property is pending, the application to pass upon the fairness of such price shall be determined by the court in which such action is pending. The hearing upon such application shall be held at such time and place and upon such notice to the depositing bondholders as the court shall direct.

**§ 130-b. Managing agents and management companies.** 1. A person, firm, association or corporation appointed, designated or employed by a trustee entering or taking possession of mortgaged property to collect rents from, or to manage or supervise the operation and maintenance of property shall be bonded by a surety bond, approved by the court as to form and sufficiency, in a sum equivalent to at least the gross rental or income of the property for the three months immediately preceding such appointment, designation or employment, running to the trustee, during the period of his or its possession for the benefit of the bondholders, conditioned upon the faithful performance by such person, firm, association or corporation, of his or its duties and the due accounting for all moneys received by him or it during the course of his or its employment. The cost or premium of such bond may, in the discretion of the court, be a charge against and paid for from the income of the mortgaged property.

2. No trustee or committee shall employ as a managing agent any management company or corporation any of whose officers, directors or stockholders are also officers, directors or employees of the trustee or members or employees of the committee.

3. No voting trustee, officer or director of a corporation acquiring the title to property in or through a reorganization of such property and no corporation of which he shall be an officer, director or stockholder, shall be employed as a managing agent for the reorganized property except with the approval of the persons owning or holding at least fifty-one per centum of the securities issued by the reorganized company.

**§ 130-c. Voting trustees and voting trust agreements.** 1. No trustee or member of a committee or the attorney of such trustee or committee or any employee of either shall be eligible to become a voting trustee or an officer or director of a corporation to be formed or used under a plan of reorganization to acquire title to property previously administered by such trustee or committee unless the facts with respect to their previous connection with the property are disclosed to the court and the affirmative approval of the holders of at least fifty-one per centum of the mortgage investments is obtained or unless a plan of reorganization approved by the court in proceedings under section one hundred and twenty-two of this chapter shall so provide.

2. No agreement appointing trustees to vote the stock of any corporation formed or used under a plan of reorganization of property shall be valid for a longer term than five years and unless it has been submitted to and approved by the court and no trustees appointed by such agreement shall continue to act thereunder after the expiration of its term, unless and until a new or an extension agreement has been entered into and received the affirmative approval of the holders of at least fifty-one per centum of the stock.

3. No salary or other compensation shall be paid to any voting trustee or any officer or director of a corporation formed or used to acquire

the title to property in or through reorganization unless the same has been approved by the court.

**§ 130-d. Fees and allowances.** In the event of a default in a trust indenture necessitating the sequestration of the rents and income of the property covered thereby and where the trustee or committee or other person or persons representing the bondholders is or are lawfully in possession of the property and they or their attorneys, if any, shall have rendered services in connection with the property at any time after default, no fees or allowances shall be paid for such services unless and until affidavits showing the value thereof have been presented to the court or a justice thereof and such court or justice has approved the same and such fees and allowances, if approved, shall be paid in such manner and at such times as the court or justice shall direct.

**§ 130-e. Removal of trustees, committees or depositaries.** A trustee, committee or any member thereof and a depositary may be removed by the court for cause shown upon the application of any person aggrieved by the act or omission to act of such trustee, committee, member or depositary after such notice and opportunity to be heard in his or its defense as the court shall direct.

**§ 130-f. Actions for accounting by minority groups; expenses thereof.** In any special proceeding or action brought by or on behalf of any minority bondholder or group of minority bondholders, or any person or group of persons not holding at least fifty-one per centum of the stock or bonds of the mortgage issue, but claiming an interest in the trust property, for a judicial accounting, the court may take into consideration the information as to income and disbursements theretofore furnished to bondholders, the merits and good faith of the proceeding or action, and whether the accounting will be of value to the bondholders, as well as the cost of such accounting, and the court may require that the petitioner or plaintiff furnish a surety company bond to indemnify the estate against the expenses of the accounting, including fees of the

referee to take the accounting, stenographic fees, and the expenses of the trustee, and may direct that, if it should appear that the accounting result in any practical benefit to all the bondholders, the court should then, in its discretion, release the indemnity, and that if no such benefit accrue, the petitioner or plaintiff and his attorney should receive no compensation, and the trust fund should be reimbursed for the expenses saddled upon it by reason thereof.

**§ 130-g. Violations and penalties.** The wilful violation of any provision of this article, except section one hundred and twenty-six unless elsewhere otherwise defined, shall constitute a misdemeanor and shall be punishable, unless elsewhere otherwise prescribed by a fine of not exceeding one thousand dollars or by imprisonment for not exceeding one year or by both such fine and imprisonment.

**§ 130-h. Construction of article.** This article shall be construed liberally to effectuate its purpose. The enumeration by this article of specific powers and duties in trust indentures and other instruments shall not preclude or prevent the use, exercise or enjoyment of additional powers and duties under or pursuant to such instruments or excuse the failure to exercise or perform such other powers or duties. Nothing contained in this article shall be construed to repeal any other provision of law except in so far as it is irreconcilably in conflict with a provision of this article in which event the latter shall control.

**§ 130-i. Separability.** If any of the provisions of this article or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect or impair other provisions or applications to other circumstances which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be separable.

**§ 130-j. Right to appeal.** Any person aggrieved by any determination hereunder shall have such right of appeal as is granted to a party to a special proceeding. All proceedings and appeals hereunder shall be entitled to such preference as is granted in respect to plans of reorganization under the provisions of section one hundred and twenty-two of this chapter.

**§ 130-k. Exemptions from restrictions on trustees and trust indentures.** The provisions of sections one hundred and twenty-six and one hundred and twenty-seven of this article shall not apply to any mortgage, deed of trust, trust indenture, or other similar instrument which has been qualified with the United States securities and exchange commission pursuant to the provisions of the trust indenture act of nineteen hundred thirty-nine, as from time to time amended and in force. In the case of a mortgage, deed of trust, trust indenture, or other similar instrument which has not been so qualified, the provisions of section one hundred twenty-seven shall not apply if such instrument (hereinafter referred to as the "indenture") contains provisions in substance to the following effect:

(a) If the trustee has or shall acquire any conflicting interest as hereinafter defined,

(1) such trustee shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment; and the obligor upon the bonds, notes or other evidences of indebtedness issued under the indenture (hereinafter referred to as the "indenture securities") shall take prompt steps to have a successor appointed in the manner provided in the indenture;

(2) in the event that such trustee shall fail to comply with the provisions of subparagraph (1), such trustee shall, within ten days after the expiration of such ninety-day period, transmit notice of such failure by mail (i) to all registered holders of indenture securities, as the names and addresses of such holders appear upon the registration books of the obligor upon the indenture securities, (ii) to such holders of indenture securities as have, within the two years preceding such

transmission, filed their names and addresses with the indenture trustee for the purpose of receiving notices or reports to indenture security holders, and (iii) to all holders of indenture securities whose names and addresses are contained in information currently preserved by the trustee for such purpose in accordance with provisions of the indenture requiring the obligor to furnish or cause to be furnished to the trustee at stated intervals of not more than six months, and at such other times as the trustee may request in writing, all information in the possession or control of such obligor, or of any of its paying agents, as to the names and addresses of the indenture security holders, and requiring the trustee to preserve, in as current a form as is reasonably practicable, all such information so furnished to it or received by it in the capacity of paying agent; and

(3) subject to any provision of the indenture to the effect that in a suit against the trustee (unless instituted by a holder or group of holders of more than ten per centum in principal amount of the indenture securities outstanding) the court may in its discretion require an undertaking for costs and may assess reasonable costs, including reasonable attorneys' fees, against any party litigant, any security holder who has been a bona fide holder of indenture securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such trustee, and the appointment of a successor, if such trustee fails, after written request therefor by such holder, to comply with the provisions of subparagraph (1).

(b) For purposes of paragraph (a), the trustee shall be deemed to have a conflicting interest if---

(1) such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of an obligor upon the indenture securities are outstanding unless (A) the indenture securities are collateral trust notes under which the only collateral consists of securities issued under such other indenture, or (B) such other indenture is a collateral trust indenture under which the only collateral consists of indenture securities, or (C) such obligor has no substantial unmortgaged assets and is engaged primarily in the business of owning, or of owning and developing and/or operating, real estate, and the indenture to be



qualified and such other indenture are secured by wholly separate and distinct parcels of real estate: Provided, that the indenture may contain a provision excluding from the operation of this subparagraph any other indenture or indentures which shall have been qualified with the United States securities and exchange commission pursuant to the provisions of the trust indenture act of nineteen hundred thirty-nine, as from time to time amended and in force;

(2) such trustee or any of its directors or executive officers is an obligor upon the indenture securities or an underwriter for such an obligor;

(3) such trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with an obligor upon the indenture securities or an underwriter for such an obligor;

(4) such trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of an obligor upon the indenture securities, or of an underwriter (other than the trustee itself) for such an obligor who is currently engaged in the business of underwriting, except that (A) one individual may be a director and/or an executive officer of the trustee and a director and/or an executive officer of such obligor, but may not be at the same time an executive officer of both the trustee and of such obligor, and (B) if and so long as the number of directors of the trustee in office is more than nine, one additional individual may be a director and/or an executive officer of the trustee and a director of such obligor, and (C) such trustee may be designated by any such obligor or by any underwriter for any such obligor, to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent or depository, or in any other similar capacity, or, subject to the provisions of subparagraph (1) of this paragraph, to act as trustee, whether under an indenture or otherwise;

(5) ten per centum or more of the voting securities of such trustee is beneficially owned either by an obligor upon the indenture securities or by any director, partner, or executive officer thereof, or twenty per centum or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or ten per centum or more of the voting securities of such trustee is beneficially owned

either by an underwriter for any such obligor or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

(6) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, (A) five per centum or more of the voting securities, or ten per centum or more of any other class of security, of an obligor upon the indenture securities, not including indenture securities and securities issued under any other indenture under which such trustee is also such trustee, or (B) ten per centum or more of any class of security of an underwriter for any such obligor;

(7) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, five per centum or more of the voting securities of any person who, to the knowledge of the trustee, owns ten per centum or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, an obligor upon the indenture securities;

(8) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, ten per centum or more of any class of security of any person who, to the knowledge of the trustee, owns fifty per centum or more of the voting securities of an obligor upon the indenture securities; or

(9) such trustee owns, on May fifteenth in any calendar year, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of twenty-five per centum or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under subparagraph (6), (7) or (8) of this paragraph. The indenture may provide, as to any such securities of which the trustee acquired ownership through becoming executor, administrator or testamentary trustee of an estate which included them, that the provisions of the preceding sentence shall not apply, for a period of not more than two years from the date of such acquisition, to the extent that such securities included in such estate do not exceed twenty-five per centum of such voting securities or twenty-five per centum of any such class of security. The indenture shall provide that

promptly after May fifteenth in each calendar year, the trustee shall make a check of its holdings of such securities in any of the above-mentioned capacities as of such May fifteenth. Such indenture shall also provide that if the obligor upon the indenture securities fails to make payment in full of principal or interest under such indenture when and as the same becomes due and payable, and such failure continues for thirty days thereafter, the trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such thirty-day period, and after such date, notwithstanding the foregoing provisions of this subparagraph, all such securities so held by the trustee, with sole or joint control over such securities vested in it, shall be considered as though beneficially owned by such trustee, for the purposes of subparagraphs (6), (7) and (8) of this paragraph.

(c) The indenture shall provide that the specification of percentages in subparagraphs (5) to (9), inclusive, of paragraph (b) shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of subparagraph (3) or (7) of paragraph (b).

(d) For the purposes of subparagraphs (6), (7), (8) and (9) of paragraph (b), (A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness; (B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty days or more, and shall not have been cured; and (C) the trustee shall not be deemed the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default as above defined, or (ii) any security which it holds as collateral security under the indenture, irrespective of any default thereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent, or depository, or in any similar representative capacity.

(e) For the purposes of paragraph (b), the term "underwriter" when

used with reference to an obligor upon the indenture securities means every person who, within three years prior to the time as of which the determination is made, was an underwriter of any security of such obligor outstanding at such time.

(f) When used in paragraphs (b) to (e), inclusive, unless the context otherwise requires---

(1) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(2) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(3) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(4) The term "obligor", when used with respect to any indenture security, means every person who is liable thereon, and, if such security is a certificate of interest or participation, such term means also every person who is liable upon the security or securities in which such certificate evidences an interest or participation; but such term shall not include the trustee under an indenture under which certificates of interest or participation, equipment trust certificates, or like securities are outstanding.

(5) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a

person; and a specified percentage of the voting securities of a person means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

## ARTICLE 6

### **DOWER AND CURTESY**

- Section 189. Estate of curtesy abolished.
- 190. Dower.
  - 190-b. Lands reacquired by the husband.
  - 191. Dower in lands exchanged.
  - 192. Dower in lands mortgaged before marriage.
  - 193. Dower in lands mortgaged for purchase-money.
  - 194. Surplus proceeds of sale under purchase-money mortgages.
  - 195. Widow of mortgagee not endowed.
  - 196. When dower barred by misconduct.
  - 196-a. When dower barred by dissolution of marriage.
  - 197. When dower barred by jointure.
  - 198. When dower barred by pecuniary provisions.
  - 199. When widow to elect between jointure and dower.
  - 200. Election between devise and dower.
  - 201. When deemed to have elected.
  - 202. When provision in lieu of dower is forfeited.
  - 203. Effect of acts of husband.
  - 204. Widow's quarantine.
  - 205. Widow may bequeath a crop.
  - 206. Divorced woman may release dower.
  - 207. Married woman may release dower by attorney.

**§ 189. Estate of curtesy abolished.** The common law estate by the curtesy in the real property of a wife dying after the thirty-first day of August, nineteen hundred and thirty, and all its incidents, are hereby abolished.

**§ 190. Dower.** When the parties intermarried prior to the first day of September, nineteen hundred and thirty, a widow shall be endowed of the third part of all the lands whereof her husband was prior to the first day of September, nineteen hundred and thirty, seized of an estate of inheritance, at any time during the marriage. Except as hereinbefore provided, after the thirty-first day of August, nineteen hundred and thirty, no inchoate right of dower shall be possessed by a wife during coverture, and no widow shall be endowed, in any lands whereof her husband became seized of an estate of inheritance.

**§ 190-b. Lands reacquired by the husband.** Lands in which the husband did not have an estate of inheritance on September first, nineteen hundred thirty, and in which the wife did not then have an inchoate right of dower, shall not be subject to dower or an inchoate right of dower if acquired by the husband after said date, although they had been owned by the husband prior to said date.

**§ 191. Dower in lands exchanged.** If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken, in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange, within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.

**§ 192. Dower in lands mortgaged before marriage.** Where a person seized of an estate of inheritance in lands, executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

**§ 193. Dower in lands mortgaged for purchase-money.** Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not entitled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

**§ 194. Surplus proceeds of sale under purchase-money mortgages.** Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life, as her dower.

**§ 195. Widow of mortgagee not endowed.** A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein, during the marriage.

**§ 196. When dower barred by misconduct.** In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

**§ 196-a. When dower barred by dissolution of marriage.** In case of a dissolution of the marriage because of the absence of the wife for five successive years, as provided in section seven-a of the domestic relations law, she shall not be endowed.

**§ 197. When dower barred by jointure.** Where an estate in real property

is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if she be a minor, by her joining with her father or guardian in that conveyance.

**§ 198. When dower barred by pecuniary provisions.** Any pecuniary provision, made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her right or claim of dower in all the lands of her husband.

**§ 199. When widow to elect between jointure and dower.** If, before the marriage, but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

**§ 200. Election between devise and dower.** If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provisions so made, or be endowed of the lands of her husband; but she is not entitled to both.

**§ 201. When deemed to have elected.** Where a woman is entitled to an election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within six months after the death of her husband she enters upon the lands assigned to her for her dower, or commences an action for her dower. But, during such period of six months after the



death of her said husband, her time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, on an affidavit showing the pendency of a proceeding to contest the probate of the will containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator can not be ascertained within the period so limited, or other reasonable cause, and on notice given to such persons, and in such manner, as such court may direct. Such order shall be indexed and recorded in the same manner as a notice of pendency of action in the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

**§ 202. When provision in lieu of dower is forfeited.** Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representatives of the person in whom they would have vested on the determination of her interest therein, by her death.

**§ 203. Effect of acts of husband.** An act, deed or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin, or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

**§ 204. Widow's quarantine.** A widow may remain in the chief house of her husband forty days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the

estate of her husband.

**§ 205. Widow may bequeath a crop.** A widow may bequeath a crop in the ground of land held by her in dower.

**§ 206. Divorced woman may release dower.** A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

**§ 207. Married woman may release dower by attorney.** A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

\* ARTICLE 6-A

**GOOD CAUSE EVICTION LAW**

- Section 210. Short title.  
211. Definitions.  
212. Applicability in the city of New York.  
213. Voluntary participation by local governments outside the city of New York.  
214. Covered housing accommodations.  
215. Necessity for good cause.  
216. Grounds for removal of tenants.  
217. Preservation of existing requirements of law.  
218. Waiver of rights void.

\* NB Repealed June 15, 2034

\* **§ 210. Short title.** This article shall be cited as the "good cause

eviction law".

\* NB Repealed June 15, 2034

\* **§ 211. Definitions.** 1. The term "housing accommodation", as used in this article shall mean any residential premises, including any residential premises located within a mixed-use residential premises.

2. The term "landlord" as used in this article shall mean any fee owner, lessor, sublessor, assignor, court appointed receiver, or any other person or entity receiving or entitled to receive rent for the occupancy of any housing accommodation or an agent of any of the foregoing.

3. (a) The term "small landlord" as used in this article shall mean a landlord of no more than (i) ten units in the state, or (ii) such other number of units in the state designated by local law pursuant to paragraph (b) of subdivision two of section two hundred thirteen of this article.

(b) If a landlord is a single natural person, then that landlord is a small landlord if they own or are a beneficial owner of, directly or indirectly, in whole or in part, no more than the number of units established pursuant to paragraph (a) of this subdivision; if there is more than one natural person owner, then no one person may own or be a beneficial owner of, directly or indirectly, in whole or in part, more than the number of units established pursuant to paragraph (a) of this subdivision.

(c) If a landlord is an entity, organized under the laws of this state or of any other jurisdiction, then that landlord is a small landlord if each natural person with a direct or indirect ownership interest in the entity or any affiliated entity owns no more than the number of units established pursuant to paragraph (a) of this subdivision. If an entity cannot provide the names of all natural persons with a direct or indirect ownership interest in the entity, such entity shall not qualify as a small landlord.

4. The term "tenant" as used in this article shall mean a tenant,

sub-tenant, lessee, sublessee, or any other person entitled to the lawful possession, use or occupancy of any housing accommodation. An individual shall not be considered a tenant for the purposes of this article if:

(a) no landlord-tenant relationship exists, as established pursuant to any of the grounds set forth in section seven hundred thirteen of the real property actions and proceedings law; or

(b) the individual is an occupant, as defined in paragraph (b) of subdivision one of section two hundred thirty-five-f of this chapter, who has not received the landlord's express or implied consent to use the housing accommodation as their primary residence in exchange for payment of rent.

5. The term "rent" as used in this article shall mean any consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the possession, use or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations. The term "rent" shall not include any separate charges for services, amenities or facilities which the tenant pays in addition to rent, including but not limited to charges for fitness centers, parking, storage, or facility rentals, provided that such charges are not imposed or increased for the purposes of circumventing this article.

6. The term "disabled person" as used in this article shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.

7. The term "inflation index" shall mean five percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States bureau of labor statistics for the region in which the housing accommodation is located, as established for the most recent preceding calendar year as shall be

published by the division of housing and community renewal no later than the first of August in any given year, provided further that for New York city and any village, town, or city that adopts the provisions of this article by local law pursuant to subdivision one of section two hundred thirteen of this article in the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester, such consumer price index shall be the New York-Newark-Jersey City, NY-NJ-PA consumer price index, and provided further that for any other village, town, or city that adopts the provisions of this article by local law pursuant to subdivision one of section two hundred thirteen of this article, such consumer price index shall be the Northeast Region consumer price index.

8. The term "local rent standard" shall mean a rent increase equal to the inflation index or ten percent, whichever is lower.

\* NB Repealed June 15, 2034

\* **§ 212. Applicability in the city of New York.** Upon the effective date of this section, this article shall apply to the city of New York.

\* NB Repealed June 15, 2034

\* **§ 213. Voluntary participation by local governments outside the city of New York.** 1. Applicability. This article shall apply in any village, town, or a city, other than the city of New York, that, acting through its local legislative body, adopts the provisions of this article by local law.

2. Opt-in by a village, town, or city, other than the city of New York. A village, town, or city that adopts the provisions of this article by local law pursuant to subdivision one of this section may:

(a) provide that any unit on or within a housing accommodation shall be exempt from the provisions of this article if such unit has a monthly rent above a percent of fair market rent, as published by the United States department of housing and urban development and as shall be published for each county in the state by the division of housing and community renewal pursuant to subdivision fifteen of section two hundred

fourteen of this article, that shall be established in the local law adopted pursuant to subdivision one of this section, provided that if such local law does not establish such percent of fair market rent, any unit on or within a housing accommodation with a monthly rent greater than two hundred forty-five percent of such fair market rent shall be exempt from the provisions of this article; and/or

(b) define "small landlord" as a landlord of no more than any number of units in the state that the village, town, or city enacts by local law, provided that if such local law does not define "small landlord," a "small landlord" shall mean a landlord of no more than ten units in the state.

3. Notwithstanding the foregoing provisions of this section, if a town and a village within such town both adopt the provisions of this article by local law pursuant to subdivision one of this section, the local law adopted by such town shall not apply within the territorial limits of a village within such town.

4. Nothing in this section shall permit a village, town, or city to which this article applies to preempt or alter the terms and provisions of this article within such village, town or city.

5. Within thirty days of receipt of a local law adopted pursuant to subdivision one of this section, and filed with the department of state pursuant to section twenty-seven of the municipal home rule law, the department of state shall notify the division of housing and community renewal of such adoption.

6. The division of housing and community renewal shall include in the annual publication required pursuant to subdivision seven of section two hundred eleven of this article a list including any village, town, or city, other than the city of New York, as to which the division of housing and community renewal has received the notice from the department of state required pursuant to subdivision five of this section indicating that such village, town, or city has adopted a local law pursuant to subdivision one of this section to apply the provisions of this article within such village, town, or city. Such list shall

include the name of each village, town, or city that has adopted such a local law, the applicable fair market rent threshold within such village, town, or city for exemption from the provisions of this article established pursuant to paragraph (a) of subdivision two of this section, and the applicable definition of small landlord within such village, town, or city established pursuant to paragraph (b) of subdivision two of this section.

\* NB Repealed June 15, 2034

\* **§ 214. Covered housing accommodations.** Where this article applies, it shall apply to all housing accommodations except a:

1. premises owned by a small landlord provided that in connection with any eviction proceeding in which the landlord claims an exemption from the provisions of this article on the basis of being a small landlord, such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence; provided further that if the landlord is an entity, organized under the laws of this state or of any other jurisdiction, then such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person with a direct or indirect ownership interest in such entity or any affiliated entity, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence;

2. owner-occupied housing accommodation with no more than ten units;

3. unit on or within a housing accommodation where such unit is sublet pursuant to section two hundred twenty-six-b of this chapter, or otherwise, where the sublessor seeks in good faith to recover possession of such housing accommodation for their own personal use and occupancy;

4. unit on or within a housing accommodation where the possession, use or occupancy of which is solely incident to employment and such employment is being or has been lawfully terminated;

5. unit on or within a housing accommodation where such unit is otherwise subject to regulation of rents or evictions pursuant to local, state or federal law, rule, or regulation;

6. unit on or within a housing accommodation where such unit must be affordable to tenants at a specific income level pursuant to statute, regulation, restrictive declaration, or pursuant to a regulatory agreement with a local, state, or federal government entity;

7. unit on or within a housing accommodation owned as a condominium or cooperative, or a unit on or within a housing accommodation subject to an offering plan submitted to the office of the attorney general, provided that nothing herein shall abrogate or otherwise limit any rights or obligations a tenant residing in a unit within a condominium or cooperative or a purchaser, owner, or offeror of a condominium or cooperative unit has pursuant to any other state law;

8. housing accommodation for which a temporary or permanent certificate of occupancy was issued on or after the first of January, two thousand nine, for a period of time of thirty years following issuance of such certificate;

9. unit on or within a housing accommodation that qualifies as a seasonal use dwelling unit pursuant to subdivisions four and five of section 7-108 of the general obligations law;

10. housing accommodation in a hospital as defined in subdivision one of section twenty-eight hundred one of the public health law, continuing care retirement community licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living residence licensed pursuant to article forty-six-B of the public health law, adult care facility licensed pursuant to article seven of the social services law,



senior residential community that have submitted an offering plan to the attorney general, and not-for-profit independent retirement community that offer personal emergency response, housekeeping, transportation and meals to their residents;

11. manufactured home located on or in a manufactured home park as defined in section two hundred thirty-three of the real property law;

12. hotel room or other transient use covered by the definition of a class B multiple dwelling under subdivision nine of section four of the multiple dwelling law, regardless of whether such use is located in a jurisdiction in which the multiple dwelling law applies;

13. dormitory owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school;

14. housing accommodation within and for use by a religious facility or institution; and

15. unit on or within a housing accommodation where the monthly rent is greater than the percent of fair market rent established pursuant to paragraph (a) of subdivision two of section two hundred thirteen of this article in a local law of a village, town, or city, other than the city of New York, adopting the provisions of this article pursuant to subdivision one of section two hundred thirteen of this article, or two hundred forty-five percent of the fair market rent, provided that fair market rent shall refer to the figure published by the United States department of housing and urban development, for the county in which the housing accommodation is located, as shall be published by the division of housing and community renewal no later than the first of August in any given year. The division of housing and community renewal shall publish the fair market rent and two hundred forty-five percent of the fair market rent for each unit type for which such fair market rent is published by the United States department of housing and urban development for each county in New York state in the annual publication required pursuant to subdivision seven of section two hundred eleven of this article.

\* NB Repealed June 15, 2034

\* **§ 215. Necessity for good cause.** No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodations covered by section two hundred fourteen of this article except for good cause as defined in section two hundred sixteen of this article.

\* NB Repealed June 15, 2034

\* **§ 216. Grounds for removal of tenants.** 1. No landlord shall remove a tenant from any housing accommodation covered by section two hundred fourteen of this article, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:

(a) (i) The tenant has failed to pay rent due and owing, provided however that the rent due and owing, or any part thereof, did not result from a rent increase which is unreasonable. In determining whether all or part of the rent due and owing is the result of an unreasonable rent increase, it shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unreasonable if said rent has been increased in any calendar year, after the effective date of this article, or after the effective date of the local law in any village, town, or city that enacts such local law to apply this article to such village, town, or city pursuant to subdivision one of section two hundred thirteen of this article, by an amount greater than the local rent standard, provided further that no rent increase less than or equal to the local rent standard shall be deemed unreasonable.

(ii) Whenever a court considers whether a rent increase is unreasonable, the court may consider all relevant facts, including but not limited to a landlord's costs for fuel and other utilities,

insurance, and maintenance; but in all cases, the court shall consider the landlord's property tax expenses and any recent increases thereto; such relevant facts also shall include whether the landlord, other than in circumstances governed by paragraph (d) of this subdivision, seeks in good faith to raise the rent upon a renewal lease to reflect completed significant repairs to the housing accommodation, or to any other part of the building or real property in which the housing accommodation is located, provided that the landlord can establish that the repairs constituted significant repairs and that such repairs did not result from the landlord's failure to properly maintain the building or housing accommodation, and provided further that for the purposes of this subparagraph, "significantly repair" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or abatement of hazardous materials, including lead-based paint, mold, or asbestos in accordance with applicable federal, state, and local laws, and provided further cosmetic improvements alone, including painting, decorating, and minor repairs, do not qualify as significant repairs;

(b) The tenant is violating a substantial obligation of their tenancy or breaching any of the landlord's rules and regulations governing said premises, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article and provided such rules or regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term;

(c) The tenant is committing or permitting a nuisance in such housing accommodation, or elsewhere in the building or on the real property in which the housing accommodation is located, or is maliciously or by reason of gross negligence substantially damaging the housing accommodation, or causing substantial damage elsewhere in the building or on the real property in which the housing accommodation is located; or the tenant's conduct is such as to interfere with the comfort and safety of the landlord or other tenants or occupants of the same or another adjacent building or structure;

(d) Occupancy of the housing accommodation by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefor; provided however that an agency of the state or municipality having jurisdiction has issued an order requiring the tenant to vacate the housing accommodation. No tenant shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not through neglect or deliberate action or failure to act create the condition necessitating the vacate order. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to such tenant's health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord or to otherwise compel compliance by the landlord with all applicable state or municipal housing codes;

(e) The tenant is using or permitting the housing accommodation, or elsewhere in the building or on the real property in which the housing accommodation is located, to be used for an illegal purpose;

(f) The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee or other person having a legitimate interest therein;

(g) The landlord seeks in good faith to recover possession of a housing accommodation for the landlord's own personal use and occupancy as the landlord's principal residence, or the personal use and occupancy as principal residence of the landlord's spouse, domestic partner, child, stepchild, parent, step-parent, sibling, grandparent, grandchild, parent-in-law or sibling-in-law, when no other suitable housing

accommodation in such building is available, provided that no judgment in favor of the landlord may be granted pursuant to this paragraph unless the landlord establishes good faith to recover possession of a housing accommodation for the landlord's own personal use and occupancy as the landlord's principal residence, or the personal use and occupancy as a principal residence of the landlord's spouse, domestic partner, child, stepchild, parent, step-parent, sibling, grandparent, grandchild, parent-in-law or sibling-in-law, by clear and convincing evidence. This paragraph shall not apply to a housing accommodation occupied by a tenant who is sixty-five years of age or older or who is a disabled person;

(h) The landlord in good faith seeks to demolish the housing accommodation, provided that no judgment in favor of the landlord may be granted pursuant to this paragraph unless the landlord establishes good faith to demolish the housing accommodation by clear and convincing evidence;

(i) The landlord seeks in good faith to withdraw a housing accommodation from the housing rental market, provided that no judgment in favor of the landlord may be granted pursuant to this paragraph unless the landlord establishes good faith to withdraw the housing accommodation from the housing rental market by clear and convincing evidence; or

(j) The tenant fails to agree to reasonable changes to a lease at renewal, including increases in rent that are not unreasonable as defined in paragraph (a) of this subdivision, as long as written notice of the changes to the lease were provided to the tenant at least thirty days, but no more than ninety days, prior to the expiration of the current lease.

2. A tenant required to surrender a housing accommodation by virtue of the operation of paragraph (g), (h), or (i) of subdivision one of this section shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use, removal from the rental housing market, or demolition of the housing accommodation. In any action or proceeding brought pursuant to this subdivision a prevailing tenant shall be

entitled to recovery of actual damages, and reasonable attorneys' fees. Except as provided in this subdivision, nothing in this article shall create a civil claim or cause of action by a tenant against a landlord.

3. Nothing in this section shall abrogate or limit the tenant's right pursuant to section seven hundred fifty-one of the real property actions and proceedings law to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the real property actions and proceedings law where applicable.

\* NB Repealed June 15, 2034

\* **§ 217. Preservation of existing requirements of law.** No action shall be maintainable and no judgment of possession shall be entered for housing accommodations pursuant to section two hundred sixteen of this article, unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants, including without limitation the manner and the time of service of such notice and the contents of such notice.

\* NB Repealed June 15, 2034

\* **§ 218. Waiver of rights void.** Any agreement by a tenant heretofore or hereinafter entered into in a written lease or other rental agreement waiving or modifying their rights as set forth in this article shall be void as contrary to public policy.

\* NB Repealed June 15, 2034

## ARTICLE 7

### **Landlord and Tenant**

Section 220. Action for use and occupation.

- 221. Rent due on life leases recoverable.
- 222. When rent is apportionable.
- 223. Rights where property or lease is transferred.
- 223-a. Remedies of lessee when possession is not delivered.
- 223-b. Retaliation by landlord against tenant.
- 224. Attornment by tenant.
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- 236. Assignment of lease of a deceased tenant.
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- 237. Discrimination in leases with respect to bearing of children.
- 237-a. Discrimination against children in dwelling houses and



manufactured home parks.

238. Agreements or contracts for privileges to deal with occupants of tenements, apartment houses or bungalow colonies.

238-a. Limitation on fees.

**§ 220. Action for use and occupation.** The landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.

**§ 221. Rent due on life leases recoverable.** Rent due on a lease for life or lives is recoverable by action, as well after as before the death of the person on whose life the rent depends, and in the same manner as rent due on a lease for years.

**§ 222. When rent is apportionable.** Where a tenant for life, who shall have demised the real property, dies before the first rent day, or between two rent days, his executor or administrator may recover the proportion of rent which accrued to him before his death.

**§ 223. Rights where property or lease is transferred.** The grantee of leased real property, or of a reversion thereof, or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in

the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty.

**§ 223-a. Remedies of lessee when possession is not delivered.** In the absence of an express provision to the contrary, there shall be implied in every lease of real property a condition that the lessor will deliver possession at the beginning of the term. In the event of breach of such implied condition the lessee shall have the right to rescind the lease and to recover the consideration paid. Such right shall not be deemed inconsistent with any right of action he may have to recover damages.

**§ 223-b. Retaliation by landlord against tenant.** 1. No landlord of premises or units to which this section is applicable shall serve a notice to quit upon any tenant or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for:

a. A good faith complaint, by or in behalf of the tenant, to the landlord, the landlord's agent or a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code, or ordinance, the warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. Actions taken in good faith, by or in behalf of the tenant, to secure or enforce any rights under the lease or rental agreement, the

warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

c. The tenant's participation in the activities of a tenant's organization.

2. No landlord of premises or units to which this section is applicable or such landlord's agent shall substantially alter the terms of the tenancy in retaliation for any actions set forth in paragraphs a, b, and c of subdivision one of this section. Substantial alteration shall include, but is not limited to, the refusal to continue a tenancy of the tenant, upon expiration of the tenant's lease, to renew the lease or offer a new lease, or offering a new lease with an unreasonable rent increase; provided, however, that a landlord shall not be required under this section to offer a new lease or a lease renewal for a term greater than one year.

3. A landlord shall be subject to a civil action for damages, attorney's fees and costs and other appropriate relief, including injunctive and other equitable remedies, as may be determined by a court of competent jurisdiction in any case in which the landlord has violated the provisions of this section.

4. In any action to recover real property or summary proceeding to recover possession of real property, judgment shall be entered for the tenant if the court finds that the landlord is acting in retaliation for any action set forth in paragraphs a, b, and c of subdivision one of this section. Retaliation shall be asserted as an affirmative defense in such action or proceeding. The tenant shall not be relieved of the obligation to pay any rent for which he is otherwise liable.

5. In an action or proceeding instituted against a tenant of premises or a unit to which this section is applicable, a rebuttable presumption that the landlord is acting in retaliation shall be created if the tenant establishes that the landlord served a notice to quit, or instituted an action or proceeding to recover possession, or attempted to substantially alter the terms of the tenancy, within one year after:

a. A good faith complaint was made, by or in behalf of the tenant, to the landlord, the landlord's agent or a governmental authority of the landlord's violation of any health or safety law, regulation, code, or ordinance, the warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. The tenant in good faith took action to secure or enforce against the landlord or his agents any rights under the lease or rental agreement, the warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree.

c. Judgment under subdivision three or four of this section was entered for the tenant in a previous action between the parties; or an inspection was made, an order was entered, or other action was taken as a result of a complaint or act described in paragraph a or b of this subdivision.

The effect of the presumption shall be to require the landlord to establish a non-retaliatory motive for his acts by a preponderance of

the evidence.

5-a. Any lease provision which seeks to assess a fee, penalty or dollar charge, in addition to the stated rent, against a tenant because such tenant files a bona fide complaint with the landlord, the landlord's agent or a building code officer regarding the condition of such tenant's leased premises shall be null and void as being against public policy. A landlord or agent of the landlord who seeks to enforce such a fee, penalty or charge shall be liable to the tenant for triple the amount of such fee, penalty or charge.

6. This section shall apply to all rental residential premises except owner-occupied dwellings with less than four units. However, its provisions shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

**§ 224. Attornment by tenant.** The attornment of a tenant to a stranger is absolutely void and does not in any way affect the possession of the landlord unless made either:

1. With the consent of the landlord; or,
2. Pursuant to or in consequence of a judgment, order, or decree of a court of competent jurisdiction; or
3. To a purchaser at foreclosure sale.

**§ 225. Notice of action adverse to possession of tenant.** Where a process or summons in an action to recover the real property occupied by him, or the possession thereof, is served upon a tenant, he must forthwith give notice thereof to his landlord; otherwise he forfeits the

value of three years' rent of such property, to the landlord or other person of whom he holds.

**§ 226. Effect of renewal on sub-lease.** The surrender of an under-lease is not requisite to the validity of the surrender of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder of an under-lease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered.

**§ 226-a. Effect of new lease on tenant's right to remove fixtures or improvements.** Unless otherwise expressly agreed, where a tenant has a right to remove fixtures or improvements, such right shall not be lost or impaired by reason of his acceptance of a new lease of the same premises without any surrender of possession between terms.

**§ 226-b. Right to sublease or assign.** 1. Unless a greater right to assign is conferred by the lease, a tenant renting a residence may not assign his lease without the written consent of the owner, which consent may be unconditionally withheld without cause provided that the owner shall release the tenant from the lease upon request of the tenant upon thirty days notice if the owner unreasonably withholds consent which release shall be the sole remedy of the tenant. If the owner reasonably withholds consent, there shall be no assignment and the tenant shall not be released from the lease.

2. (a) A tenant renting a residence pursuant to an existing lease in a dwelling having four or more residential units shall have the right to sublease his premises subject to the written consent of the landlord in advance of the subletting. Such consent shall not be unreasonably withheld.

(b) The tenant shall inform the landlord of his intent to sublease by

mailing a notice of such intent by certified mail, return receipt requested. Such request shall be accompanied by the following information: (i) the term of the sublease, (ii) the name of the proposed sublessee, (iii) the business and permanent home address of the proposed sublessee, (iv) the tenant's reason for subletting, (v) the tenant's address for the term of the sublease, (vi) the written consent of any cotenant or guarantor of the lease, and (vii) a copy of the proposed sublease, to which a copy of the tenant's lease shall be attached if available, acknowledged by the tenant and proposed subtenant as being a true copy of such sublease.

(c) Within ten days after the mailing of such request, the landlord may ask the tenant for additional information as will enable the landlord to determine if rejection of such request shall be unreasonable. Any such request for additional information shall not be unduly burdensome. Within thirty days after the mailing of the request for consent, or of the additional information reasonably asked for by the landlord, whichever is later, the landlord shall send a notice to the tenant of his consent or, if he does not consent, his reasons therefor. Landlord's failure to send such a notice shall be deemed to be a consent to the proposed subletting. If the landlord consents, the premises may be sublet in accordance with the request, but the tenant thereunder, shall nevertheless remain liable for the performance of tenant's obligations under said lease. If the landlord reasonably withholds consent, there shall be no subletting and the tenant shall not be released from the lease. If the landlord unreasonably withholds consent, the tenant may sublet in accordance with the request and may recover the costs of the proceeding and attorneys fees if it is found that the owner acted in bad faith by withholding consent.

3. The provisions of this section shall apply to leases entered into or renewed before or after the effective date of this section, however they shall not apply to public housing and other units for which there are constitutional or statutory criteria covering admission thereto nor to a proprietary lease, viz.: a lease to, or held by, a tenant entitled thereto by reason of ownership of stock in a corporate owner of premises which operates the same on a cooperative basis.

4. With respect to units covered by the emergency tenant protection act of nineteen seventy-four or the rent stabilization law of nineteen hundred sixty-nine the exercise of the rights granted by this section shall be subject to the applicable provisions of such laws. Nothing contained in this section two hundred twenty-six-b shall be deemed to affect the rights, if any, of any tenant subject to title Y of chapter 51 of the administrative code of the city of New York or the emergency housing rent control law.

5. Any sublet or assignment which does not comply with the provisions of this section shall constitute a substantial breach of lease or tenancy.

6. Any provision of a lease or rental agreement purporting to waive a provision of this section is null and void.

7. The provisions of this section except for items in paragraph (b) of subdivision two of this section not previously required, shall apply to all actions and proceedings pending on the effective date of this section.

8. Nothing contained in this section shall be deemed to prevent or limit the right of a tenant to sell improvements to a unit pursuant to article seven-C of the multiple dwelling law.

**§ 226-c. Notice of rent increase or non-renewal of residential tenancy.** 1. \* (a) Whenever a landlord intends to offer to renew the tenancy of an occupant in a residential dwelling unit with a rent increase equal to or greater than five percent above the current rent, or the landlord does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. The notice shall append or contain the notice required pursuant to section two hundred thirty-one-c of this article, which shall state the following: (i) if the unit is or is not subject to article six-A of this chapter, the "good cause eviction law", and if the unit is exempt, such notice shall state why the unit is exempt from such law; (ii) if the



landlord is not renewing the lease for a unit subject to article six-A of this chapter, the lawful basis for such non-renewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of this chapter above the applicable local rent standard, as defined in subdivision eight of section two hundred eleven of this chapter, the justification for such increase. If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, notwithstanding any provision of a lease or other tenancy agreement to the contrary.

\* NB Effective August 18, 2024 until June 15, 2034

\* (a) Whenever a landlord intends to offer to renew the tenancy of an occupant in a residential dwelling unit with a rent increase equal to or greater than five percent above the current rent, or the landlord does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, notwithstanding any provision of a lease or other tenancy agreement to the contrary.

\* NB Effective June 15, 2034

(b) Notwithstanding paragraph (a) of this subdivision, notice shall not be required under this section to be provided by a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, to a tenant who is a dwelling unit owner or shareholder of such corporation. Nothing in this paragraph shall relieve such cooperative housing corporation of any otherwise applicable obligation to provide notice to such tenant pursuant to any other law or any agreement between the parties.

2. (a) For the purposes of this section, the required notice shall be based on the cumulative amount of time the tenant has occupied the residence or the length of the tenancy in each lease, whichever is longer.

(b) If the tenant has occupied the unit for less than one year and does not have a lease term of at least one year, the landlord shall provide at least thirty days' notice.

(c) If the tenant has occupied the unit for more than one year but less than two years, or has a lease term of at least one year but less than two years, the landlord shall provide at least sixty days' notice.

(d) If the tenant has occupied the unit for more than two years or has a lease term of at least two years, the landlord shall provide at least ninety days' notice.

**§ 227. When tenant may surrender premises.** Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his or her fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he or she is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender. Any rent paid in advance or which may have accrued by the terms of a lease or any other hiring shall be adjusted to the date of such surrender.

**§ 227-a. Termination of residential lease by senior citizens or individuals with a disability moving to a residence of a family member or entering** certain health care facilities, adult care facilities or housing projects. 1. In any lease or rental agreement covering premises occupied for dwelling purposes in which a lessee or tenant has (a) attained the age of sixty-two years or older, or will attain such age during the term of such lease or rental agreement or (b) is an individual with a "disability", as defined in subdivision twenty-one of section two hundred ninety-two of the executive law or a husband or wife or dependent of such a person residing with him or her, there shall be implied a covenant by the lessor or owner to permit such lessee or tenant: (i) who is certified by a physician as no longer able, for medical reasons, to live independently in such premises and requiring

assistance with instrumental activities of daily living or personal activities of daily living, and who will move to a residence of a member of his or her family, or (ii) who is notified of his or her opportunity to commence occupancy in an adult care facility (as defined in subdivision twenty-one of section two of the social services law) except for a shelter for adults (as defined in subdivision twenty-three of section two of such law), a residential health care facility (as defined in section two thousand eight hundred one of the public health law), or a housing unit which receives substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality, or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing, or in less expensive premises in a housing project or complex erected for the specific purpose of housing senior citizens or persons with disabilities, to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and to release the lessee or tenant from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease in accordance with subdivision two of this section; and to adjust to the date of surrender any rent or other payments made in advance or which have accrued by the terms of such lease or rental agreement.

2. (a) Any lease or rental agreement covered by paragraph (a) of subdivision one of this section may be terminated by notice in writing delivered to the lessor or owner or to the lessor's or owner's agent by a lessee or tenant. Such termination shall be effective no earlier than thirty days after the date on which the next rental payment subsequent to the date when such notice is delivered is due and payable. Such notice shall be accompanied by a documentation of the physician's certification, accompanied by a notarized statement from a family member stating that the senior citizen is related, and will be moving into their place of residence for a period of not less than six months or admission or pending admission to a facility set forth in subdivision one of this section. Such notice shall be deemed delivered five days after mailing. Documentation of admission or pending admission shall consist of a copy of an executed lease or contract between the lessee or

tenant and a facility set forth in subdivision one of this section.

(b) Any lease or rental agreement covered by paragraph (b) of subdivision one of this section may be terminated by notice in writing delivered to the lessor or owner or to the lessor's or owner's agent by a lessee or tenant. Such termination shall be effective no earlier than thirty days after the date on which the next rental payment subsequent to the date when such notice is delivered is due and payable. Such notice shall be accompanied by a documentation of the physician's certification. Such notice shall be deemed delivered five days after mailing. Documentation of admission or pending admission shall consist of a copy of an executed lease or contract between the lessee or tenant and a facility set forth in subdivision one of this section.

3. Any person who shall knowingly seize, hold, or detain the personal effects, clothing, furniture or other property of any person who has lawfully terminated a lease or rental agreement covered by this section or the spouse or dependent of any such person, or in any manner interferes with the removal of such property from the premises covered by such lease or rental agreement, for the purpose of subjecting or attempting to subject any of such property to a purported claim for rent accruing subsequent to the date of termination of such lease or rental agreement, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or by both such fine and imprisonment.

3-a. Each owner or lessor of a facility or unit into which a lessee or tenant is entitled to move after quitting and surrendering as provided for herein shall in writing, upon an application, notify prospective tenants of the provision of this section. Such notice shall include, in plain and simple English, in conspicuous print of at least eighteen point type, an explanation of a tenants right to terminate the existing lease and all other applicable requirements and duties relating thereto. Such notice shall read as follows:

NOTICE: RESIDENTIAL LEASE TERMINATION

SECTION 227-a OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK ALLOWS FOR THE TERMINATION OF A RESIDENTIAL LEASE BY SENIOR CITIZENS OR

INDIVIDUALS WITH A DISABILITY MOVING TO A RESIDENCE OF A FAMILY MEMBER OR ENTERING CERTAIN HEALTH CARE FACILITIES, ADULT CARE FACILITIES OR HOUSING PROJECTS.

Who is eligible?

Any lessee or tenant who is age sixty-two years or older,  
or who will attain such age during the term of the lease or rental  
agreement,

or an individual with a "disability", as defined in subdivision  
21 of section 292 of the executive law,

or a spouse or dependent of such person residing with him or her.

What kind of facilities does this law apply to?

This law will apply if the senior citizen or individual with a  
disability is relocating to:

- A. An adult care facility;
- B. A residential health care facility;
- C. Subsidized low income housing;
- D. Senior citizen housing; or
- E. A residence of a family member.

What are the responsibilities of the rental property owner?

When the tenant gives notice of his or her opportunity to move into  
one of the above facilities the landlord must allow:

A. for the termination of the lease or rental agreement, and

B. the release of the tenant from any liability to pay rent or other payments in lieu of rent from the termination of the lease in accordance with section 227-a of the real property law, to the time of the original termination date, and

C. to adjust any payments made in advance or payments which have accrued by the terms of such lease or rental agreement.

How do you terminate the lease?

If the tenant can move into one of the specified facilities, he or she must terminate the lease or agreement in writing no earlier than thirty days after the date on which the next rental payment (after the notice is delivered) is due and payable. The notice is deemed delivered five days after being mailed. The written notice must include documentation of admission or pending admission to one of the above mentioned facilities.

For example: Mail the notice: May 5th

Notice received: May 10th

Next rental payment due: June 1st

Termination effective: July 1st

Will the landlord face penalties if he or she does not comply?

Yes, according to section 227-a of the real property law, if anyone interferes with the removal of your property from the premises they will be guilty of a misdemeanor and will be either imprisoned for up to one year or fined up to \$1000.00 or both.

4. Any agreement by a lessee or tenant of premises occupied for dwelling purposes waiving or modifying his or her rights as set forth in

this section shall be void as contrary to public policy.

**§ 227-b. Termination of certain contracts by senior citizens.** 1. In any lease or contract for a senior citizen who has attained the age of sixty-two or older to reside in those facilities set forth in subdivision one of section two hundred twenty-seven-a of this article except for residential health care facility (as defined in section twenty-eight hundred one of the public health law) and any other facilities operated for the specific purpose of housing senior citizens which offer ancillary services to accommodate senior citizens, there shall be implied a covenant by the lessor or owner of such facilities to permit such senior citizen, or other person obligated by any part of such lease or contract on behalf of such senior citizen, to cancel such lease or contract until midnight of the third business day after which such person has signed such lease or contract. Where any provision of such lease or contract or any law or regulations affords a longer period to cancel than the period provided in this subdivision, such longer period shall govern.

2. Cancellation occurs when written notice of cancellation is given to the owner or lessor.

3. Notice of cancellation, if given by mail, shall be deemed given on the date of the postmark.

4. The form of notice of cancellation shall not be prescribed by such lease or contract. Notice of cancellation shall be sufficient if it indicates the intention of the senior citizen or other person obligated for any part of the contract on behalf of such senior citizen to cancel such lease or contract.

5. Where a person exercises their right to cancel a lease or contract pursuant to this section, and such person has terminated a lease or rental agreement under section two hundred twenty-seven-a of this article, such person shall have the right to reinstate such original lease or rental agreement until midnight of the fifth business day after

the notice of termination required under subdivision two of section two hundred twenty-seven-a of this article has been delivered. Notice of intent to reinstate a lease or rental agreement pursuant to this subdivision shall be made in writing and delivered to the lessor or owner or to the owner's or lessor's agent by the lessee or tenant. If such notice is given by mail, it shall be deemed given on the date of the postmark. Such original lease or rental agreement shall continue to be in effect for the period stated in such agreement as if there had been no interruption in the lease period.

6. Any lease or rental agreement entered into by a lessor or owner to relet the premises being vacated by the senior citizen pursuant to a notice served pursuant to section two hundred twenty-seven-a of this article shall be subject to the provisions of this section. In the event a senior citizen exercises his or her right of reinstatement pursuant to this section such lease or rental agreement to relet the premises shall be canceled. In such event the owner or lessor shall have no obligation to (a) the prospective tenant other than refund of any rent or security paid to such owner or lessor by the prospective tenant, or (b) any broker, agent or other party in connection with such reletting.

7. Any broker's fee or commission paid in connection with the lease or contract referred to in subdivision one of this section or reletting referred to in subdivision six of this section shall be refunded to the party who paid such fee or commission if such lease or contract referred to in subdivision one of this section is canceled pursuant to this section or if such lease or rental agreement referred to in subdivision six of this section is canceled or terminated.

8. Notwithstanding any other provision of this section, any person who enters senior citizen housing prior to midnight of the third business day after the day on which such person has signed a lease or contract for such housing and subsequently cancels such lease or contract shall be financially responsible for room, board and services received while such person was a resident in such housing in the same manner and to the same extent had the lease or contract not been canceled pursuant to the provisions of this section.



9. Such lease or contract referred to in subdivision one of this section shall include a statement notifying the senior citizen of his or her right to cancel such lease or contract pursuant to the provisions of this section. Such statement shall include in conspicuous print, of at least eighteen point type, an explanation of a senior citizen's right to cancel a lease or contract referred to in subdivision one of this section and all other applicable requirements and duties relating thereto. Such notice shall read as follows:

NOTICE TO SENIOR CITIZENS:

A. CONTRACT OR LEASE CANCELLATION

SECTION 227-b OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK ALLOWS FOR THE CANCELLATION OF A CONTRACT OR LEASE ENTERED INTO BY SENIOR CITIZENS WITH CERTAIN HEALTH CARE FACILITIES, ADULT CARE FACILITIES OR OTHER SENIOR CITIZEN HOUSING FACILITIES.

Who is eligible?

Any senior citizen who is age sixty-two years or older.  
What kind of facilities does this law apply to?

This law will apply if the senior citizen is canceling a contract or

lease with:

- a. An adult care facility;
- b. Other senior citizen housing facilities.

How do you cancel the contract or lease?

The senior citizen is allowed to cancel a contract or lease entered into with any of the above mentioned facilities until midnight of the third business day after which the contract or lease was signed by the senior citizen. Cancellation occurs when written notice of cancellation is given to the owner of the facility. Notice of

cancellation, if given by mail, shall be deemed given on the date of the postmark.

#### B. REINSTATEMENT OF A RESIDENTIAL LEASE

SECTION 227-B OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK ALLOWS SENIOR CITIZENS TO REINSTATE A RESIDENTIAL LEASE UNDER CERTAIN CONDITIONS.

Who is eligible?

Any senior citizen who has exercised his or her right to cancel a lease or contract with an adult care facility or a senior citizen housing facility and has terminated a residential lease under Section 227-a of the Real Property Law of the State of New York.

How do you reinstate a residential lease?

The senior citizen is allowed to reinstate a residential lease until midnight of the fifth business day after the notice of termination required under subdivision two of section 227-a of the real property law has been delivered. Reinstatement occurs when written notice of reinstatement is given to the landlord. Notice of reinstatement, if given by mail, shall be deemed given on the date of the postmark.

10. Any agreement by a senior citizen waiving or modifying any of the rights set forth in this section shall be void as contrary to public policy.

**§ 227-c. Termination of residential lease by victims of domestic violence.** 1. Lease or rental agreement. In any lease or rental agreement covering premises occupied for dwelling purposes, where a tenant or a member of the tenant's household is a victim of domestic violence as defined by section four hundred fifty-nine-a of the social services law and reasonably fears remaining in the leasehold premises because of potential further domestic violence, such tenant shall be permitted to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises and the land so leased or occupied pursuant to the provisions of this section and to be released from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease in accordance with subdivision two of this section.

2. Lease termination procedure. (a) A tenant who meets the requirements in subdivision one of this section may terminate the tenant's lease by notice in writing delivered to the lessor or owner of the premises occupied by such person, or to the lessor's or owner's agent, and to any co-tenants of such lessee or tenant other than the perpetrator of domestic violence. The notice shall specify the termination date which shall be no earlier than thirty days after such notice is delivered. If the notice is mailed via first class mail, it shall be deemed delivered five days after mailing. If the tenant asserts that the lessor or owner is the perpetrator of domestic violence, a person authorized by the tenant may deliver such notice on the tenant's behalf.

(b) Such notice shall state that the tenant or a member of the tenant's household has experienced domestic violence and reasonably believes the tenant, or the member of the tenant's household, is unable to safely remain in the leased premises as a result of the domestic violence.

(c) Within twenty-five days of such notice, the tenant shall provide documentation demonstrating that the tenant or a member of the tenant's household has been a victim of domestic violence as described in subdivision one of this section. This documentation may include any one or more of the following:

(i) A temporary or final order of protection issued by a court of

competent jurisdiction;

(ii) A record, complaint, or report from a federal, state, or local law enforcement agency of an act of domestic violence as described in section four hundred fifty-nine-a of the social services law or a family offense as described in section eight hundred twelve of the family court act, or certifying that the tenant or a member of the tenant's household has been subjected to domestic violence;

(iii) A record from a health care provider for treatment related to domestic violence as described in section four hundred fifty-nine-a of the social services law or a family offense as described in section eight hundred twelve of the family court act;

(iv) A written verification from any other qualified third party to whom the tenant, or a member of the tenant's household reported the domestic violence.

(A) "Qualified third party" shall include: any law enforcement officer; employee of a court of the state; attorney, physician, psychiatrist, psychologist, social worker, registered nurse, therapist, or clinical professional counselor licensed to practice in any state; person employed by a government or non-profit agency or service that advises or provides services to persons regarding domestic violence; or any member of the clergy of a church or religious society or denomination.

(B) Written verification as described herein shall be satisfied by any sworn or notarized statement including the required information.

(d) The following sample forms shall satisfy the notice and verification requirements but are not required. These sample forms shall be posted to the New York state unified court system's website, and shall be made available in the state's family, civil, housing, criminal, and supreme courts:

#### Part I. Tenant/Legal Occupant Statement

I, (insert name of tenant), state as follows:

(Choose the next part (A, B, or C) that most accurately describes your situation)

(A) I have been subject to domestic violence. Date(s) of recent incident(s) happened on or about:

(B) A member of my household has been subject to domestic violence. Date(s) of recent incident(s) happened on or about:

(C) Both I and at least one member of my household have been subject to domestic violence. Date(s) of recent incident(s) happened on or about: The person I have asserted has perpetrated domestic violence is my co-tenant, and I cannot safely give notice of my termination to my co-tenant. (YES/NO)

I reasonably fear that I cannot safely remain in my current apartment. I hereby terminate my lease effective (date at least thirty days after this notice is delivered).

\_\_\_\_\_  
(signature of tenant)

\_\_\_\_\_  
(date)

Acknowledgement

State of \_\_\_\_\_)

)ss.:

County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## Part II. Qualified Third Party Statement

I, (insert name of qualified third party), state as follows:

My employer name/address/phone number/e-mail address are as follows:

I am:

\_\_\_\_\_ A law enforcement officer employed by the (insert law enforcement agency).

\_\_\_\_\_ An employee of \_\_\_\_\_ court located in the state of \_\_\_\_\_.

\_\_\_\_\_ An attorney licensed to practice in (insert name of state(s)).

\_\_\_\_\_ A physician licensed to practice in (insert name of state(s)).

\_\_\_\_\_ A psychiatrist licensed to practice in (insert name of state(s)).

\_\_\_\_\_ A psychologist licensed to practice in (insert name of state(s)).

\_\_\_\_\_ A social worker licensed to practice in (insert name of state(s)).

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

### Part III. Statement of Interpretation/Translation

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(name of interpreter/translator)
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(date)

State of \_\_\_\_\_)

County of \_\_\_\_\_)

Notary Public

(c) A tenant who meets the requirements in subdivision one of this section and submits proper notice pursuant to subdivision two of this

section shall have a defense in any action brought by a landlord against such tenant to recover rent and/or damages for breach of lease and shall not be liable for any rent after the effective termination date.

(d) The lessor or owner may withhold a security deposit in part or in full to the extent allowed by the lease or statute, except for the early termination granted by this section, and shall not withhold any part of the security deposit due to the tenant's exercise of rights under this section.

(e) Nothing in this section shall be construed to be a defense against an action for rent for a period of time before the tenant vacated the premises and gave notice as required in subdivision two of this section.

#### 4. Co-tenants and other occupants. Upon termination:

(a) If the terminating tenant is the sole leaseholder, the premises shall be delivered to the lessor or owner:

(i) free of all tenants and occupants, provided that the terminating tenant shall not be responsible for ensuring that the abusive household member is not present; and

(ii) in accordance with the terms of the lease relating to delivery of the premises at the termination of the lease.

(b) If there are tenants on the lease other than the terminating tenant:

(i) the landlord shall not, except upon consent of such additional tenants, terminate or sever the co-tenancy. The landlord must provide the remaining tenant at least thirty days from the termination date to decide whether to consent to a termination or severance.

(ii) The remaining co-tenant or co-tenants hold the right to add an additional occupant as defined by paragraph (b) of subdivision one of section two hundred thirty-five-f of this article.

5. Confidentiality provisions. (a) Unless the terminating tenant provides written authorization for the release of information or unless required by law, court order, or statute, the information shall not be released. Information that shall be kept confidential shall include information obtained during the process of the tenant terminating his or her lease in accordance with this section, such as: (i) the nature of the termination, (ii) the status of the tenant or member of the tenant's



household as a victim of domestic violence, and (iii) any information contained in documentation provided to demonstrate status as a victim of domestic violence.

(b) Pursuant to this section, the landlord shall not divulge, describe, or characterize the termination of the rental agreement as an early termination by a current lessor to a prospective lessor or any third party.

6. Violations. (a) Landlords who knowingly, or intentionally violate any part of this section may be liable for liquidated damages, not to exceed one thousand dollars, actual damages, costs and attorneys' fees.

(b) Any agreement by a lessee or tenant of premises occupied for dwelling purposes waiving or modifying his or her rights as set forth in this section shall be void as contrary to public policy.

**§ 227-d. Discrimination based on domestic violence status; prohibited.**

1. Definitions. For the purposes of this section, a person is a "domestic violence victim" and possesses "domestic violence victim status" if such person is or has been, or is a parent accompanied by a minor child or children who is or has been, in a situation in which such person or child is a victim of an act that would constitute a violent felony offense as enumerated in section 70.02 of the penal law, or a family offense as enumerated in subdivision one of section eight hundred twelve of the family court act, and such act is alleged to have been committed by a member of the same family or household, as defined in subdivision one of section eight hundred twelve of the family court act.

2. Discrimination based on domestic violence victim status prohibited.

(a) No person, firm or corporation owning or managing any building used for dwelling purposes, or the agent of such person, firm or corporation, shall, because of such person's or family member's domestic violence victim status, (1) refuse to rent a residential unit to any person or family, when, but for such status, rental would not have been refused, (2) discriminate in the terms, conditions, or privileges of any such rental, when, but for such status, such discrimination would not have occurred, or (3) print or circulate, or cause to be printed or

circulated, any statement, advertisement or publication which expresses, directly or indirectly, any limitation, specification, or discrimination. A violation of this subdivision shall be a misdemeanor and, on conviction thereof, shall be punished by a fine of not less than one thousand dollars and not more than two thousand dollars for each offense; provided, however, that it shall be a defense that such person, firm, corporation or agent refused to rent a residential unit on any other lawful ground.

(b) (1) Where discriminatory conduct prohibited by this subdivision has occurred, such person or family shall have a cause of action in any court of appropriate jurisdiction for compensatory and punitive damages, with such punitive damages not exceeding two thousand dollars for each offense, and declaratory and injunctive relief; and (2) in all actions brought under this section, reasonable attorneys' fees as determined by the court may be awarded to a prevailing party, provided, however, that a prevailing defendant in order to recover such reasonable attorneys' fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous. In order to find the action or proceeding to be frivolous, the court must find one or more of the following: (i) the action was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or (ii) the action was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

(c) Nothing in this section shall be construed as limiting the ability of a person, firm or corporation owning or managing a building used for dwelling purposes, or the agent of such person, firm or corporation, from applying reasonable standards not based on or derived from domestic violence victim status in determining the eligibility of a person or family seeking to rent a residential unit.

(d) This section shall not apply to buildings used for dwelling purposes that are owner occupied and have two or fewer residential units.

3. A person, firm, or corporation owning or managing a building used for dwelling purposes or agent of such person, firm or corporation shall not be civilly liable to other tenants, guests, invitees, or licensees arising from reasonable and good faith efforts to comply with this section.

4. Nothing in this section shall be construed as prohibiting a person, firm or corporation owning or managing a building used for dwelling purposes, or the agent of such person, firm or corporation, from:

(a) providing or preserving a rental preference in any public or private housing for victims of domestic violence;

(b) providing any other assistance to victims of domestic violence in obtaining or retaining any public or private housing; or

(c) responding to an inquiry or request by an applicant, tenant, or leaseholder who is a victim of domestic violence.

5. Nothing in this section shall be construed as prohibiting a municipality from retaining or promulgating local laws or ordinances imposing additional or enhanced protections prohibiting discrimination against victims of domestic violence.

6. Nothing in this section shall be construed as limiting, diminishing, or otherwise affecting any rights under existing law.

**§ 227-e. Landlord duty to mitigate damages.** In any lease or rental agreement, excluding any real estate purchase contract defined in paragraphs (a), (c) and (d) of subdivision four of section four hundred sixty-one of this chapter, covering premises occupied for dwelling purposes, if a tenant vacates a premises in violation of the terms of the lease, the landlord shall, in good faith and according to the landlord's resources and abilities, take reasonable and customary actions to rent the premises at fair market value or at the rate agreed to during the term of the tenancy, whichever is lower. If the landlord rents the premises at fair market value or at the rate agreed to during the term of the tenancy, the new tenant's lease shall, once in effect,

terminate the previous tenant's lease and mitigate damages otherwise recoverable against the previous tenant because of such tenant's vacating the premises. The burden of proof shall be on the party seeking to recover damages. Any provision in a lease that exempts a landlord's duty to mitigate damages under this section shall be void as contrary to public policy.

**§ 227-f. Denial on the basis of involvement in prior disputes prohibited.** 1. No landlord of a residential premises shall refuse to rent or offer a lease to a potential tenant on the basis that the potential tenant was involved in a past or pending landlord-tenant action or summary proceeding under article seven of the real property actions and proceedings law. There shall be a rebuttable presumption that a person is in violation of this section if it is established that the person requested information from a tenant screening bureau relating to a potential tenant or otherwise inspected court records relating to a potential tenant and the person subsequently refuses to rent or offer a lease to the potential tenant.

2. Whenever the attorney general shall believe from evidence satisfactory to him or her that any person, firm, corporation or association or agent or employee thereof has violated subdivision one of this section, he or she may bring an action or special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty of not less than five hundred dollars, but not more than one thousand dollars for each violation.

**§ 228. Termination of tenancies at will or by sufferance, by notice.** A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At

the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain an action to recover possession, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

**§ 229. Liability of tenant holding over after giving notice of intention to quit.** If a tenant gives notice of his intention to quit the premises held by him, and does not accordingly deliver up the possession thereof, at the time specified in such notice, he or his personal representatives must, so long as he continue in possession, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be recovered at the same time, and in the same manner, as the single rent.

**§ 230. Right of tenants to form, join or participate in tenants' groups.** 1. No landlord shall interfere with the right of a tenant to form, join or participate in the lawful activities of any group, committee or other organization formed to protect the rights of tenants; nor shall any landlord harass, punish, penalize, diminish, or withhold any right, benefit or privilege of a tenant under his tenancy for exercising such right.

2. Tenants' groups, committees or other tenants' organizations shall have the right to meet without being required to pay a fee in any location on the premises including a community or social room where use is normally subject to a fee which is devoted to the common use of all tenants in a peaceful manner, at reasonable hours and without obstructing access to the premises or facilities. No landlord shall deny such right.

**§ 231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose.** 1. Whenever the lessee or occupant other than the owner of any building or premises, shall use or occupy the same, or any part thereof, for any illegal trade, manufacture or other

business, the lease or agreement for the letting or occupancy of such building or premises, or any part thereof shall thereupon become void, and the landlord of such lessee or occupant may enter upon the premises so let or occupied.

2. The owner of real property, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.05, 230.06, 230.11, 230.12, 230.13, 230.20, 230.25, 230.30, 230.32 or 230.40 of the penal law arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owners knowledge of the same.

4. Any lease or agreement hereafter executed for the letting or occupancy of real property or any portion thereof, to be used by the lessee as a residence, which contains therein a provision pledging personal property exempt by law from levy and sale by virtue of an execution, as security for the payment of rent due or to become due thereunder, is void as to such provision.

\* 5. The attorney general may commence an action or proceeding in the supreme court to enjoin the continued unlawful trade, manufacture or business in such premises.

\* NB There are 2 sub 5's

\* 5. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20, 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple

dwelling law shall be presumptive evidence of unlawful use of such premises and of the owner's knowledge of the same.

\* NB There are 2 sub 5's

6. Any owner or tenant, including a tenant of one or more rooms of an apartment house, tenement house or multiple dwelling of any premises within two hundred feet of the demised real property, may commence an action or proceeding in supreme court to enjoin the continued unlawful trade, manufacture or other business in such premises.

**§ 231-a. Sprinkler system notice in residential leases.** 1. Every residential lease shall provide conspicuous notice in bold face type as to the existence or non-existence of a maintained and operative sprinkler system in the leased premises.

2. For purposes of this section, "sprinkler system" shall have the same meaning as defined in section one hundred fifty-five-a of the executive law.

3. If there is a maintained and operative sprinkler system in the leased premises, the residential lease agreement shall provide further notice as to the last date of maintenance and inspection.

**§ 231-b. Flood history and risk notice in residential leases.** 1. Every residential lease shall provide notice of the following information related to the previous flood history and current flood risk of the leased premises, as follows:

(a) whether any or all of the leased premises is located wholly or partially in a Federal Emergency Management Agency ("FEMA") designated floodplain;

(b) whether any or all of the leased premises is located wholly or partially in the Special Flood Hazard Area ("SFHA"; "100-year floodplain") according to FEMA's current Flood Insurance Rate Maps for the leased premises' area;

(c) whether any or all of the leased premises is located wholly or

partially in a Moderate Risk Flood Hazard Area ("500-year floodplain") according to FEMA's current Flood Insurance Rate Maps for the leased premises' area; and

(d) any prior flood damage to the leased premises due to a natural flood event, such as heavy rainfall, coastal storm surge, tidal inundation, or river overflow, that the lessor knows or reasonably should know has occurred to such premises and the nature of any such damage.

2. Every residential lease shall also contain the following notice to tenants: "Flood insurance is available to renters through the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP) to cover your personal property and contents in the event of a flood. A standard renter's insurance policy does not typically cover flood damage. You are encouraged to examine your policy to determine whether you are covered."

**\* § 231-c. Good cause eviction law notice.** 1. A landlord as defined in subdivision two of section two hundred eleven of this chapter shall append to or incorporate into any initial lease, renewal lease, notice required pursuant to paragraph (a) of subdivision one of section two hundred twenty-six-c of this article, notice required pursuant to subdivision two of section seven hundred eleven of the real property actions and proceedings law, or petition pursuant to section seven hundred forty one of the real property actions and proceedings law, the following notice:

NOTICE TO TENANT OF APPLICABILITY OR INAPPLICABILITY OF THE NEW YORK STATE GOOD CAUSE EVICTION LAW

This notice from your landlord serves to inform you of whether or not your unit/apartment/home is covered by the New York State Good Cause Eviction Law (Article 6-A of the Real Property Law) and, if applicable, the reason permitted under the New York State Good Cause Eviction Law that your landlord is not renewing your lease. Even if your apartment is not protected by Article 6-A, known as the New York State Good Cause Eviction Law, you may have other rights under other local, state, or federal laws and regulations concerning rents and evictions. This



notice, which your landlord is required to fill out and give to you, does not constitute legal advice. You may wish to consult a lawyer if you have any questions about your rights under the New York State Good Cause Eviction Law or about this notice.

NOTICE (THIS SHOULD BE FILLED OUT BY YOUR LANDLORD)

UNIT INFORMATION

STREET:

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UNIT OR APARTMENT NUMBER:

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CITY/TOWN/VILLAGE:

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STATE:

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ZIP CODE:

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1. IS THIS UNIT SUBJECT TO ARTICLE 6-A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW? (PLEASE MARK APPLICABLE ANSWER)

YES \_\_\_\_

NO \_\_\_\_

2. IF THE UNIT IS EXEMPT FROM ARTICLE 6-A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW, WHY IS IT EXEMPT FROM THAT LAW? (PLEASE MARK ALL APPLICABLE EXEMPTIONS)

A. Village/Town/City outside of New York City has not adopted good cause eviction under section 213 of the Real Property Law \_\_\_\_;

B. Unit is owned by a "small landlord," as defined in subdivision 3 of section 211 of the Real Property Law, who owns no more than 10 units for small landlords located in New York City or the number of units established as the maximum amount a "small landlord" can own in the state by a local law of a village, town, or city, other than New York City, adopting the provisions of Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law, or no more than 10 units, as applicable. In connection with any eviction proceeding in which the landlord claims an exemption from the provisions of Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law, on the basis of being a small landlord, the landlord shall

provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence. If the landlord is an entity, organized under the laws of this state or of any other jurisdiction, then such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person with a direct or indirect ownership interest in such entity or any affiliated entity, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence (exemption under subdivision 1 of section 214 of the Real Property Law) \_\_\_\_;

C. Unit is located in an owner-occupied housing accommodation with no more than 10 units (exemption under subdivision 2 of section 214 of the Real Property Law) \_\_\_\_;

D. Unit is subject to regulation of rents or evictions pursuant to local, state, or federal law (exemption under subdivision 5 of section 214 of the Real Property Law)\_\_\_\_;

E. Unit must be affordable to tenants at a specific income level pursuant to statute, regulation, restrictive declaration, or pursuant to a regulatory agreement with a local, state, or federal government entity (exemption under subdivision 6 of section 214 of the Real Property Law) \_\_\_\_;

F. Unit is on or within a housing accommodation owned as a condominium or cooperative, or unit is on or within a housing accommodation subject to an offering plan submitted to the office of the attorney general (exemption under subdivision 7 of section 214 of the Real Property Law) \_\_\_\_;

G. Unit is in a housing accommodation that was issued a temporary or permanent certificate of occupancy within the past 30 years (only if building received the certificate on or after January 1st, 2009) (exemption under subdivision 8 of section 214 of the Real Property Law) \_\_\_\_;

H. Unit is a seasonal use dwelling unit under subdivisions 4 and 5 of section 7-108 of the General Obligations Law (exemption under

subdivision 9 of section 214 of the Real Property Law) \_\_\_\_;

I. Unit is in a hospital as defined in subdivision 1 of section 2801 of the Public Health Law, continuing care retirement community licensed pursuant to Article 46 or 46-A of the Public Health Law, assisted living residence licensed pursuant to Article 46-B of the Public Health Law, adult care facility licensed pursuant to Article 7 of the Social Services Law, senior residential community that has submitted an offering plan to the attorney general, or not-for-profit independent retirement community that offers personal emergency response, housekeeping, transportation and meals to their residents (exemption under subdivision 10 of section 214 of the Real Property Law) \_\_\_\_;

J. Unit is a manufactured home located on or in a manufactured home park as defined in section 233 of the Real Property Law (exemption under subdivision 11 of section 214 of the Real Property Law) \_\_\_\_;

K. Unit is a hotel room or other transient use covered by the definition of a class B multiple dwelling under subdivision 9 of section 4 of the Multiple Dwelling Law (exemption under subdivision 12 of section 214 of the Real Property Law) \_\_\_\_;

L. Unit is a dormitory owned and operated by an institution of higher education or a school (exemption under subdivision 13 of section 214 of the Real Property Law) \_\_\_\_;

M. Unit is within and for use by a religious facility or institution (exemption under subdivision 14 of section 214 of the Real Property Law) \_\_\_\_;

N. Unit has a monthly rent that is greater than the percent of fair market rent established in a local law of a village, town, or city, other than New York City, adopting the provisions of Article 6-A of the Real Property Law, known as the New York Good Cause Eviction Law, or 245 percent of the fair market rent, as applicable. Fair market rent refers to the figure published by the United States Department of Housing and Urban Development, for the county in which the housing accommodation is located, as shall be published by the Division of Housing and Community Renewal no later than August 1st in any given year. The Division of Housing and Community Renewal shall publish the fair market rent and 245 percent of the fair market rent for each unit type for which such fair market rent is published by the United States Department of Housing and Urban Development for each county in New York State in the annual

publication required pursuant to subdivision 7 of section 211 of the Real Property Law (exemption under subdivision 15 of section 214 of the Real Property Law) \_\_\_\_;

3. IF THIS UNIT IS SUBJECT TO ARTICLE 6-A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW, AND THIS NOTICE SERVES TO INFORM A TENANT THAT THE LANDLORD IS INCREASING THE RENT ABOVE THE THRESHOLD FOR PRESUMPTIVELY UNREASONABLE RENT INCREASES, WHAT IS THE LANDLORD'S JUSTIFICATION FOR INCREASING THE RENT ABOVE THE THRESHOLD FOR PRESUMPTIVELY UNREASONABLE RENT INCREASES? (A rent increase is presumptively unreasonable if the increase from the prior rent is greater than the lower of: (a) 5 percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States Bureau of Labor Statistics for the region in which the housing accommodation is located, as published not later than August 1st of each year by the Division of Housing and Community Renewal; or (b) 10 percent.) (PLEASE MARK AND FILL OUT THE APPLICABLE RESPONSE)

A. The rent is not being increased above the threshold for presumptively unreasonable rent increases described above: \_\_\_\_;

B. The rent is being increased above the threshold for presumptively unreasonable rent increases described above: \_\_\_\_;

B-1: If the rent is being increased above the threshold for presumptively unreasonable rent increases described above, what is the justification for the increase:

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4. IF THIS UNIT IS SUBJECT TO ARTICLE 6-A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW, AND THIS NOTICE SERVES TO INFORM A TENANT THAT THE LANDLORD IS NOT RENEWING A LEASE, WHAT IS THE GOOD CAUSE FOR NOT RENEWING THE LEASE? (PLEASE MARK ALL APPLICABLE REASONS)

A. This unit is exempt from Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law, for the reasons stated in response to question 2, above (IF THIS ANSWER IS CHECKED, NO OTHER ANSWERS TO THIS QUESTION SHOULD BE CHECKED): \_\_\_\_;

B. The tenant is receiving this notice in connection with a first lease or a renewal lease, so the landlord does not need to check any of the lawful reasons listed below for not renewing a lease under Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law (IF THIS ANSWER IS CHECKED, NO OTHER ANSWERS TO THIS QUESTION SHOULD BE CHECKED) \_\_\_\_;

C. The landlord is not renewing the lease because the unit is sublet and the sublessor seeks in good faith to recover possession of the unit for their own personal use and occupancy (exemption under subdivision 3 of section 214 of the Real Property Law): \_\_\_\_;

D. The landlord is not renewing the lease because the possession, use or occupancy of the unit is solely incident to employment and the employment is being or has been lawfully terminated (exemption under subdivision 4 of section 214 of the Real Property Law): \_\_\_\_;

E. The landlord is not renewing the lease because the tenant has failed to pay rent due and owing, and the rent due or owing, or any part thereof, did not result from a rent increase which is unreasonable. A rent increase is presumptively unreasonable if the increase from the prior rent is greater than the lower of: (a) 5 percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States Bureau of Labor Statistics for the region in which the housing accommodation is located, as published not later than August 1st of each year by the Division of Housing and Community Renewal; or (b) 10 percent (good cause for eviction under paragraph a of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

F. The landlord is not renewing the lease because the tenant is violating a substantial obligation of their tenancy or breaching any of the landlord's rules and regulations governing the premises, other than the obligation to surrender possession of the premises, and the tenant has failed to cure the violation after written notice that the violation must cease within 10 days of receipt of the written notice. For this good cause to apply, the obligation the tenant violated cannot be an obligation that was imposed for the purpose of circumventing the intent of Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law. The landlord's rules or regulations that the tenant has violated also must be reasonable and have been accepted in

writing by the tenant or made a part of the lease at the beginning of the lease term (good cause for eviction under paragraph b of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

G. The landlord is not renewing the lease because the tenant is either (a) committing or permitting a nuisance on the unit or the premises; (b) maliciously or grossly negligently causing substantial damage to the unit or the premises; (c) interfering with the landlord's, another tenant's, or occupants of the same or an adjacent building or structure's comfort and safety (good cause for eviction under paragraph c of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

H. The landlord is not renewing the lease because the tenant's occupancy of the unit violates law and the landlord is subject to civil or criminal penalties for continuing to let the tenant occupy the unit. For this good cause to apply, a state or municipal agency having jurisdiction must have issued an order requiring the tenant to vacate the unit. No tenant shall be removed from possession of a unit on this basis unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the vacate order. If the landlord does not try to cure the conditions causing the violation of the law, the tenant has the right to pay or secure payment, in a manner satisfactory to the court, to cure the violation. Any tenant expenditures to cure the violation shall be applied against rent owed to the landlord. Even if removal of a tenant is absolutely essential to the tenant's health and safety, the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. The tenant also retains the right to bring an action for monetary damages against the landlord or to otherwise compel the landlord to comply with all applicable state or municipal housing codes (good cause for eviction under paragraph d of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

I. The landlord is not renewing the lease because the tenant is using or permitting the unit or premises to be used for an illegal purpose (good cause for eviction under paragraph e of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

J. The landlord is not renewing the lease because the tenant has unreasonably refused the landlord access to the unit for the purposes of

making necessary repairs or improvements required by law or for the purposes of showing the premises to a prospective purchaser, mortgagee, or other person with a legitimate interest in the premises (good cause for eviction under paragraph f of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

K. The landlord is not renewing the lease because the landlord seeks in good faith to recover possession of the unit for the landlord's personal use and occupancy as the landlord's principal residence, or for the personal use and occupancy as a principal residence by the landlord's spouse, domestic partner, child, stepchild, parent, step-parent, sibling, grandparent, grandchild, parent-in-law, or sibling-in-law. The landlord can only recover the unit for these purposes if there is no other suitable housing accommodation in the building that is available. Under no circumstances can the landlord recover the unit for these purposes if the tenant is (a) 65 years old or older; or (b) a "disabled person" as defined in subdivision 6 of section 211 of the Real Property Law. To establish this good cause in an eviction proceeding, the landlord must establish good faith to recover possession of a housing accommodation for the uses described herein by clear and convincing evidence (good cause for eviction under paragraph g of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

L. The landlord is not renewing the lease because the landlord in good faith seeks to demolish the housing accommodation. To establish this good cause in an eviction proceeding, the landlord must establish good faith to demolish the housing accommodation by clear and convincing evidence (good cause for eviction under paragraph h of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

M. The landlord is not renewing the lease because the landlord seeks in good faith to withdraw the unit from the housing rental market. To establish this good cause in an eviction proceeding, the landlord must establish good faith to withdraw the unit from the rental housing market by clear and convincing evidence (good cause for eviction under paragraph i of subdivision 1 of section 216 of the Real Property Law): \_\_\_\_;

N. The landlord is not renewing the lease because the tenant has failed to agree to reasonable changes at lease renewal, including reasonable increases in rent, and the landlord gave written notice of the changes

to the lease to the tenant at least 30 days, but no more than 90 days, before the current lease expired. A rent increase is presumptively unreasonable if the increase from the prior rent is greater than the lower of: (a) 5 percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States Bureau of Labor Statistics for the region in which the housing accommodation is located, as published by August 1st of each year by the Division of Housing and Community Renewal; or (b) 10 percent (good cause for eviction under paragraph j of subdivision 1 of section 216 of the Real Property Law):\_\_\_\_.

\*NB Repealed June 15, 2034

**§ 232. Duration of certain agreements in New York.** An agreement for the occupation of real estate in the city of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of October next after the possession commences under the agreement.

**§ 232-a. Notice to terminate monthly tenancy or tenancy from month to month in the city of New York.** No monthly tenant, or tenant from month to month, shall hereafter be removed from any lands or buildings in the city of New York on the grounds of holding over the tenant's term unless pursuant to the notice period required by subdivision two of section two hundred twenty-six-c of this article, or for a tenancy other than a residential tenancy at least thirty days before the expiration of the term, the landlord or the landlord's agent serve upon the tenant, in the same manner in which a notice of petition in summary proceedings is now allowed to be served by law, a notice in writing to the effect that the landlord elects to terminate the tenancy and that unless the tenant removes from such premises on the day designated in the notice, the landlord will commence summary proceedings under the statute to remove such tenant therefrom.

**§ 232-b. Notification to terminate monthly tenancy or tenancy from**



**month to month outside the city of New York.** A monthly tenancy or tenancy from month to month of any lands or buildings located outside of the city of New York may be terminated by the tenant or for a tenancy other than a residential tenancy the landlord, upon the tenant's or non-residential landlord's notifying the landlord or non-residential tenant at least one month before the expiration of the term of the tenant's election to terminate; provided, however, that no notification shall be necessary to terminate a tenancy for a definite term.

**§ 232-c. Holding over by a tenant after expiration of a term longer than one month; effect of acceptance of rent.** Where a tenant whose term is longer than one month holds over after the expiration of such term, such holding over shall not give to the landlord the option to hold the tenant for a new term solely by virtue of the tenant's holding over. In the case of such a holding over by the tenant, the landlord may proceed, in any manner permitted by law, to remove the tenant, or, if the landlord shall accept rent for any period subsequent to the expiration of such term, then, unless an agreement either express or implied is made providing otherwise, the tenancy created by the acceptance of such rent shall be a tenancy from month to month commencing on the first day after the expiration of such term.

**§ 233. Manufactured home parks; duties, responsibilities.** a. Wherever used in this section:

1. The term "manufactured home tenant" means one who rents space in a manufactured home park from a manufactured home park owner or operator for the purpose of parking his manufactured home or one who rents a manufactured home in a manufactured home park from a manufactured home park owner or operator.

2. The term "manufactured home owner" means one who holds title to a manufactured home.

3. The term "manufactured home park" means a contiguous parcel of

privately owned land which is used for the accommodation of three or more manufactured homes occupied for year-round living.

4. The term "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 the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include a "mobile home" as defined in paragraph five, and shall include a structure which meets all the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development.

5. The term "mobile home" means a moveable or portable unit, manufactured prior to January first, nineteen hundred seventy-six, designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. "Mobile home" shall mean units designed to be used exclusively for residential purposes, excluding travel trailers.

6. The term "rent-to-own contract" shall mean any agreement between a manufactured home park owner or operator and a manufactured home renter which provides that after a specified term or other contingency the manufactured home renter will take ownership of the rented home.

7. The term "rent-to-own payment" shall mean any payment or payments made by a manufactured home renter pursuant to a rent-to-own contract which are in addition to rental payments for the rented site and the

rented home.

b. A manufactured home park owner or operator may not evict a manufactured home tenant other than for the following reasons:

2. The manufactured home tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a demand of the rent with at least thirty days notice in writing has been served upon him as prescribed in section seven hundred thirty-five of the real property actions and proceedings law. Upon the acceptance of such delinquent rent together with allowable costs, an action instituted for nonpayment of rent shall be terminated. Any person succeeding to the manufactured home park owner or operator's interest in the premises may proceed under this subdivision for rent due his predecessor in interest if he has a right thereto.

3. The premises, or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd purposes or for purposes of prostitution, or for any illegal trade or business.

4. The manufactured home tenant is in violation of some federal, state or local law or ordinance which may be deemed detrimental to the safety and welfare of the other persons residing in the manufactured home park.

5. The manufactured home tenant or anyone occupying the manufactured home is in violation of any lease term or rule or regulation established by the manufactured home park owner or operator pursuant to this section, and has continued in violation for more than ten days after the manufactured home park owner or operator has given written notice of such violation to the manufactured home tenant setting forth the lease term or rule or regulation violated and directing that the manufactured home tenant correct or cease violation of such lease term or rule or regulation within ten days from the receipt of said notice. Upon the expiration of such period should the violation continue or should the manufactured home tenant or anyone occupying the manufactured home be deemed a persistent violator of the lease term or rules and regulations, the park owner or operator may serve written notice upon the

manufactured home tenant directing that he vacate the premises within thirty days of the receipt of said notice.

6. (i) The manufactured home park owner or operator proposes a change in the use of the land comprising the manufactured home park, or a portion thereof, on which the manufactured home is located, from manufactured home lot rentals to some other use, provided the manufactured home owner is given written notice of the proposed change of use and the manufactured home owner's need to secure other accommodations. Whenever a manufactured home park owner or operator gives a notice of proposed change of use to any manufactured home owner, the manufactured home park owner or operator shall, at the same time, give notice of the proposed change of use to all other manufactured home owners or tenants in the manufactured home park who will be required to secure other accommodations as a result of such proposed change of use. Eviction proceedings based on a change in use shall not be commenced prior to two years from the service of notice of proposed change in use. Such notice shall be served in the manner prescribed in section seven hundred thirty-five of the real property actions and proceedings law or by certified mail, return receipt requested.

(ii) Where a purchaser of a manufactured home park certified that such purchaser did not intend to change the use of the land pursuant to paragraph (b) of subdivision two of section two hundred thirty-three-a of this article, no eviction proceedings based on a change of use shall be commenced until the expiration of sixty months from the date of the closing on the sale of the park.

(iii) (A) The manufactured home park owner or operator shall provide the manufactured home owner a stipend of up to fifteen thousand dollars per manufactured home owner, pursuant to a court order. A warrant for eviction cannot be executed until the stipend has been paid to the manufactured home owner being evicted.

(B) The court shall calculate the stipend based upon consideration of the following factors:

- (1) The cost of relocation of the manufactured home;
- (2) The number of manufactured homes in the same park that would be receiving a stipend;
- (3) The amount the real property is being purchased for;

(4) The value of the real property the manufactured home is located on;

(5) The value of the development rights attached to real property parcel the manufactured home is located on; and

(6) Any other factors the court determines are relevant in each case.

(C) In the event the manufactured home owner is not removed and the eviction proceeding is terminated the manufactured home owner shall return the stipend to the park owner. The weight to be afforded to each of the various factors is within the discretion of the trial court.

c. If the manufactured home park owner or operator does not have one of the above grounds available, the manufactured home tenant may raise the same by affirmative defense to an action for eviction.

d. The proceedings to evict shall be governed by the procedures set forth in article seven of the real property actions and proceedings law, except for the provisions of subdivision two of section seven hundred forty-nine of the real property actions and proceedings law which shall be superseded by the provisions of this subdivision.

1. The officer to whom the warrant is directed and delivered shall give at least ninety days notice, in writing and in the manner prescribed in article seven of the real property actions and proceedings law for the service of notice of petition, to the person or persons to be evicted or dispossessed and shall execute the warrant between the hours of sunrise and sunset.

2. The court may order that such warrant be directed and delivered with only thirty days written notice to the person or persons to be evicted or dispossessed if the conditions upon which the eviction is founded pose an imminent threat to the health, safety, or welfare of the other manufactured home tenants in the manufactured home park.

3. The court shall order that such warrant be directed and delivered with thirty days written notice to the person or persons to be evicted or dispossessed if the condition upon which the eviction is founded is that such person is in default in the payment of rent.

4. Notwithstanding the provisions of paragraphs one and two of this subdivision, nor of any other general, special or local law, rule or regulation to the contrary, the officer to whom the warrant is directed and delivered shall give seventy-two hours written notice to the person or persons to be evicted or dispossessed, if such person or persons rents a manufactured home in a manufactured home park from a manufactured home park owner or operator and such officer shall execute such warrant between the hours of sunrise and sunset.

e. Leases. 1. The manufactured home park owner or operator shall offer every manufactured home tenant prior to occupancy, the opportunity to sign a lease for a minimum of one year, which offer shall be made in writing. All lease offers, including initial and renewal leases, shall include a rider regarding tenant rights. Such rider shall be in a form approved or promulgated by the commissioner of housing and community renewal and which shall be made available to manufactured home park owners and operators.

2. (i) On or before, as appropriate, (a) the first day of October of each calendar year with respect to a manufactured home owner who is not currently a party to a written lease with a manufactured home park owner or operator or (b) the ninetieth day next preceding the expiration date of any existing written lease between a manufactured home owner and a manufactured home park owner or operator, the manufactured home park owner or operator shall submit to each such manufactured home owner a written offer to lease for a term of at least twelve months from the commencement date thereof unless the manufactured home park owner or operator has previously furnished the manufactured home owner with written notification of a proposed change of use pursuant to paragraph six of subdivision b of this section. Any such offer shall include a copy of the proposed lease containing such terms and conditions, including provisions for rent and other charges, as the manufactured home park owner shall deem appropriate; provided such terms and conditions are consistent with all rules and regulations promulgated by the manufactured home park operator prior to the date of the offer and are not otherwise prohibited or limited by applicable law. Such offer

shall also contain a statement advising the manufactured home owner that if he or she fails to execute and return the lease to the manufactured home park owner or operator within thirty days after submission of such lease, the manufactured home owner shall be deemed to have declined the offer of a lease and shall not have any right to a lease from the manufactured home park owner or operator for the next succeeding twelve months.

(ii) For purposes of this paragraph, the commencement date of any lease offered by the manufactured home park owner to the manufactured home owner shall be the ninetieth day after the date upon which the manufactured home park owner shall have provided the offer required pursuant to this paragraph; provided, however, that no such lease shall be effective if, on such commencement date, the manufactured home owner is in default of more than one month's rent. In the event the manufactured home owner shall have failed to execute and return said lease to the manufactured home park owner or operator within thirty days after it is submitted to the manufactured home owner as required by subparagraph (i) of this paragraph the manufactured home owner shall be deemed to have declined to enter said lease.

3. No lease provision shall be inconsistent with any rule or regulation in effect at the commencement of the lease.

4. If a manufactured home park owner or operator fails to offer a tenant a lease as provided in this subdivision, the tenant shall have all the rights of a leaseholder and may not be evicted for other than the reasons specified in paragraph two, three, four, five or six of subdivision (b) of this section.

5. All rent increases, including all fees, rents, charges, assessments and utilities, shall be subject and pursuant to section two hundred thirty-three-b of this article.

f. Rules and regulations. 1. A manufactured home park owner or operator may promulgate rules and regulations governing the rental or occupancy of a manufactured home lot provided such rules and regulations shall not be unreasonable, arbitrary or capricious. A copy of all rules

and regulations shall be delivered by the manufactured home park owner or operator to all manufactured home tenants at the same time such owner or operator initially offers the written lease provided for in subdivision e of this section. A copy of the rules and regulations shall be posted in a conspicuous place upon the manufactured home park grounds.

2. If a rule or regulation is not applied uniformly to all manufactured home tenants of the manufactured home park there shall be a rebuttable presumption that such rule or regulation is unreasonable, arbitrary and capricious, provided, however, that an inconsistency between a rule or regulation and a lease term contained in a lease signed before the date the rule or regulation is effective shall not raise a rebuttable presumption that such rule is unreasonable, arbitrary or capricious.

3. Any rule or regulation which does not conform to the requirements of this section or which has not been supplied or posted as required by paragraph one of this subdivision shall be unenforceable and may be raised by the manufactured home tenant as an affirmative defense in any action to evict on the basis of a violation of such rule or regulation.

4. No rules or regulations may be changed by the manufactured home park owner or operator without specifying the date of implementation of said changed rules and regulations, which date shall be no fewer than thirty days after written notice to all tenants.

5. A mobile home park owner or operator may not prohibit the placement of a for sale sign on any mobile home. A rule or regulation may be promulgated limiting the maximum size of such sign; provided, that it does not prohibit signs the size of which do not exceed the smaller of three feet by two feet or the maximum size allowed by law or governmental regulation or ordinance, if any.

g. 1. No tenant shall be charged a fee for other than rent, utilities and charges for facilities and services available to the tenant. All fees, charges or assessments must be reasonably related to services



actually rendered.

2. A manufactured home park owner or operator shall be required to fully disclose in writing all fees, charges, assessments, including rental fees, rules and regulations prior to entering into a rental agreement with a prospective tenant in the manufactured home park.

3. No fees, charges, assessments or rental fees may be increased by manufactured home park owner or operator without specifying the date of implementation of said fees, charges, assessments or rental fees which date shall be no less than ninety days after written notice to all manufactured home tenants. Failure on the part of the manufactured home park owner or operator to fully disclose all fees, charges or assessments shall prevent the manufactured home park owner or operator from collecting said fees, charges or assessments, and refusal by the manufactured home tenant to pay any undisclosed charges shall not be used by the manufactured home park owner or operator as a cause for eviction in any court of law. Rent, utilities and charges for facilities and services available to the tenant may not be increased unless a lease has been offered to the tenant as required by subdivision e of this section.

4. (a) Whenever money shall be deposited or advanced on a contract or license agreement for the use or rental of premises and the manufactured home, if rented, in a manufactured home park as security for performance of the contract or agreement or to be applied to payments upon such contract or agreement when due, such money with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person making such deposit or advance and shall be a trust fund in the possession of the person with whom such deposit or advance shall be made and shall not be mingled with other funds or become an asset of the park owner, operator or his agent.

(b) Whenever the person receiving money so deposited or advanced shall deposit such money in a banking organization, such person shall thereupon notify in writing each of the persons making such security deposit or advance, giving the name and address of the banking organization in which the deposit of security money is made, and the

amount of such deposit. Deposits in a banking organization pursuant to the provisions of this subdivision shall be made in a banking organization having a place of business within the state. If the person depositing such security money in a banking organization shall deposit same in an interest bearing account, he shall be entitled to receive, as administration expenses, a sum equivalent to one percent per annum upon the security money so deposited, which shall be in lieu of all other administrative and custodial expenses. The balances of the interest paid by the banking organization shall be the money of the person making the deposit or advance and shall either be held in trust by the person with whom such deposit or advance shall be made, until repaid or applied for the use or rental of the leased premises, or annually paid to the person making the deposit of security money.

(c) Whenever the money so deposited or advanced is for the rental of a manufactured home park lot on property on which are located six or more manufactured home park lots, the person receiving such money shall, subject to the provisions of this section, deposit it in an interest bearing account in a banking organization within the state which account shall earn interest at a rate which shall be the prevailing rate earned by other such deposits made with the banking organizations in such area.

(d) In the event that a lease terminates other than at the time that a banking organization in such area regularly pays interest, the person depositing such security money shall pay over to his manufactured home tenant such interest as he is able to collect at the date of such lease termination.

(e) Any provision of such a contract or agreement whereby a person who so deposits or advances money waives any provision of this subdivision is void.

h. No manufactured home park owner shall:

1. Require a manufactured home tenant therein to purchase from said manufactured home park owner or operator skirting or equipment for tying down manufactured homes, or any other equipment. However, the manufactured home park owner or operator may determine by rule or regulation the style or quality of such equipment to be purchased by the manufactured home tenant from the vendor of the manufactured home

tenant's choosing, providing such equipment is readily available.

2. Charge any manufactured home tenant who chooses to install an electric or gas appliance in his manufactured home an additional fee solely on the basis of such installation unless such installation is performed by the manufactured home park owner or operator at the request of the manufactured home tenant, nor shall the manufactured home park owner or operator restrict the installation, service or maintenance of any such appliance, restrict the ingress or egress of repairers to enter the manufactured home park for the purpose of installation, service or maintenance of any such appliance, or restrict the making of any interior improvement in such manufactured home, so long as such an installation or improvement is in compliance with applicable building codes and other provisions of law and further provided that adequate utilities are available for such installation or improvement.

3. Require, by contract, rule, regulation or otherwise, a manufactured home dweller to purchase from the manufactured home park owner or any person acting directly or indirectly on behalf of the park owner, commodities or services incidental to placement or rental within such park; nor shall the park owner restrict access to the manufactured home park to any person employed, retained or requested by the manufactured home dweller to provide such commodity or service, unless the manufactured home park owner establishes that such requirement or restriction is necessary to protect the property of such park owner from substantial harm or impairment.

4. Require a manufactured home owner or a prospective manufactured home owner to purchase his or her manufactured home from the manufactured home park owner or operator, or from any person or persons designated by the manufactured home park owner or operator. Nothing herein shall be construed to prevent a manufactured home park owner or operator from requiring that any new manufactured home to be installed in his or her manufactured home park comply with the rules and regulations of said manufactured home park or conform to the physical facilities then existing for installation of a manufactured home in said manufactured home park.

i. 1. No manufactured home park owner or operator shall deny any manufactured home tenant the right to sell his manufactured home within the manufactured home park provided the manufactured home tenant shall give to the manufactured home park owner or operator twenty days' written notice of his intention to sell, provided that if the manufactured home owner is deceased no such notice shall be required from the administrator or executor of the home owner's estate, and provided further that no manufactured home park owner or operator shall restrict access to the manufactured home park to any potential purchaser or representatives of any seller unless the manufactured home park owner establishes that such restriction is necessary to protect the property of such park owner or operator from substantial harm or impairment. No manufactured home park owner or operator shall require the manufactured home owner or subsequent purchaser to remove the manufactured home from the manufactured home park solely on the basis of the sale thereof. The manufactured home park owner or operator may reserve the right to approve the purchaser of said manufactured home as a manufactured home tenant for the remainder of the seller's or deceased tenant's term but such permission may not be unreasonably withheld. If the manufactured home park owner or operator unreasonably withholds his permission or unreasonably restricts access to the manufactured home park, the manufactured home tenant or the executor or administrator of a deceased tenant's estate may recover the costs of the proceedings and attorneys' fees if it is found that the manufactured home park owner or operator acted in bad faith by withholding permission or restricting access.

2. The manufactured home park owner or operator shall not exact a commission or fee with respect to the price realized by the seller unless the manufactured home park owner or operator has acted as agent for the manufactured home owner in the sale pursuant to a written contract.

3. If the ownership or management rejects a purchaser as a prospective tenant, the selling tenant must be informed in writing of the reasons therefor.

j. The owner or operator of a manufactured home park may enter a manufactured home owner's manufactured home without the prior consent of the occupant only in case of emergency. The owner or operator of a manufactured home park may enter a manufactured home tenant's manufactured home during reasonable hours on reasonable notice.

k. The owner or operator shall provide reasonable notice where practicable to all manufactured home tenants who would be affected by any planned disruption of necessary services caused by the owner, operator or his agent.

l. The park owner shall designate an agent on the premises or in close proximity to the manufactured home park to insure the availability of emergency response actions in matters affecting the health, safety, well-being and welfare of manufactured home tenants in the park. The designated agent's name, address and telephone number shall be posted in a conspicuous location in the park, given in writing to each tenant and registered with appropriate county law enforcement and health officials and local fire officials.

m. Warranty of habitability, maintenance, disruption of services. In every written or oral lease or rental agreement entered into by a manufactured home tenant, the manufactured home park owner or operator shall be deemed to covenant and warrant that the premises so leased or rented and the manufactured home if rented, including rental through a rent-to-own contract, and all areas used in connection therewith in common with other manufactured home tenants or residents including all roads within the manufactured home park are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises and such manufactured homes if rented shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the manufactured home tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties. The rights and obligations of the manufactured home park owner or operator and the manufactured home tenant shall be governed by the provisions of this subdivision and

subdivisions two and three of section two hundred thirty-five-b of this article.

n. 1. No manufactured home park owner or operator shall serve a notice to quit upon any manufactured home tenant or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for:

(a) A good faith complaint, by or in behalf of the tenant, to a governmental authority of the manufactured home park owner's or operator's alleged violation of any health or safety law, regulation, code, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes; or

(b) Actions taken in good faith, by or in behalf of the manufactured home tenant, to secure or enforce any rights under the lease or rental agreement, under subdivision m of this section and subdivisions two and three of section two hundred thirty-five-b of this article, or under any other local law, law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes; or

(c) The manufactured home tenant's participation in the activities of a tenant's organization.

2. No manufactured home park owner or operator shall substantially alter the terms of the tenancy in retaliation for any actions set forth in subparagraphs (a), (b), and (c) of paragraph one of this subdivision. Substantial alteration shall include, but is not limited to, the refusal to continue a tenancy of the manufactured home tenant or, upon expiration of the manufactured home owner's lease, to renew the lease or offer a new lease; provided, however, that a manufactured home park owner or operator shall not be required under this subdivision to offer a manufactured home owner a new lease or a lease renewal for a term greater than one year.

3. This subdivision shall apply to all manufactured home parks with four or more manufactured homes. However, its provisions shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the manufactured

home tenant, a member of the manufactured home tenant's household, or a guest of the manufactured home tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership. The rights and obligations of the manufactured home park owner or operator and the manufactured home tenant shall be governed by the provisions of this subdivision and subdivisions three, four and five of section two hundred twenty-three-b of this article.

o. Whenever a lease shall provide that in any action or summary proceeding the manufactured home park owner or operator may recover attorney's fees and/or expenses awarded by a court, there shall be implied in such lease a covenant by the manufactured home park owner or operator, to pay to the tenant the reasonable attorney's fees and/or expenses incurred by the tenant to the same extent as is provided in section two hundred thirty-four of this article which section shall apply in its entirety. A manufactured home park owner or operator may not demand that a tenant pays attorneys' fees unless such fees have been awarded pursuant to a court order.

p. Any manufactured home park owner or operator who has agreed to provide hot or cold water, heat, light, power, or any other service or facility to any occupant of the manufactured home park who willfully or intentionally without just cause fails to furnish such water, heat, light, power, or other service or facility, or who interferes with the quiet enjoyment of the leased premises, is guilty of a violation.

q. Upon receipt of rent, fees, charges or other assessments, in the form of cash or any instrument other than the personal check of the tenant, it shall be the duty of the manufactured home park owner or operator to provide the payor with a written receipt containing the following:

1. the date;
2. the amount;

3. the identity of the premises and the period for which paid;
4. the signature and title of the person receiving rent.

r. Limitation on late charges. A late charge on any rental payment by a manufactured home owner which has become due and remains unpaid shall not exceed and shall be enforced to the extent of three percent of such delinquent payment; provided, however, that no charge shall be imposed on any rental payment by a manufactured home owner received within ten days after the due date. In the absence of a specific provision in the lease or the manufactured home park's rules and regulations, no late charge on any delinquent rental payment shall be assessed or collected. Late charges may not be compounded and shall not be considered additional rent.

s. It shall be a violation for a manufactured home park owner, operator or his agent to restrict occupancy of a manufactured home or manufactured home park lot intended for residential purposes by express lease terms or otherwise, to a manufactured home tenant or tenants or to such tenants and immediate family. Any such restriction in a lease or rental agreement entered into or renewed before or after the effective date of this subdivision shall be unenforceable as against public policy. The rights and obligations of a manufactured home park owner or operator and the manufactured home tenant shall be governed by the provisions of this subdivision and subdivisions one, three, four, five, six, seven, eight and nine of section two hundred thirty-five-f of this article.

t. 1. Unless a greater right to assign is conferred by the lease, a manufactured home tenant may not assign his lease without the written consent of the manufactured home park owner or operator, which consent may be unconditionally withheld without cause provided that the manufactured home park owner or operator shall release the manufactured home tenant from the lease upon request of the mobile home tenant upon thirty days notice if the manufactured home park owner or operator unreasonably withholds consent which release shall be the sole remedy of the tenant. If the owner reasonably withholds consent, there shall be no



assignment and the manufactured home tenant shall not be released from the lease.

2. (a) A manufactured home tenant renting space or a manufactured home in a manufactured home park with four or more manufactured homes pursuant to an existing lease shall have a right to sublease his premises subject to the written consent of the park owner in advance of the subletting. Such consent shall not be unreasonably withheld.

(b) The manufactured home tenant shall inform the manufactured home park owner or operator of his intent to sublease by mailing a notice of such intent by certified mail, return receipt requested. Such request shall be accompanied by the following information: (i) the term of the sublease, (ii) the name of the proposed sublessee, (iii) the business and permanent home address of the proposed sublessee, (iv) the tenant's reason for subletting, (v) the tenant's address for the term of the sublease, (vi) the written consent of any co-tenant or guarantor of the lease, and (vii) a copy of the proposed sublease, to which a copy of the manufactured home tenant's lease shall be attached if available, acknowledged by the manufactured home tenant and proposed subtenant as being a true copy of such sublease.

(c) Within ten days after the mailing of such request, the manufactured home park owner or operator may ask the manufactured home tenant for additional information as will enable the manufactured home park owner or operator to determine if rejection of such request shall be unreasonable. Any such request for additional information shall not be unduly burdensome. Within thirty days after the mailing of the request for consent, or of the additional information reasonably asked for by the manufactured home park owner or operator, whichever is later, the manufactured home park owner or operator shall send a notice to the manufactured home tenant of his consent or, if he does not consent, his reasons therefor. Manufactured home park owner's or operator's failure to send such a notice shall be deemed to be a consent to the proposed subletting. If the manufactured home park owner or operator consents, the premises may be sublet in accordance with the request, but the manufactured home tenant thereunder, shall nevertheless remain liable for the performance of manufactured home tenant's obligations under said lease. If the manufactured home park owner or operator reasonably

withholds consent, there shall be no subletting and the manufactured home tenant shall not be released from the lease. If the manufactured home park owner or operator unreasonably withholds consent, the manufactured home tenant may sublet in accordance with the request and may recover the costs of the proceeding and attorneys fees if it is found that the manufactured home park owner or operator acted in bad faith by withholding consent. The rights and obligations of the manufactured home park owner or operator and the manufactured home tenant shall be governed by the provisions of this subdivision and subdivisions three, five, six, seven and eight of section two hundred twenty-six-b of this article.

u. In the event of a breach by a manufactured home park owner or operator of any of the requirements of this section, the manufactured home tenant may commence an action for damages actually incurred as a result of such breach, or in an action or summary proceeding commenced by such manufactured home park owner or operator, may counterclaim for damages occasioned by such breach.

v. 1. On and after April first, nineteen hundred eighty-nine, the commissioner of housing and community renewal shall have the power and duty to enforce and ensure compliance with the provisions of this section. However, the commissioner shall not have the power or duty to enforce manufactured home park rules and regulations established under subdivision f of this section.

2. On or before January first, nineteen hundred eighty-nine, each manufactured home park owner or operator shall file a registration statement with the commissioner and shall thereafter file an annual registration statement on or before January first of each succeeding year. The commissioner, by regulation, shall provide that such registration statement shall include only the names of all persons owning an interest in the park, the names of all tenants of the park, all services provided by the park owner to the tenants and a copy of all current manufactured home park rules and regulations. The reporting of such information to the commissioner of taxation and finance pursuant to subparagraph (B) of paragraph six of subsection (eee) of section six

hundred six of the tax law shall be deemed to satisfy the requirements of this paragraph. That the commissioner may not be the primary recipient of such registration statement shall not be construed to limit, alter or diminish the ability or responsibility of the division of housing and community renewal in regards to enforcement of this section or any other applicable laws. The commissioner may request additional or corrected information to be filed by each manufactured home park owner or operator as he or she deems necessary to carry out proper oversight of such manufactured home parks. The commissioner shall annually make publicly available on its website a report of the data collected pursuant to this subdivision or subparagraph (B) of paragraph six of subsection (eee) of section six hundred six of the tax law, not including any personally identifiable information.

3. Whenever there shall be a violation of this section, an application may be made by the commissioner of housing and community renewal in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation and with respect to this subdivision, directing the filing of a registration statement. In any such proceeding, the court may make allowances to the commissioner of housing and community renewal of a sum not exceeding two thousand dollars against each defendant, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand five hundred dollars for each violation. Such penalty shall be deposited in the manufactured home cooperative fund, created pursuant to section fifty-nine-h of the private housing finance law. In connection with any such proposed application, the commissioner of housing and community renewal is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. The provisions of this subdivision shall not impair the rights granted under subdivision u of this section.

w. Real property tax payments. 1. A manufactured home park owner, operator or the agent of such owner or operator shall reduce the annual rent paid by a manufactured home tenant for use of the land upon which such manufactured home sits in an amount equal to the total of the real property taxes actually paid by such manufactured home tenant for such manufactured home plus the amount by which the taxes on such manufactured home were reduced as a result of the partial real property tax exemption granted to the manufactured home tenant pursuant to article four of the real property tax law, provided such manufactured home tenant:

(a) owns a manufactured home which is separately assessed, subject to the provisions of paragraph two of this subdivision;

(b) is entitled to and actually receives a partial real property tax exemption pursuant to article four of the real property tax law; and

(c) pays the real property taxes due on such home.

3. A manufactured home park owner or operator providing a reduction in rent as required by paragraph one of this subdivision may retain, in consideration for record keeping expenses, two percent of the amount of such reduction.

3-a. Any reduction required to be provided pursuant to paragraph one of this subdivision shall be provided as follows:

(a) a reduction in monthly rent (prorating the reduction in twelve parts) shall take effect upon the first monthly rental payment due sixty days after the last date for the payment of real property taxes with no penalty or interest for lateness and shall be extended to the next eleven monthly payments thereafter; or

(b) with the consent of the manufactured home park owner, operator, or agent of such owner or operator, a reduction in rent may be offset in the entire amount of such reduction against the first monthly rental payment due sixty days after the last date for the payment of real property taxes with no penalty or interest for lateness, and the balance thereof, if any, may be offset against the monthly rental payments for succeeding months, until exhausted; or

(c) at the election of the manufactured home park owner, operator, or

agent of such owner or operator, the total amount of such reduction in rent may be paid to the tenant no later than sixty days after the last date for the payment of real property taxes with no penalty or interest for lateness.

4. The failure of a manufactured home park owner or operator to comply with the provisions of this subdivision shall be a violation punishable by a fine not to exceed five hundred dollars for each violation.

x. 1. Rent and other fees, charges and assessments may not be increased by a manufactured home park owner or operator more than once in any year.

2. Notwithstanding the provisions of paragraph one of this subdivision, if a fee, charge, or assessment in effect at the commencement of a lease or tenancy is for goods or services provided by a party unrelated to and not controlled by the manufactured home park owner or operator, the manufactured home park owner or operator may, upon the notice required in this section, provide for the pass-along to the manufactured home tenant of any increases in such fee, charge or assessment.

3. Any agreement modifying any of the rights set forth in this subdivision shall be void as contrary to public policy.

y. 1. No manufactured home park owner or operator shall offer or execute a rent-to-own contract unless the manufactured park owner or operator possesses documentation of ownership of the manufactured home, including a certificate of title to the home, if the home is a manufactured home subject to being titled pursuant to article forty-six of the vehicle and traffic law, or for mobile homes not subject to being titled pursuant to such law, such other documentation, which may include a bill of sale, or deed, sufficient to establish ownership.

2. Every rent-to-own contract shall be in writing and clearly state all terms, including but not limited to: a description of the home to be leased, including the name of the manufacturer, the serial number and

the year of manufacture; the site number upon which the home is located in the manufactured home park; an itemized statement of any payments to be made during the term of the contract, including the initial lot rent, the rental amount for the home, and the amount of the rent-to-own payments; the term of the agreement; the number of payments, itemized, required to be made over the term of the agreement; any lien or security interest encumbering the manufactured or mobile home, if applicable; and the amount of any additional fees to be paid during the term. A rent-to-own contract shall not require a manufactured home tenant to pay any additional fees for transfer of ownership at the end of the lease period. A rent-to-own contract shall provide that where the rent-to-own tenant pays all rent-to-own payments and other fees established in the contract during the lease term, title transferred at the end of the lease term shall be free of superior interests, liens or encumbrances.

3. Valuations used to determine the fair market value of the manufactured home at the time the rent-to-own contract is entered into, shall be based on the information provided by an independent system, entity, publication or publications that provide valuation information for manufactured homes adjusted, as appropriate, by reasonable and identifiable regional market data, such as location, park-specific amenities, trends and comparable sales.

4. Every rent-to-own contract shall clearly state that the manufactured home tenant is occupying a rented home, until ownership is transferred, and that the manufactured home park owner and operator shall be responsible for compliance with the warranty of habitability, including but not limited to all major repairs and capital improvements.

5. With the execution of every rent-to-own contract, the manufactured home park owner or operator shall offer the manufactured home tenant a lease for the site on which the home is located as provided in subdivision f of this section, and, if the term of the rent-to-own contract is longer than the term of the initial site lease, shall offer renewal leases on the same terms as provided to manufactured home tenants within the park pursuant to subdivision e of this section, provided that such renewal lease may not include a rent increase greater

than that imposed on similarly situated manufactured home tenants that own their home within the park.

6. The manufactured home park owner or operator shall provide each manufactured home tenant who is a party to a rent-to-own contract an itemized accounting listing all payments made pursuant to the rent-to-own contract. Such accounting shall be provided no less than once each year, beginning one year from the execution of the rent-to-own contract. Upon request by a manufactured home tenant, the manufactured home park owner or operator shall provide such an accounting within ten days of such request.

7. Any successor to ownership of the manufactured home park shall be bound by the terms of a rent-to-own contract entered into after the effective date of this subdivision.

8. If a manufactured home tenant's tenancy is terminated by the manufactured home park owner or operator during the term of a rent-to-own contract, all rent-to-own payments made during the term of the contract shall be refunded to the manufactured home tenant; if a manufactured home park owner or operator fails to refund such payments, in an eviction proceeding, the court may award the manufactured home renter damages in the amount of the rent-to-own payments which have not been refunded.

9. It is a violation of this section for a manufactured home park owner or operator to make any material misrepresentation, either written or oral, regarding any of the terms of a rent-to-own contract, or to obtain, or attempt to obtain, a waiver from any manufactured home renter of any protection or right provided under this subdivision.

10. (i) If a manufactured home park owner or operator violates the provisions of this subdivision or wrongfully evicts a manufactured home tenant who is a party to a rent-to-own contract, a court may award damages including treble the economic damages suffered by the manufactured home tenant, which may include all rent-to-own payments. The court may also provide for reasonable attorney fees and costs of

litigation, and other equitable relief.

(ii) Failure of the manufactured home park owner or operator to comply with this section shall give the manufactured home renter the unconditional right to cancel the rent-to-own contract and receive immediate refund of all payments and deposits made on account of or in contemplation of the lease with the rent-to-own contract.

11. The provisions of this section apply to rent-to-own contracts and tenants with rent-to-own contracts.

**§ 233-a. Sale of manufactured home parks.** 1. Whenever used in this section:

(a) The term "notify" shall mean the placing of a notice in the United States mail, addressed to the officers of the manufactured homeowners' association or the manufactured home park owner by certified mail, return receipt requested, or personal delivery upon the officers of the manufactured homeowners' association, or if no manufactured homeowners' association exists, upon all manufactured homeowners in the manufactured home park or the manufactured home park owner. Each such notice shall be deemed to have been given upon the deposit of the notice in the United States mail or upon receipt of personal delivery.

(b) The term "manufactured homeowners' association", whether incorporated or not, shall mean an association greater than fifty percent of all manufactured homeowners within the manufactured home park, who shall have given written consent to forming a manufactured homeowners' association, and which association has notified the park owner of its establishment and has provided to the park owner the names and addresses of the officers of such association. The provisions of section two hundred twenty-three-b of this article shall apply to the formation of a manufactured homeowners' association.

2. If a manufactured home park owner takes any action to market or offer the park for sale, or receives a bona fide offer to purchase a manufactured home park that such manufactured home park owner intends to accept or respond to with a counteroffer, a manufactured home park owner shall include a notice stating that such acceptance or counteroffer



shall be subject to the right of the homeowners of the manufactured home park to purchase the manufactured home park pursuant to this subdivision. Notwithstanding any provision of law or agreement to the contrary, every agreement to purchase a manufactured home park by a prospective purchaser of a manufactured home park shall be subject to the right of the homeowners of the manufactured home park to purchase the manufactured home park pursuant to this subdivision.

3. (a) If a manufactured home park owner receives a bona fide offer to purchase a manufactured home park that such manufactured home park owner intends to accept or respond to with a counteroffer, such manufactured home park owner shall notify:

(i) the officers of the manufactured homeowners' association within such park of all the terms thereof; provided that the park owner has been notified of the establishment of a manufactured homeowners' association and been provided with the names and addresses of the officers of such association; or

(ii) if no homeowners' association exists, all manufactured homeowners in the manufactured home park; and

(iii) the commissioner of housing and community renewal.

(b) The manufactured home park owner's notification shall state:

(i) the price;

(ii) the material terms and conditions of sale upon which such manufactured home park owner would sell the park;

(iii) that the manufactured homeowners have the right to organize a manufactured homeowners' association or a manufactured homeowners' cooperative for the park;

(iv) that purchase financing may be available through the New York state homes and community renewal; and

(v) that the manufactured homeowners' association, a cooperative, or manufactured home owners or tenants have one hundred forty days to exercise their right to purchase the park in accordance with this section.

(c) (i) If a manufactured homeowners' association exists at the time of the offer, the association shall, within sixty days of receipt of notice from the park owner, deliver to the park owner a notice of intent to make an offer to purchase the park. If such notice is not delivered

within the sixty days, the park owner has no further obligation under this section.

(ii) If the manufactured homeowners' association delivers such intent to the park owner as required by subparagraph (i) of this paragraph, the association shall have the right to purchase the park; provided that the association shall have delivered to the manufactured home park owner an executed offer to purchase which meets the identical price, terms, and conditions of the offer or counteroffer provided in the notice of the manufactured home park owner within one hundred forty days of receipt of notice from the manufactured home park owner, unless otherwise agreed to in writing. During this time period, the park owner shall not accept a final unconditional offer to purchase the park.

(iii) If an offer to purchase by the association is not delivered within such one hundred forty day period, then, unless the park owner thereafter elects to offer to sell the park at a price lower than the price specified in the notice to the homeowners' association or at terms substantially different from those presented to the association, the park owner has no further obligations under this section.

(iv) If the park owner, after such one hundred forty day period, elects to offer to sell the park at a price lower than the price specified in the notice given or at terms substantially different from those previously presented to the association, then the association shall be entitled to notice thereof and shall have an additional thirty days after receipt of notice of the revised terms to deliver to the park owner an executed offer to purchase which meets the revised price, terms, and conditions as presented by the park owner.

(d) (i) If there is no existing homeowners' association at the time of the offer, the homeowners shall, within sixty days of receipt of notice from the park owner, deliver to the park owner a notice of intent to make an offer to purchase the park. Such notice must be signed by greater than fifty percent of all the manufactured home owners within the manufactured home park. If such notice is not delivered within the sixty days, the park owner has no further obligation under this section. If such notice is properly provided within sixty days, the homeowners shall have the right to purchase the park; provided the following conditions are met:

(A) The manufactured homeowners shall have the right to form a

manufactured homeowners' association, whether incorporated or not.

(B) Such homeowners' association shall include greater than fifty percent of all manufactured homeowners, who shall have given written consent to forming a manufactured homeowners' association. The provisions of section two hundred twenty-three-b of this article shall apply to the formation of a manufactured homeowners' association.

(C) The association, acting through its officers, shall have given notice to the park owner of its formation, the names and addresses of its officers, and delivered an executed offer to purchase the park at the identical price, terms, and conditions of the offer presented in the notification given by the park owner within one hundred forty days of receipt of notice from the park owner, unless otherwise agreed to in writing. During this time period, the park owner shall not accept a final unconditional offer to purchase the park;

(ii) If the homeowners fail to form a manufactured homeowners' association, or if upon the formation of a manufactured homeowners' association, the association does not deliver an executed offer to purchase as set forth in paragraph (a) of this subdivision within the one hundred forty day period, then, unless the park owner elects to offer the park at a price lower than the price specified in the notice previously presented to the homeowners, the park owner has no further obligation under this section; and

(iii) If the park owner thereafter elects to sell the park at a price lower than the price specified in the notice to the homeowners or at terms substantially different from those previously presented, then the association shall have an additional thirty days after receipt of notice of the revised terms to deliver to the park owner an executed offer to purchase which meets the revised price, terms, and conditions as presented by the park owner.

4. This section does not apply to:

(a) Any conveyance of an interest in a manufactured home park incidental to the financing of such manufactured home park.

(b) The purchase of a manufactured home park by a governmental entity under its powers of eminent domain.

5. Nothing in this section shall be construed to compel the

manufactured home park owner to divide the land and sell it to individual manufactured homeowners.

**\* § 233-b. Manufactured home parks; rent increases.** 1. The provisions of this section shall apply to all manufactured homes located in a manufactured home park as defined in section two hundred thirty-three of this article, however manufactured homes located in manufactured home parks that are subject to a regulatory agreement with a governmental entity to preserve affordable housing or that otherwise limits rent increases are exempt from the provisions of this section.

2. Increases in rent shall not exceed a three percent increase above the rent since the current rent became effective. In this section, rent shall mean all costs, including all rent, fees, charges, assessments, and utilities. Notwithstanding the above, a manufactured home park owner is permitted to increase the rent in excess of three percent above the rent since the current rent became effective, due to:

(a) Increases in the manufactured home park owner's operating expenses.

(b) Increases in the manufactured home park owner's property taxes on such park.

(c) Increases in costs which are directly related to capital improvements in the park.

3. An increase above three percent may be challenged by an aggrieved manufactured homeowner as unjustified. Multiple aggrieved manufactured homeowners may join in the same action where there is a common question of law and fact.

4. Within ninety days of the proposed increase, an aggrieved manufactured homeowner may challenge such increase by filing an action in the court of appropriate subject matter jurisdiction where the real property is located seeking a declaratory judgment that the rent increase is unjustifiable.

5. In any proceeding under this section there shall be an irrebuttable

presumption that a rent increase is justifiable when the amount of such increase does not exceed the tenant's pro-rata share in operating costs and property taxes for the manufactured home park in which the manufactured home owner resides.

6. (a) In determining whether a rent increase is permissible, the court shall consider the provisions of paragraphs (a), (b) and (c) of subdivision two of this section. Notwithstanding the above, rent increases shall not exceed six percent above the rent since the current rent became effective, except upon the approval of a temporary hardship application by the court. In addition to the provisions of this paragraph and paragraphs (b) and (c) of this subdivision the court shall take into account the following factors when determining whether to grant a temporary hardship application:

(i) The amount of increase being sought by the park owners;

(ii) The ability of the manufactured home owner to pay such increase including whether the increase would have an unreasonable adverse impact on the manufactured home owner;

(iii) The amount of time and notice the manufactured home owner may need in order to pay a temporary rent increase;

(iv) The duration the park owners intend for the temporary rent increase to last;

(v) The cause of the hardship the rent increase is being requested to alleviate, including whether the hardship was due to owner negligence and malfeasance;

(vi) The ability of the park owners to utilize other means besides a rent increase to alleviate said hardship;

(vii) The likelihood that the property the manufactured home park is located on will go into foreclosure if a temporary rent increase above six percent is not granted;

(viii) Any other factor that will jeopardize the ability of the park to legally operate.

(b) A court order approving a temporary hardship application shall state for each manufactured home owner:

(i) The amount of the rent increase;

(ii) The date the rent increase is to take effect;

(iii) The date the increase is to end;

(iv) The amount the rent will return to; and

(v) The court's findings as to the factors necessitating a temporary increase.

(c) Upon a finding by the court that the manufactured home park should be granted a hardship exemption, the amount of any rent increase shall be the minimum amount to alleviate the hardship. An order granting a temporary rent increase shall not exceed six months. The order must be served on the manufactured home owners and all known legal tenants pursuant to the rules of civil procedure within thirty days of the court order, the cost of which shall be on the manufactured home park owner.

7. The court may condition its approval of any rent increase upon the redress of conditions in the manufactured home park which threaten the health and safety of the manufactured home tenant.

8. While a challenge to a rent increase pursuant to this section is pending, manufactured home park tenants shall pay the amount of the rent increase to the manufactured home park owner who shall hold such amounts in escrow pending a mediated agreement between the parties or a final decision from the courts, provided, however, that no manufactured home park tenant shall be evicted for non-payment of the rent increase prior to the final disposition of the matter by the court in the county where the manufactured home park is located. Failure by the manufactured home park owner to place such challenged rent increase in escrow shall be punishable by a civil penalty of not more than five hundred dollars. If the petitioners appeal, the manufactured home park owner may remove the rent increase funds from escrow, mingle such funds with any other funds, and commence a nonpayment proceeding in the court of appropriate jurisdiction against a tenant who has not paid the increase of rent. If the court enters a final judgment declaring the rent increases or any part thereof unjustifiable and impermissible, the manufactured home park owner shall refund the amount of the impermissible increase to each tenant household.

\* NB There are 2 § 233-b's

\* **§ 233-b. Campgrounds.** a. Whenever used in this section:

1. "Campground" means any parcel or tract of land, including buildings or other structures, where five or more campsites are made available for use as temporary living quarters for recreational, camping, travel or seasonal use. For purposes of this section, campgrounds shall not include land owned by the state of New York.

2. "Campground owner" means the owner or operator of a campground or an agent of such owner or operator.

3. "Guest" means a person who occupies a campsite pursuant to an agreement with a term of more than one week.

b. 1. A campground owner may request any law enforcement officer remove any guest who willfully denies other guests their right to quiet enjoyment of the campground, including, but not limited, to any guest who:

- (a) disturbs, threatens or endangers other guests;
- (b) is less than twenty-one years of age and possesses alcohol;
- (c) possesses illegal drugs;
- (d) violates any state or local law; or

(e) violates any other lawful rule or regulation of the campground that enhances the safety and quiet enjoyment of its guests and is posted in a conspicuous place or made a part of the guest's occupancy agreement.

2. the right to request a guest to be removed by any law enforcement officer can only be exercised after the campground owner or its agent has provided the guest with written warning that his or her conduct shall result in a removal from the campground if it is repeated. In the event that such conduct is repeated and the guest fails to vacate the campground upon being requested to do so, the campground owner may only cause the guest to be removed by a law enforcement officer, who may cite the guest with trespass.

c. A person who is removed from a campground pursuant to subdivision b of this section shall be entitled to a refund of the unused portion of

any prepaid fees, less any amount otherwise owed to the campground owner or deducted for damages, which unused portion of prepaid fees may be prorated at a rate that is based upon the daily rate charged by the campground owner.

d. A campground owner may remove property belonging to a person who is removed from a campground pursuant to subdivision b of this section from a campsite and such property, whether removed from a campsite or allowed to remain on a campsite, shall be deemed to be placed in storage. A campground owner shall provide the owner of such property thirty days written notice, by certified mail, return receipt requested, to remove such property and dispose of such property pursuant to article nine of the lien law in the event the owner fails to remove such property within the thirty-day period of time.

\* NB There are 2 § 233-b's

**§ 233-c. Residential ground lease cooperative apartment buildings. 1.**  
Wherever used in this section:

(a) The term "residential ground lease cooperative apartment building" means any and all buildings, improvements or other structures located in the state of New York occupied, owned or leased in whole or in part by a ground lease residential cooperative, or any subsidiary or affiliate thereof, pursuant to a subject residential cooperative ground lease.

(b) The term "ground lease residential cooperative" means any New York corporation organized or operating as a housing development fund corporation, New York cooperative corporation or cooperative housing corporation, including any entity meeting the definition thereof for federal income tax purposes, or any person or entity that is a tenant in common, co-tenant or joint owner with any such corporation, or which is, directly or indirectly through a subsidiary or affiliate thereof, a party to a subject residential cooperative ground lease.

(c) The term "subject residential cooperative ground lease" means the lease agreement, together with any amendments or other related agreements including any forbearance, settlement, tenancy in common or other similar agreements related thereto, pursuant to which a ground lease residential cooperative leases, occupies or otherwise uses for



residential, commercial, or other ancillary purposes the ground lease real property from one or more subject ground lease owners.

(d) The term "ground lease real property" means all real property, including improvements thereon, all or any portion of which is leased, rented, licensed or otherwise provided for use to a ground lease residential cooperative pursuant to a subject residential cooperative ground lease, including any portion thereof that may be subleased or otherwise used for ancillary retail, parking, or commercial purposes.

(e) The term "subject ground lease owners" means any and all persons or entities, whether natural persons, estates, trusts, corporations, partnerships or other entities, other than any excepted ground lease owner, that holds title to or is the owner, whether by the entirety, as tenants in common or otherwise, of ground lease real property or is otherwise the landlord under any subject residential cooperative ground lease.

(f) The term "excepted ground lease owner" means (i) the United States federal government, the state of New York, the city of New York, and any agency, municipality or political subdivision of any of the foregoing thereof, any entity owned or controlled by any of the foregoing, including but not limited to, the Battery Park city authority, the Roosevelt Island Operating Corporation, the Queens West Development Corporation, the Brooklyn Bridge Park Development Corporation, the New York City Educational Construction Fund, and the New York City Housing Authority, (ii) any charity approved under section 501(c) of the internal revenue code which acquired its interest as the owner or landlord of a ground lease real property prior to January first, two thousand twenty-four, and (iii) any Indian nation, tribe or band as such lands are described under and protected by the Indian law or title twenty-five of the United States Code, but shall exclude any private foundation within the meaning of section five hundred nine of the internal revenue code.

2. Notwithstanding any term of a subject residential cooperative ground lease to the contrary, if a subject residential cooperative ground lease authorizes the ground lease residential cooperative to renew or extend its lease at the sole option of the ground lease residential cooperative, then the ground lease residential cooperative

may exercise such right to renew or extend at any time prior to the expiration of the subject residential cooperative ground lease in accordance with all other terms thereof.

**§ 234. Right to recover attorneys' fees in actions or summary proceedings arising out of leases of residential property.** 1. Whenever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorneys' fees and/or expenses incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and/or expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. A landlord may not recover attorneys' fees upon a default judgment. Any waiver of this section shall be void as against public policy.

2. Notwithstanding the provisions of subdivision one of this section, where a tenant is a dwelling unit owner or shareholder of a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, attorney's fees may be awarded to either party in the event of default judgment if recovery of attorney's fees is provided for in the proprietary lease or occupancy agreement.

**§ 234-a. Unauthorized legal fees.** (a) An owner, lessor or agent thereof shall be prohibited from assessing a lessee any fee, surcharge

or other charges for legal services in connection with the operation or rental of a residential unit unless the owner, lessor or agent has the legal authority to do so pursuant to a court order. The provisions of this subdivision shall not apply to a shareholder of a cooperative housing corporation, provided, however, that the provisions of this subdivision shall apply with respect to any tenant or subtenant of such a shareholder.

(b) Legal services include, but are not limited to, court fees, legal representation, attorney fees, notary public charges, and administrative fees incurred by the owner, lessor or agent in connection with management of the building, including actions and proceedings in a court of law.

(c) Any agreement or assessment contrary to this section shall be void as contrary to public policy.

**§ 235. Wilful violations.** 1. Any lessor, agent, manager, superintendent or janitor of any building, or part thereof, the lease or rental agreement whereof by its terms, expressed or implied, requires the furnishing of hot or cold water, heat, light, power, elevator service, telephone service or any other service or facility to any occupant of said building, who wilfully or intentionally fails to furnish such water, heat, light, power, elevator service, telephone service or other service or facility at any time when the same are necessary to the proper or customary use of such building, or part thereof, or any lessor, agent, manager, superintendent or janitor who wilfully and intentionally interferes with the quiet enjoyment of the leased premises by such occupant, is guilty of a violation.

2. Any lessor, agent, manager, superintendent or janitor of any building, or part thereof, who wilfully or intentionally acts to prevent or obstruct the delivery of fuel oil ordered in compliance with either section three hundred two-c of the multiple dwelling law or section three hundred five-c of the multiple residence law or the refiring of an oil burner after such a delivery shall be guilty of a violation.

**§ 235-a. Tenant right to offset payments and entitlement to damages in certain cases.** 1. In any case in which a residential tenant shall lawfully make a payment to a utility company pursuant to the provisions of sections thirty-three, thirty-four and one hundred sixteen of the public service law, or to a utility company as defined in subdivision twenty-three of section two of the public service law, public authority, water-works corporation, as defined in subdivision twenty-seven of section two of the public service law, or municipal water system, as prescribed in section eighty-nine-l of the public service law, for water service which a landlord is responsible for but has failed or refused to provide payment therefor, such payment shall be deductible from any future payment of rent.

2. Any owner (as defined in the multiple dwelling law or multiple residence law) of a multiple dwelling responsible for the payment of charges for gas, electric, steam or water service who causes the discontinuance of that service by failure or refusal to pay the charges for past service shall be liable for compensatory and punitive damages to any tenant whose utility service is so discontinued.

\* 3. Nothing contained in this section and no payment made pursuant to this section shall be deemed to discharge the liability of a renter with an interest in real property pursuant to subdivision two of section three hundred four of the real property tax law from taxes levied on such interest.

\* NB (Effective pending ruling by Commissioner of Internal Revenue)

**§ 235-b. Warranty of habitability.** 1. In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not

constitute a breach of such covenants and warranties.

2. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.

3. In determining the amount of damages sustained by a tenant as a result of a breach of the warranty set forth in the section, the court;

(a) need not require any expert testimony; and

(b) shall, to the extent the warranty is breached or cannot be cured by reason of a strike or other labor dispute which is not caused primarily by the individual landlord or lessor and such damages are attributable to such strike, exclude recovery to such extent, except to the extent of the net savings, if any, to the landlord or lessor by reason of such strike or labor dispute allocable to the tenant's premises, provided, however, that the landlord or lesser has made a good faith attempt, where practicable, to cure the breach.

(c) where the premises is subject to regulation pursuant to the local emergency housing rent control law, the emergency tenant protection act of nineteen seventy-four, the rent stabilization law of nineteen hundred sixty-nine or the city rent and rehabilitation law, reduce the amount awarded hereunder by the total amount of any rent reduction ordered by the state division of housing and community renewal pursuant to such laws or act, awarded to the tenant, from the effective date of such rent reduction order, that relates to one or more matters for which relief is awarded hereunder.

**§ 235-bb. Certificates of occupancy; required disclosure to tenant.** 1. Prior to executing a residential lease or rental agreement with a tenant, the owner of real property consisting of three or fewer rental units shall provide conspicuous notice in bold face type as to whether a certificate of occupancy, if such certificate is required by law, is currently valid for the dwelling unit subject to the lease or rental agreement. Owners who provide the tenant with an actual copy of the valid certificate of occupancy shall be deemed to have complied with the requirements of this subdivision.

2. Any agreement by a lessee or tenant of premises for dwelling purposes waiving or modifying his or her rights as set forth in this section shall be void as contrary to public policy.

**§ 235-c. Unconscionable lease or clause.** 1. If the court as a matter of law finds a lease or any clause of the lease to have been unconscionable at the time it was made the court may refuse to enforce the lease, or it may enforce the remainder of the lease without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. When it is claimed or appears to the court that a lease or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose and effect to aid the court in making the determination.

**§ 235-d. Harassment.** 1. Notwithstanding any other provision of law, within a city having a population of one million or more, it shall be unlawful and shall constitute harassment for any landlord of a building which at any time was occupied for manufacturing or warehouse purposes, or other person acting on his behalf, to engage in any course of conduct, including, but not limited to intentional interruption or discontinuance or willful failure to restore services customarily provided or required by written lease or other rental agreement, which interferes with or disturbs the comfort, repose, peace or quiet of a tenant in the tenant's use or occupancy of rental space if such conduct is intended to cause the tenant (i) to vacate a building or part thereof; or (ii) to surrender or waive any rights of such tenant under the tenant's written lease or other rental agreement.

2. The lawful termination of a tenancy or lawful refusal to renew or extend a written lease or other rental agreement shall not constitute harassment for purposes of this section.

3. As used in this section the term "tenant" means only a person or business occupying or residing at the premises pursuant to a written lease or other rental agreement, if such premises are located in a building which at any time was occupied for manufacturing or warehouse purposes and a certificate of occupancy for residential use of such building is not in effect at the time of the last alleged acts or incidents upon which the harassment claim is based.

4. A tenant may apply to the supreme court for an order enjoining acts or practices which constitute harassment under subdivision one of this section; and upon sufficient showing, the supreme court may issue a temporary or permanent injunction, restraining order or other order, all of which may, as the court determines in the exercise of its sound discretion, be granted without bond. In the event the court issues a preliminary injunction it shall make provision for an expeditious trial of the underlying action.

5. The powers and remedies set forth in this section shall be in addition to all other powers and remedies in relation to harassment including the award of damages. Nothing contained herein shall be construed to amend, repeal, modify or affect any existing local law or ordinance, or provision of the charter or administrative code of the city of New York, or to limit or restrict the power of the city to amend or modify any existing local law, ordinance or provision of the charter or administrative code, or to restrict or limit any power otherwise conferred by law with respect to harassment.

6. Any agreement by a tenant in a written lease or other rental agreement waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.

**§ 235-e. Duty to provide a written receipt.** (a) Upon the receipt of the payment of rent for residential premises in the form of cash, or any instrument other than the personal check of the lessee, it shall be the duty of the lessor, or any agent of the lessor authorized to receive rent, to provide the lessee with a written receipt containing the

following:

1. The date;
2. The amount;
3. The identity of the premises and period for which paid; and
4. The signature and title of the person receiving the rent.

(b) A lessee may request, in writing, that a lessor provide a receipt for rent paid by personal check. If such request is made, the lessor, or any agent of the lessor authorized to receive rent, shall provide the lessee with the receipt described in subdivision (a) of this section. Such request shall, unless otherwise specified by the lessee, remain in effect for the duration of such lessee's tenancy. The lessor shall maintain a record of all cash receipts for rent for at least three years.

(c) If a payment of rent is personally transmitted to a lessor, or an agent of a lessor authorized to receive rent, the receipt for such payment shall be issued immediately to a lessee. If a payment of rent is transmitted indirectly to a lessor, or an agent of a lessor authorized to receive rent, a lessee shall be provided with a receipt within fifteen days of such lessor or agent's receipt of a rent payment.

(d) If a lessor, or an agent of a lessor authorized to receive rent, fails to receive payment for rent within five days of the date specified in a lease agreement, such lessor or agent shall send the lessee, by certified mail, a written notice stating the failure to receive such rent payment. The failure of a lessor, or any agent of the lessor authorized to receive rent, to provide a lessee with a written notice of the non-payment of rent may be used as an affirmative defense by such lessee in an eviction proceeding based on the non-payment of rent. Notwithstanding the provisions of this subdivision, a lessor which is a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, may provide for a method of sending notice by mail other than by certified mail, as long as such method of sending notice is provided for in the



proprietary lease or occupancy agreement, and the lessee is a dwelling unit owner or shareholder of such cooperative housing corporation.

**§ 235-f. Unlawful restrictions on occupancy.** 1. As used in this section, the terms:

(a) "Tenant" means a person occupying or entitled to occupy a residential rental premises who is either a party to the lease or rental agreement for such premises or is a statutory tenant pursuant to the emergency housing rent control law or the city rent and rehabilitation law or article seven-c of the multiple dwelling law.

(b) "Occupant" means a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants.

2. It shall be unlawful for a landlord to restrict occupancy of residential premises, by express lease terms or otherwise, to a tenant or tenants or to such tenants and immediate family. Any such restriction in a lease or rental agreement entered into or renewed before or after the effective date of this section shall be unenforceable as against public policy.

3. Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence.

4. Any lease or rental agreement for residential premises entered into by two or more tenants shall be construed to permit occupancy by tenants, immediate family of tenants, occupants and dependent children of occupants; provided that the total number of tenants and occupants, excluding occupants' dependent children, does not exceed the number of tenants specified in the current lease or rental agreement, and that at least one tenant or a tenants' spouse occupies the premises as his primary residence.

5. The tenant shall inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord.

6. No occupant nor occupant's dependent child shall, without express written permission of the landlord, acquire any right to continued occupancy in the event that the tenant vacates the premises or acquire any other rights of tenancy; provided that nothing in this section shall be construed to reduce or impair any right or remedy otherwise available to any person residing in any housing accommodation on the effective date of this section which accrued prior to such date.

7. Any provision of a lease or rental agreement purporting to waive a provision of this section is null and void.

8. Nothing in this section shall be construed as invalidating or impairing the operation of, or the right of a landlord to restrict occupancy in order to comply with federal, state or local laws, regulations, ordinances or codes.

9. Any person aggrieved by a violation of this section may maintain an action in any court of competent jurisdiction for:

- (a) an injunction to enjoin and restrain such unlawful practice;
- (b) actual damages sustained as a result of such unlawful practice;
- and
- (c) court costs.

**§ 235-g. Electronic billing and/or payment of rent.** 1. A landlord shall not require a lessee or tenant to use an electronic billing and/or payment system as the only method for the payment of rent. A landlord shall not assess any fee or other charge for a lessee or tenant that chooses not to use an electronic billing and/or payment system.

2. Any agreement by a lessee or tenant of a dwelling waiving or modifying his or her rights as set forth in this section shall be void as contrary to public policy.

**§ 235-h. Waiver of right to bring a declaratory judgment action.** No commercial lease shall contain any provision waiving or prohibiting the right of any tenant to bring a declaratory judgment action with respect to any provision, term or condition of such commercial lease. The inclusion of any such waiver provision in a commercial lease shall be null and void as against public policy.

**§ 235-i. Unreasonable tenant fees for reproductions of keys.** A landlord shall not charge a tenant a fee for the reproduction of keys to a single dwelling greater than one hundred ten percent of the actual cost of reproduction, provided such limitation shall not apply if a tenant requires the reproduction of keys for a single dwelling more than three times in a calendar year.

**§ 235-j. Duty to inform of bed bug infestation.** 1. Upon having knowledge of a bed bug infestation in a unit of a residential rental premises, the landlord or lessor of a residential rental premises shall provide written notice of such infestation to the landlord's tenants and lessees who reside in units on the premises immediately above, immediately below, and immediately adjacent to the infested unit. Such written notice shall be provided to such tenants and lessees within seventy-two hours of the landlord or lessor having knowledge of the bed bug infestation.

2. Upon having knowledge of a bed bug infestation in a common area of a residential rental premises, the landlord or lessor of the residential rental premises shall place notice of such infestation in a conspicuous location accessible to all tenants and lessees residing in the premises within seventy-two hours of the landlord or lessor having knowledge of the bed bug infestation.

3. Any notice required to be provided pursuant to subdivision one of this section shall not identify the infested unit or contain any

personally identifying information of the tenant or tenants whose unit experienced the bed bug infestation.

4. Subdivisions one and two of this section shall not apply to a landlord or lessor that is subject to notice and remediation obligations related to bed bug infestations pursuant to a judicial order, legal settlement, or binding agreement with a federal, state, or local regulatory entity while such judicial order, legal settlement, or binding agreement is in effect.

**§ 236. Assignment of lease of a deceased tenant.** Notwithstanding any contrary provision contained in any lease hereafter made which affects premises demised for residential use, or partly for residential and partly for professional use, the executor, administrator or legal representative of a deceased tenant under such a lease, may request the landlord thereunder to consent to the assignment of such a lease, or to the subletting of the premises demised thereby. Such request shall be accompanied by the written consent thereto of any co-tenant or guarantor of such lease and a statement of the name, business and home addresses of the proposed assignee or sublessee. Within ten days after the mailing of such request, the landlord may ask the sender thereof for additional information as will enable the landlord to determine if rejection of such request shall be unreasonable. Within thirty days after the mailing of the request for consent, or of the additional information reasonably asked for by the landlord, whichever is later, the landlord shall send a notice to the sender thereof of his election to terminate said lease or to grant or refuse his consent. Landlord's failure to send such a notice shall be deemed to be a consent to the proposed assignment or subletting. If the landlord consents, said lease may be assigned in accordance with the request provided a written agreement by the assignee assuming the performance of the tenant's obligations under the lease is delivered to the landlord in form reasonably satisfactory to the landlord, or the premises may be sublet in accordance with the request, as the case may be, but the estate of the deceased tenant, and any other tenant thereunder, shall nevertheless remain liable for the performance of tenant's obligations under said lease. If the landlord terminates

said lease or unreasonably refuses his consent, said lease shall be deemed terminated, and the estate of the deceased tenant and any other tenant thereunder shall be discharged from further liability thereunder as of the last day of the calendar month during which the landlord was required hereunder to exercise his option. If the landlord reasonably refuses his consent, said lease shall continue in full force and effect, subject to the right to make further requests for consent hereunder. Any request, notice or communication required or authorized to be given hereunder shall be sent by registered or certified mail, return receipt requested. This act shall not apply to a proprietary lease, viz.: a lease to, or held by, a tenant entitled thereto by reason of ownership of stock in a corporate owner of premises which operates the same on a cooperative basis. Any waiver of any part of this section shall be void as against public policy.

**§ 236-a. Termination of lease of a deceased tenant.** Notwithstanding any contrary provision contained in any lease hereafter made or renewed which affects premises demised for residential use, or partly for residential and partly for professional use, the executor, administrator or legal representative of a deceased tenant under such a lease shall have the option to terminate such a lease upon notice given to the landlord. Such termination shall be effective as of the date on which the tenant's estate notifies the landlord of its election to terminate and surrenders possession of the premises. Such termination option shall be accompanied by the written consent thereto of any co-tenant or guarantor of such lease. Nothing in this section shall be construed to relieve the tenant's estate of liability for rent money or any debt incurred prior to the date of termination of the lease, including damages to the premises and any expenses the landlord may incur as a direct result of the tenant's death, except that the tenant's estate shall not be liable for damages or any other penalty for breach of inadequate notice as a result of terminating a lease under this section. Any notice or communication required or authorized to be given hereunder shall be sent by registered or certified mail, return receipt requested. This section shall not apply to a proprietary lease, viz.: a lease to, or held by, a tenant entitled thereto by reason of ownership of stock in

a corporate owner of premises which operates the same on a cooperative basis. Any waiver of any part of this section shall be void as against public policy.

**§ 237. Discrimination in leases with respect to bearing of children.**

Any person, firm or corporation owning or having in charge any apartment house, tenement house or other building or mobile home park used for dwelling purposes who shall, in any lease of any or part of any such building or mobile home park, have a clause therein providing that during the term thereof the tenants shall remain childless or shall not bear children, shall be guilty of a violation.

**§ 237-a. Discrimination against children in dwelling houses and manufactured home parks.** a. Any person, firm or corporation owning or having in charge any apartment house, tenement house or other building or manufactured home park used for dwelling purposes who shall refuse to rent any or part of any such building or manufactured home park to any person or family, or who discriminates in the terms, conditions, or privileges of any such rental, solely on the ground that such person or family has or have a child or children shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty nor more than one hundred dollars for each offense; provided, however, the prohibition against discrimination against children in dwelling houses and manufactured home parks contained in this section shall not apply to:

(1) housing units for senior citizens subsidized, insured, or guaranteed by the federal government; or

(2) one or two family owner occupied dwelling houses or manufactured homes; or

(3) manufactured home parks intended and operated for occupancy by persons fifty-five years of age or older. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b)(2)(c)(42 U.S.C. 3607(b)(2)(c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

b. Civil liability:

(1) where discriminatory conduct prohibited by this section has occurred, an aggrieved individual shall have a cause of action in any court of appropriate jurisdiction for damages, declaratory and injunctive relief;

(2) in all actions brought under this section, reasonable attorney's fees as determined by the court may be awarded to a prevailing plaintiff.

**§ 238. Agreements or contracts for privileges to deal with occupants of tenements, apartment houses or bungalow colonies.** 1. A contract, agreement or arrangement entered into or executed by and between the owner or prospective owner of an apartment house, tenement or what is commonly known as a bungalow colony connected with common or joint means of ingress and egress, whether such apartment house, tenement or bungalow colony is in existence or in process of construction or to be constructed in the future, or any person in possession or claiming possession of such apartment house, tenement or bungalow colony, or any part thereof, including the common or joint means of ingress or egress, or any of the agents, employees or servants of such an owner or possessors thereof and a dealer in or seller of fuel, ice or food, or his agents, employees or representatives for the purpose of giving to such dealer or seller the privilege of selling or delivering fuel, ice or food, to the persons occupying or to occupy such apartment house, tenement or bungalow colony, or any part thereof, is against public policy and void.

2. Any person who shall, directly or indirectly, either as the owner or prospective owner of such apartment house, tenement or bungalow colony, or any part thereof, including the common or joint means of ingress or egress, or as an agent, employee or servant of such an owner, or any person in possession or claiming possession of such apartment house, tenement or bungalow colony, or any part thereof, including the common or joint means of ingress or egress, accept any money, property or thing of value for permitting or giving to any person, or his agents, employees or representatives, the privilege of selling or delivering

fuel, ice or food, to the persons occupying or to occupy such apartment house, tenement or bungalow colony, or any part thereof, and any person who shall, directly or indirectly, either as a seller of, or dealer in, fuel, ice or food, as an agent, employee, or representative of such seller or dealer, pay or give any money, property or thing of value, for such privilege shall be guilty of a misdemeanor. If a corporation is convicted of a violation of this section, it shall be punished by a fine of not less than fifty nor more than one thousand dollars.

3. A person occupying an apartment house, tenement or bungalow colony, or any part thereof, to whom fuel, ice or food, shall be sold or delivered by a seller or dealer who has paid or given any money, property or thing of value for the privilege of selling or delivering fuel, ice or food, to the persons occupying or to occupy such apartment house, tenement or bungalow colony, or any part thereof, may recover of such seller or dealer for his benefit a penalty, in the sum of two hundred and fifty dollars, in a civil action brought in a court of competent jurisdiction.

**§ 238-a. Limitation on fees.** In relation to a residential dwelling unit:

1. (a) Except in instances where statutes or regulations provide for a payment, fee or charge, no landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the processing, review or acceptance of an application, or demand any other payment, fee or charge before or at the beginning of the tenancy, except background checks and credit checks as provided by paragraph (b) of this subdivision, provided that this subdivision shall not apply to entrance fees charged by continuing care retirement communities licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living providers licensed pursuant to article forty-six-B of the public health law, adult care facilities licensed pursuant to article seven of the social services law, senior residential communities that have submitted an offering plan to the attorney general, or not-for-profit independent retirement communities that offer personal emergency response,



housekeeping, transportation and meals to their residents. Nothing in this paragraph shall prohibit a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, from demanding from a prospective tenant any payment, fee or charge which is necessary to compensate a managing agent and/or transfer agent for the processing, review or acceptance of such prospective tenant's application where such prospective tenant would become a dwelling unit owner or shareholder of such cooperative housing corporation.

(b) A landlord, lessor, sub-lessor or grantor may charge a fee or fees to reimburse costs associated with conducting a background check and credit check, provided the cumulative fee or fees for such checks is no more than the actual cost of the background check and credit check or twenty dollars, whichever is less, and the landlord, lessor, sub-lessor or grantor shall waive the fee or fees if the potential tenant provides a copy of a background check or credit check conducted within the past thirty days. The landlord, lessor, sub-lessor or grantor may not collect the fee or fees unless the landlord, lessor, sub-lessor or grantor provides the potential tenant with a copy of the background check or credit check and the receipt or invoice from the entity conducting the background check or credit check. Notwithstanding the provisions of this paragraph, a cooperative housing corporation shall be permitted to charge a fee or fees to reimburse costs associated with conducting a background check and credit check in excess of twenty dollars, where the potential tenant would become a dwelling unit owner or shareholder of such cooperative housing corporation, provided the cumulative fee or fees for such checks is no more than the actual cost of such background check and/or credit check. Further, with regard to a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, all such fees must be reasonable and approved by the agency supervising such cooperative housing corporation.

2. No landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the late payment of rent unless the payment of rent has not been made within five days of the date it was due, and such

payment, fee, or charge shall not exceed fifty dollars or five percent of the monthly rent, whichever is less; provided a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, shall be permitted to charge a tenant that is a dwelling unit owner or shareholder of such cooperative housing corporation a fee of up to eight percent of the monthly maintenance fee for the late payment of the monthly maintenance fee if the proprietary lease or occupancy agreement provides for such fee.

2-a. (a) No landlord, lessor, sub-lessor or grantor shall demand any payment, fee, or charge from a tenant for the delivery of a check, draft or like instrument that was given in payment for rent and subsequently dishonored by the tenant's financial institution for insufficient funds except as provided in paragraph (b) of this subdivision.

(b) Notwithstanding any contrary provision herein, a landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge from a tenant for the delivery of a dishonored check only if such payment, fee, or charge was provided for in the lease or contract between landlord, lessor, sub-lessor or grantor and the tenant; provided, however, that:

(i) such payment, fee, or charge shall not exceed the actual costs, charges or fees incurred by landlord, lessor, sub-lessor or grantor for the return of such dishonored check or the amount set forth in subdivision three of section 5-328 of the general obligations law, whichever is greater; and

(ii) if the payment, fee or charge exceeds the amount set forth in subdivision three of section 5-328 of the general obligations law, the landlord, lessor, sub-lessor or grantor shall provide to the tenant upon request evidence substantiating the equivalence between the payment, fee or charge and the amount of actual costs, charges or fees incurred for the return of the dishonored check.

(c) As used in this subdivision, "dishonored check" shall have the same meaning as such term is defined in section 5-328 of the general obligations law.

(d) The provisions of this subdivision shall not apply to a shareholder of a cooperative housing corporation, provided, however, that the provisions of this subdivision shall apply with respect to any

tenant or subtenant of such a shareholder.

3. Any provision of a lease or contract waiving or limiting the provisions of this section shall be void as against public policy.

## ARTICLE 7A

### **PORTABLE KEROSENE HEATERS**

Section 239. Legislative findings.

239-a. Definitions.

239-b. Only approved portable kerosene heaters permitted in structures.

239-c. Approval by the secretary of state.

239-d. Sale of unapproved portable kerosene heaters.

239-e. Portable kerosene heaters prohibited in multiple dwellings.

239-f. Penalties for violation.

239-g. Application of article.

**§ 239. Legislative findings.** The legislature recognizes that the ever-increasing cost of home heating has resulted in widespread consumer interest in the use of portable kerosene heaters. Because there is a wide variety of kerosene heaters, including different designs and intended purposes, the public interest requires that those heaters which are used in residential structures meet certain safety standards designed to insure that they are reasonably safe for that purpose. Accordingly, it is the intent of this article to protect the public by establishing standards which will permit the use of reasonably safe heaters in residential structures.

**§ 239-a. Definitions.** As used in this article the following terms shall mean and include:

1. "Structure." Any building or completed construction of any kind including but not limited to, private dwellings or to any structure used

for business, commercial or industrial purposes, but not including multiple dwellings, buildings under construction, or buildings used solely for agricultural purposes.

2. "Multiple dwelling." A multiple dwelling is a dwelling which is either rented, leased, let or hired out to be occupied or is occupied as the residence or home of three or more families living independently of each other and shall include, dwelling portions of hospitals, nursing homes, convents, monasteries, asylums and public institutions.

3. "Owner." The owner of the freehold of any real property (as defined in section two of the real property law), or of a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of real property.

4. "Person." The term person shall include the owner, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation, directly or indirectly in control of a structure or part thereof.

5. "Listed." Any portable kerosene heater which has been tested by an independent, nationally recognized testing or inspection agency, acceptable to the secretary of state and which has been determined to meet a generally accepted standard for such heaters. Such determination shall be evidenced by either the inclusion of the heater on a list published by such agency or by the heater bearing the listing mark of such agency.

6. "Portable kerosene heater." Any non-flue connected, self-contained, self-supporting, kerosene-fueled heating appliance equipped with an integral reservoir, designed to be carried from one location to another.

7. "Approved portable kerosene heater." Any listed portable kerosene heater which:

- (a) has a fuel capacity of not more than two gallons;
- (b) emits no more than .04 percent carbon monoxide in an air free

sample of flue gases at maximum heat output and no more than .08 percent at recommended low-fire setting;

(c) has a minimum tipping angle of no more than thirty-three degrees from the vertical with a full fuel reservoir;

(d) has an automatic shutoff safety device or inherent design feature which extinguishes the heating flame upon tipover in not more than ten seconds;

(e) includes as standard equipment a pump or siphon for refueling;

(f) is packaged with instructions advising the purchaser of proper maintenance and operation;

(g) bears labeling, in conspicuous letters, cautioning and informing the purchaser as to:

(i) the need for an adequate source of ventilation when the heater is in operation;

(ii) the use of only suitable fuel for the heater;

(iii) proper manner of refueling;

(iv) proper placement and handling of the heater when in operation;  
and

(v) proper procedures for lighting, flame regulation and extinguishing the heater;

(h) after April first, nineteen hundred eighty-two, meets such additional standards, if any, as may be contained in reasonable rules and regulations adopted by the secretary of state pursuant to section two hundred thirty-nine-c of this article.

**§ 239-b. Only approved portable kerosene heaters permitted in structures.** Portable kerosene heaters which do not meet the requirements of subdivision seven of section two hundred thirty-nine-a of this article are prohibited in structures. It shall be unlawful for any person (1) to use any portable kerosene heater except an approved portable kerosene heater in any portion of a structure, or (2) being the owner of such structure, to provide or place or cause to be provided or placed in any portion of a structure, any portable kerosene heater except an approved portable kerosene heater for use by any occupant of such structure.

**§ 239-c. Approval by the secretary of state.** After April first, nineteen hundred eighty-two, no portable kerosene heater shall be offered for sale in this state for use in a structure unless it has been approved by the secretary of state or his designee. In determining whether to approve a portable kerosene heater for sale, the secretary of state shall consider whether the heater meets (1) the standards set forth in subdivision seven of section two hundred thirty-nine-a of this article, and (2) any additional standards which the secretary of state reasonably believes are required to effectuate the purposes of this article as set forth in section two hundred thirty-nine of this article. The secretary of state may promulgate reasonable rules and regulations setting forth the procedure by which portable kerosene heaters will be reviewed for approval.

**§ 239-d. Sale of unapproved portable kerosene heaters.** All unapproved portable kerosene heaters offered for sale in this state shall have printed thereon or attached thereto and on the package in which such heater is sold the following statement: "This heater is not approved for residential or commercial use." There shall also be printed thereon or attached thereto and on the package in which such heater is sold such other information as may be required by the secretary of state.

**§ 239-e. Portable kerosene heaters prohibited in multiple dwellings.** It shall be unlawful to use any portable kerosene heater in a multiple dwelling.

**§ 239-f. Penalties for violation.** Any person who shall violate any provision of this article shall be guilty of a misdemeanor, punishable for each offense by a fine not exceeding one hundred dollars or by imprisonment for a period of not more than ninety days.

**§ 239-g. Application of article.** 1. This article shall not be

applicable to any city having a population in excess of five hundred thousand.

2. Nothing in this article shall be construed to permit the sale or use of any portable kerosene heater in any municipality in which such use or sale is restricted or prohibited by any general, special or local law or rule or regulation.

## ARTICLE 8

### **CONVEYANCES AND MORTGAGES**

- Section 240. Definitions and use of terms.
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  - 240-c. Joint tenancy severance.
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**§ 240. Definitions and use of terms.** 1. The term "heirs," or other words of inheritance, are not requisite to create or convey an estate in fee.

2. The term "conveyance," as used in this article, includes every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered.

3. Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument, and is consistent with the rules of law.

4. The terms "estate" and "interest in real property" include every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent.

**§ 240-b. Certain conveyances authorized; effect thereof.** 1. Any person or persons owning real property or an interest in real property which he or they have power to convey, may effectively convey such property or interest by a conveyance naming himself or themselves and another person or persons, or one or more of themselves and another person or other persons, as grantees, and the conveyance has the same effect as to whether it creates an estate in severalty, a joint tenancy, or a tenancy by the entirety, or tenancy in common, as if it were a conveyance from a stranger who owned the property or interest to the persons named as grantees in the conveyance.

2. Any two or more persons owning real property or an interest in real property which they have power to convey, may effectively convey such property or interest by a conveyance naming one, or more than one, or all such persons, as grantees, and the conveyance has the same effect, as to whether it creates an estate in severalty, or a joint tenancy, or a tenancy by the entirety, or tenancy in common, as if it were a conveyance from a stranger who owned the property or interest to the persons named as grantees in the conveyance.

3. As used in this section, "person" may be a married person and "persons" may be persons married to each other.

**§ 240-c. Joint tenancy severance.** 1. In addition to any other means by which a joint tenancy with right of survivorship may be severed, a joint tenant may unilaterally sever a joint tenancy in real property without consent of any non-severing joint tenant or tenants by:

(a) Execution and delivery of a deed that conveys legal title to the severing joint tenant's interest to a third person, whether or not pursuant to an agreement requiring the third person to reconvey legal title to the severing joint tenant; or

(b) Execution of a written instrument that evidences the intent to sever the joint tenancy, including a deed that names the severing tenant as the direct grantee of the severing tenant's interest.

2. No severance of a joint tenancy pursuant to subdivision one of this

section shall terminate the right of survivorship of any non-severing joint tenant or tenants as to the severing tenant's interest unless the deed or written instrument effecting the severance is recorded, prior to the death of the severing tenant, in the county where the real property is located.

3. Nothing in this section shall limit the manner or effect of:

(a) A severance of a joint tenancy pursuant to a written instrument executed by all joint tenants, or pursuant to a written agreement of all joint tenants.

(b) A severance of a joint tenancy effected by a deed from a joint tenant to another joint tenant.

(c) A severance ordered by a court of competent jurisdiction.

**§ 241. Ancient conveyances abolished.** The conveyance of real property by feoffment, with livery of seizin, or by fines, or common recoveries, is abolished.

**§ 242. Disclosure prior to the sale of real property.** 1. (a) Any person, firm, company, partnership or corporation offering to sell real property to which no utility electric service is provided shall provide written notice to the prospective purchaser or to the prospective purchaser's agent, clearly indicating this fact. Such notice shall be provided prior to accepting a purchase offer.

(b) Any prospective or actual purchaser who has suffered a loss due to a violation of this section is entitled to recover any actual damages incurred from the person offering to sell said real property.

(c) The provisions of this subdivision shall not apply in instances where the real property being sold lies within the applicable free footage allowance or service lateral specified by the public service commission in rule, regulation or public utility tariff.

2. Disclosure prior to the sale of real property to which utility surcharge payments attach. (a) Any person, firm, company, partnership or corporation offering to sell real property against which an electric,

gas or water utility surcharge is assessed for the purpose of defraying the costs associated with an electric, gas or water line extension, or for the purpose of defraying the costs associated with related facilities, shall provide written notice to the prospective purchaser or the prospective purchaser's agent, stating as follows: "This property is subject to an electric, gas and/or water utility surcharge". In addition, such notice shall also state, the type and purpose of the surcharge, the amount of the surcharge and whether such surcharge is payable on a monthly, yearly or other basis. Such notice shall be provided by the seller prior to accepting a purchase offer.

(b) Any prospective or actual purchaser who has suffered a loss due to a violation of this subdivision is entitled to recover any actual damages incurred from the person offering to sell or selling said real property.

3. Any person, firm, company, partnership or corporation offering to sell real property on which uncapped natural gas wells are situated, and of which such person, firm, company, partnership or corporation has actual knowledge, shall inform any purchaser of the existence of these wells prior to entering into a contract for the sale/purchase of such property.

4. Disclosure prior to the sale of real property to which a green jobs-green New York on-bill recovery charge applies. (a) Any person, firm, company, partnership or corporation offering to sell real property which is subject to a green jobs-green New York on-bill recovery charge pursuant to title nine-A of article eight of the public authorities law shall provide written notice to the prospective purchaser or the prospective purchaser's agent, stating as follows: "This property is subject to a green jobs-green New York on-bill recovery charge". Such notice shall also state the total amount of the original charge, the payment schedule and the approximate remaining balance, a description of the energy efficiency services performed, including improvements to the property, and an explanation of the benefit of the green jobs-green New York qualified energy efficiency services. Such notice shall be provided by the seller prior to accepting a purchase offer.

(b) Any prospective or actual purchaser who has suffered a loss due to

a violation of this subdivision is entitled to recover any actual damages incurred from the person offering to sell or selling said real property.

**§ 243. Grant of fee or freehold.** A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent thereunto authorized in writing. If not duly acknowledged before its delivery, according to the provisions of this chapter, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or incumbrancer until so acknowledged.

**§ 244. When grant takes effect.** A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed.

**§ 245. Estate which passes by grant or devise.** A grant or devise of real property passes all the estate or interest of the grantor or testator unless the intent to pass a less estate or interest appears by the express terms of such grant or devise or by necessary implication therefrom. A greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deeds; except that every grant is conclusive against the grantor and his heirs claiming from him by descent, and as against a subsequent purchaser or incumbrancer from such grantor, or from such heirs claiming as such, other than a subsequent purchaser or incumbrancer in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded.

**§ 246. Certain deeds declared grants.** Deeds of bargain and sale, and

of lease and release, may continue to be used; and are to be deemed grants, subject to all the provisions of law in relation thereto.

**§ 247. Conveyance by tenant for life or years of greater estate than possessed.** A conveyance made by a tenant for life or years, of a greater estate than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey.

**§ 248. Effect of conveyance where property is leased.** An attornment to a grantee is not requisite to the validity of a conveyance of real property occupied by a tenant, or of the rents or profits thereof, or any other interest therein. But the payment of rent to a grantor, by his tenant, before notice of the conveyance, binds the grantee; and the tenant is not liable to such grantee, before such notice, for the breach of any condition of the lease.

**§ 249. Covenants in mortgages.** A mortgage of real property does not imply a covenant for the payment of the sum intended to be secured; and where such covenant is not expressed in the mortgage, or a bond or other separate instrument to secure such payment has not been given, the remedies of the mortgagee are confined to the property mentioned in the mortgage.

**§ 251. Covenants not implied.** A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not.

**§ 252. Lineal and collateral warranties abolished.** Lineal and collateral warranties, with all their incidents, have been abolished; but the heirs and devisees of a person, who has made a covenant or agreement, are answerable thereon, to the extent of the real property

descended or devised to them, in the cases and in the manner prescribed by law.

**§ 253. Construction of covenants in grants of freehold interests.** In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. Seizin.-- A covenant that the grantor "is seized of the said premises (described) in fee simple, and has good right to convey the same," must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. Quiet enjoyment.-- A covenant that the grantee "shall quietly enjoy the said premises," must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. Freedom from incumbrances.-- A covenant "that the said premises are free from incumbrances," must be construed as meaning that such premises are free, clear, discharged and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever.

4. Further assurance.-- A covenant that the grantor will "execute or procure any further necessary assurance of the title to said premises," must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or

equitably deriving any estate, right, title or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors or assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. Warranty of title.-- A covenant that the grantor "will forever warrant the title" to the said premises, must be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors or assigns, against the grantor and his heirs or successors, and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. Grantor has not incumbered.-- A covenant that the grantor "has not done or suffered anything whereby the said premises have been incumbered," must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

**§ 254. Construction of clauses and covenants in mortgages and bonds or notes.** In mortgages of real property, and in bonds and notes secured thereby or in assignments of mortgages and bonds and mortgages and notes, or in agreements to extend or to modify the terms of mortgages and bonds and mortgages and notes, the following or similar clauses and



covenants must be construed as follows:

1. Clauses of mortgage. The words "This mortgage, made the ..... (A) ..... day of ..... (B) ....., nineteen hundred and ..... (C) ....., between ..... (D) ....., the mortgagor, and ..... (E) ....., residing at ..... (F) ....., the mortgagee, Witnesseth, that to secure the payment of an indebtedness in the sum of ..... (G) ..... dollars, lawful money of the United States, to be paid on the ..... (H) ..... day of ..... (I) ....., nineteen hundred and ..... (J) ....., with interest thereon to be computed from ..... (K) ..... at the rate of ..... (L) ..... per centum per annum, and to be paid ..... (M) ....., according to a certain bond, note or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee (description)," must be construed as equivalent in meaning to the words "This indenture, made the ..... (A1) ..... day of ..... (B1) ....., in the year nineteen hundred and ..... (C1) ..... between ..... (D1) ....., party of the first part, and ..... (E1) ....., of ..... (F1) ....., party of the second part.

"Whereas, the said ..... (D1) ..... is justly indebted to the said party of the second part in the sum of ..... (G1) ..... dollars, lawful money of the United States, secured to be paid by his certain bond, note or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..... (G1) ..... dollars, on the ..... (H1) ..... day of ..... (I1) ..... nineteen hundred and ..... (J1) ..... and the interest thereon, to be computed from ..... (K1) ....., at the rate of ..... (L1) ..... per centum per annum, and to be paid ..... (M1) .....

"It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of any installment of principal, interest, taxes or assessments, as hereinafter provided.

"Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond, note or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby

acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns for ever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises, together with all fixtures and articles of personal property attached to, or used in connection with, the premises. To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. Provided, always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond, note or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void."

(Explanation: Whatever words are inserted in the blank spaces above marked (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M) respectively, shall be construed as being inserted in the corresponding blank spaces above marked (A1), (B1), (C1), (D1), (E1), (F1), (G1), (H1), (I1), (J1), (K1), (L1) and (M1) respectively.)

2. Covenant that whole sum shall become due. A covenant "that the whole of the said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any installment of principal or of interest for ..... days; or after default in the payment of any tax, water rate or assessment for ..... days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided," must be construed as meaning that should any default be made in the payment of any installment of principal or of any part thereof, or in the payment of the said interest, or any part thereof, on any day whereon the same is made payable, or should any tax, water rate or assessment, and/or any installment of any assessment which has been divided into annual installments pursuant to provision of law in such

cases made and provided which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said installment of principal or interest remain unpaid and in arrear for the space of ..... days, or such tax, water rate or assessment or annual installment remain unpaid and in arrear for ..... days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment and/or annual installment is unpaid, and demand for the payment thereof, or should any default be made after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinafter provided, or upon failure to furnish such statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided, after the expiration of ..... days in case the request is made personally, or after the expiration of ..... days after the mailing of such request in case the request is made by mail, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

3. Covenant to pay indebtedness. In default of payment, mortgagee to have power to sell. A covenant "that the mortgagor will pay the indebtedness, as hereinbefore provided," must be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the principal sum or the interest that may grow due thereon, or of any part thereof, or in case of any other default, that then and from thenceforth it shall be lawful for the mortgagee, his executors,

administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise; as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

4. Mortgagor to keep buildings insured. (a) A covenant "that the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies," shall be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount to be approved by the mortgagee not exceeding in the aggregate one hundred per centum of their full insurable value and in a company or companies to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, which policy or policies shall have endorsed thereon the standard New York mortgagee clause in the name of the mortgagee, so and in such manner and form that he and they shall at all time and times,

until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said moneys, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in an amount in the aggregate not exceeding one hundred per centum of the full insurable value of said buildings erected on the mortgaged premises for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and that should the mortgagee by reason of such insurance against loss by fire receive any sum or sums of money for damage by fire, and should the mortgagee retain such insurance money instead of paying it over to the mortgagor, the mortgagee's right to retain the same and his duty to apply it in payment of or on account of the sum secured by the mortgage and in satisfaction or reduction of the lien thereof shall be limited and qualified as hereafter in this paragraph provided. Said insurance money so received by the mortgagee shall be held by him as trust funds until paid over or applied as hereinafter provided. If the mortgagor shall notify the mortgagee in writing within thirty days after the fire that the mortgaged premises have been damaged thereby, and shall thereafter make good the damage by means of such repairs, restoration or rebuilding as may be necessary to restore the buildings to their condition prior to the damage, then upon presentation to the mortgagee within three years after the fire of proof that the damage has been fully made good (and if he so demands in writing within thirty days after such presentation of proof, then upon presentation to the mortgagee within thirty days after such demand of proof also of the actual cost of such repairs, restoration and rebuilding and of the reasonable value of any part of the work so performed by the mortgagor) the mortgagee, unless he rejects the proof submitted to him as insufficient, shall pay over to the mortgagor so much of said insurance money theretofore received by the mortgagee as does not exceed the lesser of (1) the reasonable cost of such repairs, restoration and rebuilding or (2) the total amount actually paid therefor by the

mortgagor, together with the reasonable value of any part of the work done by him. Such proof shall be deemed sufficient unless, within sixty days after presentation of all such proof to the mortgagee as aforesaid, he shall notify the mortgagor in writing that the proof is rejected. Any excess of said insurance money over the amount so payable to the mortgagor shall be applied in reduction of the principal of the mortgage. Provided, however, that if and so long as there exists any default by the mortgagor in the performance of any of the terms or provisions of the mortgage on his part to be performed the mortgagee shall not be obligated to pay over any of said insurance money received by him. If the mortgagor shall fail to comply with any of the foregoing provisions within the time or times hereinabove limited, or shall fail within sixty days after rejection of the proof so submitted to commence an action against the mortgagee to recover so much of said insurance money as is payable to the mortgagor as hereinabove provided, or if the entire principal of the mortgage shall have become payable by reason of default or maturity, the mortgagee shall apply said insurance money in satisfaction or reduction of the principal of the mortgage; and any excess of said insurance money over the amount required to satisfy the mortgage shall be paid to the mortgagor. Unless the court, in any such action, shall determine that the mortgagee's rejection of the proof submitted by the mortgagor prior to the commencement of the action was unreasonable, the mortgagee may offset the reasonable amount, as determined by the court, of his expense incident to the litigation, and may reimburse himself out of the insurance money for the amount so determined. The term "mortgage," as hereinabove used, shall be deemed to include agreements extending or otherwise in any way modifying the terms or provisions of an existing mortgage. The term "mortgagor," as hereinabove used, shall mean the owner for the time being of the mortgaged fee or the junior mortgagee actually in possession of the mortgaged property, or the tenant for the time being in possession of the property under a lease which has been mortgaged. The term "mortgagee," as hereinabove used, shall be deemed to include the successors in interest of the mortgagee. In the event that there be more than one mortgage covering the same premises, such covenant must be construed as hereinbefore prescribed in this paragraph, except that the mortgagor, his heirs, successors and assigns, notwithstanding such

foregoing provisions, may not be required to provide such insurance, as to all the mortgagees combined, in the preferential order of their priority, for a total amount of more than one hundred per cent of the insurable value of the buildings on the premises, and a second or subordinate mortgagee shall be entitled to exercise the rights of a mortgagee with respect to the procurement of such insurance and the holding of the policy or policies thereof as hereinbefore prescribed in this paragraph only when and to the extent that the mortgagor, his heirs, successors or assigns, as the case may be, does or do not furnish satisfactory proof of such maximum insurance for the benefit of such second or subordinate mortgagee and one or more other mortgagees in the preferential order of their priority in a company or companies duly authorized to do business in this state.

The limitations and qualifications hereinabove imposed on the mortgagee's right to retain proceeds of a fire insurance policy shall apply only to mortgages or extensions or other modifications thereof made after the effective date of this act.

(b) A covenant "that the mortgagor will keep the buildings on the premises insured against loss by flood if the premises are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of nineteen hundred sixty-eight; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies," shall be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by flood provided the premises are located in an area identified by the Secretary of Housing and Urban Development of the United States as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of nineteen hundred sixty-eight, to an amount at least equal to the outstanding principal balance of the money secured by the mortgage or the maximum limit of coverage available with

respect to the buildings under said Act, whichever is less, and in a company or companies to be approved by the mortgagee and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, which policy or policies shall have endorsed thereon the standard New York mortgagee clause in the name of the mortgagee, so and in such manner and form that he and they shall at all time and times, until the full payment of said money, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns may make such insurance from year to year, in the amount as aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and that should the mortgagee by reason of such insurance receive any sum or sums of money for damage by flood, the provisions for retention, holding application and payment of said insurance money shall be as set forth in paragraph (a) above with respect to loss by fire. The term "mortgage," as hereinabove used, shall be deemed to include agreements extending or otherwise in any way modifying the terms or provisions of an existing mortgage. The term "mortgagor," as hereinabove used, shall mean the owner for the time being of the mortgaged fee or the junior mortgagee actually in possession of the mortgaged property, or the tenant for the time being in possession of the property under a lease which has been mortgaged. The term "mortgagee," as hereinabove used, shall be deemed to include the successors in interest of the mortgagee. In the event that there be more than one mortgage covering the same premises, such covenant must be construed as hereinbefore prescribed in this paragraph except that the mortgagor, his heirs, successors and assigns, notwithstanding such foregoing provisions, may not be required to provide such insurance, as to all the mortgagees combined, in the preferential order of their priority, for a total amount greater than the outstanding principal balance of the money secured by the mortgage or the maximum limit of coverage available with respect to the premises,



whichever is less, and a second or subordinate mortgagee shall be entitled to exercise the rights of a mortgagee with respect to the procurement of such insurance and the holding of the policy or policies thereof as hereinbefore prescribed in this paragraph only when and to the extent that the mortgagor, his heirs, successors or assigns, as the case may be, does or do not furnish satisfactory proof of such maximum insurance for the benefit of such second or subordinate mortgagee and one or more other mortgagees in the preferential order of their priority in a company or companies duly authorized to do business in this state.

The limitations and qualifications hereinabove imposed on the mortgagee's right to retain proceeds of a flood insurance policy shall apply only to mortgages or extensions or other modifications thereof made after the effective date of this act.

4-a. Mortgagor to maintain premises and all improvements thereon in good condition or repair. (a) A covenant contained in a mortgage on real property improved by a residence for four families or more that the mortgagor will maintain the premises and all improvements thereon in "good condition or repair" shall be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the premises and the building or buildings erected thereon in good condition and repair and free from violations of applicable municipal or state laws, codes or regulations concerning the state of such condition and/or repair. Upon a finding and certification by any such government or its agency of a violation of any such law, code or regulation involving a serious danger to the health and safety of the occupants of such mortgaged premises and upon the service of one copy thereof on the owner of record, or upon the appointment of an administrator pursuant to article seven-A of the real property actions and proceedings law, such mortgagee may declare the entire balance of the principal sum secured by such mortgage, together with all accrued interest, immediately due and payable upon the following conditions: the mortgagee shall allow the mortgagor a reasonable opportunity to correct the violation or, in the case of an administrator appointed pursuant to article seven-A of the real property actions and proceedings law, to

have such administrator removed; the mortgagee may commence foreclosure proceedings upon failure of the mortgagor to make such corrections within the time period mandated by local law, rule or code enforcement agency, provided, however, no such action shall be commenced within thirty days of the expiration of the period, if any, specified by local law, rule or code enforcement regulation, or, in the case of an administrator appointed pursuant to article seven-A of the real property actions and proceedings law, the mortgagee may commence foreclosure proceedings no earlier than sixty days after the appointment of such administrator.

(b) Should any such mortgagee commence a foreclosure proceeding based upon such violation and not complete the same because such violation had been cured, the mortgagee shall be entitled to recover all reasonable attorney's fees and disbursements incurred in the bringing of such proceeding.

(c) Notwithstanding the provisions of this section, the mortgagee and the mortgagor shall retain all existing interest and rights.

5. Mortgagor to warrant title. A covenant "that the mortgagor warrants the title to the premises," must be construed as meaning that the mortgagor warrants that he has good title to said premises and has a right to mortgage the same and that the mortgagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

6. Mortgagor to pay all taxes, assessments or water rates. A covenant "that the mortgagor will pay all taxes, assessments or water rates and in default thereof, the mortgagee may pay the same" must be construed as

meaning that until the amount hereby secured is paid, the mortgagor will pay all taxes, assessments and water rates which may be assessed or become liens on said premises, and in default thereof the holder of this mortgage may pay the same, and the mortgagor will repay the same with interest, and the same shall be liens on said premises and secured by the mortgage.

7. Statement of amount due. A covenant "that the mortgagor within ..... days upon request in person or within ..... days upon request by mail will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt" must be construed as meaning that the mortgagor, and any subsequent owner of the premises described herein upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the mortgagee or to any proposed assignee of this mortgage, the amount of principal and interest then owing on this mortgage and whether any offsets or defenses exist against the mortgage debt within ..... days in case the request is made personally, or within ..... days after the mailing of such request in case the request is made by mail.

8. Notice and demand. A covenant "that notice and demand or request may be made in writing and may be served in person or by mail" must be construed as meaning that every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request personally served on one or more of the persons who shall at the time hold the record title to the premises, or on their heirs or successors, or mailed by depositing it in any post-office station or letter-box, enclosed in a post-paid envelope addressed to such person or persons, or their heirs or successors, at his, their or its address to the mortgagee last known.

9. Power of attorney to assignee. The word "assign" or other words of assignment, when contained in an assignment of a mortgage and bond or mortgage and note, must be construed as having included in their meaning that the assignor does thereby make, constitute and appoint the assignee the true and lawful attorney, irrevocable, of the assignor, in the name

of the assignor, or otherwise, but at the proper costs and charges of the assignee, to have, use and take all lawful ways and means for the recovery of the money and interest secured by the said mortgage and bond or mortgage and note, and in case of payment to discharge the same as fully as the assignor might or could do if the assignment were not made.

10. Mortgagee entitled to appointment of receiver. A covenant "that the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver," must be construed as meaning that the mortgagee, his heirs, successors or assigns, in any action to foreclose the mortgage, shall be entitled, without notice and without regard to adequacy of any security of the debt, to the appointment of a receiver of the rents and profits of the premises covered by the mortgage; and the rents and profits in the event of any default or defaults in paying the principal, interest, taxes, water rents, assessments or premiums of insurance, are assigned to the holder of the mortgage as further security for the payment of the indebtedness.

**§ 254-a. Right of election of mortgagee in certain cases.** If a bond or note, or the mortgage on real property, improved by a one to six family residence occupied by the owner, securing the payment of same, contains (1) a provision whereby the mortgagee retains the right to accelerate the due date for payment of the balance of principal upon a transfer or sale of such real property or by alienation of title of such real property due to an act or operation of law, and (2) a provision for payment of any charge, however denominated, in the nature of a prepayment fee and if a mortgagor sells or transfers his property or if title to the mortgaged property is transferred by act or operation of law and the purchaser requests permission to assume the mortgage or take the mortgaged premises subject to the mortgage, but the mortgagee does not consent to such request and thereby necessitates prepayment of the mortgage, the mortgagee shall not levy a prepayment fee; provided, however, that the provisions of this section shall not apply to the extent such provisions are inconsistent with any federal law or regulation.

**§ 254-b. Limitation on late charges.** 1. If a bond or note, or the mortgage on real property, heretofore or hereafter made, improved by a one to six family residence occupied by the owner, securing the payment of same, or a note representing a loan for the purpose of financing the purchase of an ownership interest in, and proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of residential real estate, contains a provision whereby the mortgagee or lender retains the right to collect a late charge on any instalment which has become due and remains unpaid, such charge on any such delinquent instalment, regardless of the period it remains in default, shall not exceed and shall only be enforced to the extent of two percent of such delinquent instalment; provided, however, that no charge shall be imposed on any instalment paid within fifteen days after the due date. No such late charge shall be deducted from any regular instalment payment by the mortgagor or borrower, but shall be separately charged and collected by the mortgagee or lender. In the absence of a specific provision in a bond, note or mortgage no late charge on any delinquent instalment shall be assessed or collected. The term "instalment" shall include amounts representing interest, amortization of principal and payments in respect of insurance premiums, taxes and utility charges if the bond, note or mortgage provides for collection thereof by the mortgagee.

2. The provisions in this section shall not apply to any loan or forbearance insured by the federal housing commissioner or for which a commitment to insure has been made by the federal housing commissioner or to any loan or forbearance insured or guaranteed pursuant to the provisions of an act of congress entitled "Servicemen's Readjustment Act of 1944", or to the extent the provisions of this section are inconsistent with any other federal law or regulation.

3. 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.

**§ 254-c. Right to a copy of real property appraisals and consumer reports in certain cases.** 1. Any lender who requires an applicant for a loan or forbearance, which is to be secured primarily by an interest in real property, to bear the cost of either an appraisal of said property or the cost of obtaining a consumer report subject to the provisions of article twenty-five of the general business law as a condition to the processing of the application or the granting of the loan or forbearance, shall, upon the written request of such applicant, provide to him a copy of said appraisal or consumer report as the case may be, at no additional cost.

2. "Lender" as used in this section shall mean and include any bank, trust company, national bank, savings bank, federal mutual savings bank, savings and loan association, federal savings and loan association, private banker, credit union, federal credit union, investment company, insurance company, pension fund, mortgage banker or any other entity.

3. 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.

**§ 254-d. Fees by mortgagee for direct payment of real property taxes by mortgagor prohibited.** No mortgagor on a loan secured primarily by an interest in real property shall be charged a fee by the mortgagee because the parties have agreed that the mortgagor shall pay real property taxes on such real property directly to the taxing authority or authorities and not in escrow to the mortgagee or the mortgagee's agent.

**§ 255. Construction of grant of appurtenances and of all the rights**

**and estate of grantor.** In any grant or mortgage of freehold interests in real estate, the words, "together with the appurtenances and all the estate and rights of the grantor in and to said premises," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances.

**§ 256. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.** In any deed by an executor of, or trustee under a will, the words "together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

**§ 257. Covenants bind representatives of grantor and mortgagor and inure to the benefit of whom.** All covenants contained in any grant or mortgage of real estate bind the heirs, executors, administrators, successors and assigns, of the grantor or mortgagor, and inure to the benefit of the heirs, executors, administrators, successors and assigns

of the grantee or mortgagee in the same manner and to the same extent, and with like effect as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

**§ 258. Short forms of deeds and mortgages.** The use of the following forms of instruments for the conveyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

SCHEDULE A.  
DEED WITH FULL COVENANTS.

Statutory Form A.

(Individual)

This indenture, made the ..... day of ..... nineteen hundred and ....., between ..... (insert residence) party of the first part, and ..... (insert residence) party of the second part,

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever. And said ..... covenants as follows:

First. That said ..... is seized of said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;



Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said ..... will forever warrant the title to said premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE B.  
DEED WITH FULL COVENANTS.

Statutory Form AA.

(Corporation)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., a corporation organized under the laws of ....., party of the first part, and ..... (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever. And the party of the first part covenants as follows:

First. That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE C.

BARGAIN AND SALE DEED.

Statutory Form B.

Without Covenant against Grantor.  
(Individual)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence) party of the first part, and ....., (insert residence) party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... and assigns forever, all .....  
(description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the above granted premises unto the party of the second part, ..... and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE D.

BARGAIN AND SALE DEED.

Statutory Form BB.

Without Covenant against Grantor.

(Corporation)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., a corporation organized under the laws of ....., party of the first part, and ..... (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE E.

BARGAIN AND SALE DEED.

Statutory Form C.

With Covenant against Grantor.  
(Individual)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence), party of the first part, and ....., (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, his heirs and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever. And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE F.

BARGAIN AND SALE DEED.

Statutory Form CC.

With Covenant against Grantor.  
(Corporation)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., a corporation organized under the laws of ....., party of the first part, and ....., (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever. And the party of the first part covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE G.

QUITCLAIM DEED.

Statutory Form D.

(Individual)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence), party of the first part, and ....., (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release, and quitclaim unto the party of the second part, ..... and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE H.  
QUITCLAIM DEED.

Statutory Form DD.

(Corporation)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., a corporation organized under the laws of ....., party of the first part, and ..... (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, his heirs and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE I.  
EXECUTOR'S DEED.

Statutory Form E.

This indenture, made the ..... day of ....., nineteen hundred and ....., between ..... as executor of ..... the last will and testament of ....., late of ....., deceased, party of the first part, and ....., (insert residence) party of the second part:

Witnesseth, that the party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... his heirs and assigns forever, all ..... (description), together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever.

And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE J.  
REFEREE'S DEED IN FORECLOSURE.

Statutory Form F.

This deed, made the ..... day of ....., nineteen hundred and ....., between ....., referee duly appointed in the action hereinafter mentioned, grantor, and ..... (insert residence), grantee:

Witnesseth, that the grantor, the referee appointed in an action between ....., plaintiffs, and ....., defendants, foreclosing a mortgage recorded on the ..... day of ....., in the office of the ..... of the county of ....., in liber ..... of mortgages, at page ....., in pursuance of a judgment entered at a special term of the ....., on the ..... day of ....., and in consideration of ..... dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee, all (description),

To have and to hold the premises herein granted unto the grantee, ..... and assigns forever.

In witness whereof, the grantor has hereunto set his hand and seal.

In presence of:

SCHEDULE K.  
REFEREE'S DEED IN PARTITION.

Statutory Form G.

This deed, made the ..... day of ....., nineteen hundred and ....., between ....., referee duly appointed in the action hereinafter mentioned, grantor, and ....., (insert residence), grantee:

Witnesseth, that the grantor, the referee appointed in an action in

partition between ....., plaintiffs, and ....., defendants, in pursuance of a judgment entered at a special term of the ....., on the ..... day of ....., and in consideration of ..... dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee all (description),

To have and to hold the premises herein granted unto the grantee, ..... and assigns forever.

In witness whereof, the grantor has hereunto set his hand and seal.

In presence of:

SCHEDULE L.  
ASSIGNMENT OF LEASE.

Statutory Form H.

Know that ....., assignor, in consideration of ..... dollars, paid by ....., assignee, hereby assigns unto the assignee, a certain lease made by ....., to ....., dated the ..... day of ....., and recorded on the ..... day of ....., in the office of the ..... of the county of ....., in liber ..... of conveyances, at page ....., covering premises ....., together with the premises therein described, and the buildings thereon, with the appurtenances,

To have and to hold the same unto the assignee, ..... and assigns, from the ..... day of ....., nineteen hundred and ....., for all the rest of ..... years mentioned in the said lease, subject to the rents, covenants, conditions and provisos therein also mentioned.

And the assignor hereby covenants that the said assigned premises are free from incumbrances.

In witness whereof, the assignor has hereunto set his hand and seal this ..... day of ....., nineteen hundred and .....



In presence of:

SCHEDULE M  
MORTGAGE

Statutory Form M.

This mortgage, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence) the mortgagor, and ..... (insert residence), the mortgagee.

Witnesseth, that to secure the payment of an indebtedness in the sum of ..... dollars, lawful money of the United States, to be paid on the ..... day of ....., nineteen hundred and ....., with interest thereon to be computed from ....., at the rate of ..... per centum per annum, and to be paid ....., according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee (description).

And the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.

3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.

4. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any installment of principal or of interest for ..... days; or after default in the payment of any tax, water rate or assessment for ..... days after notice and demand; or after default after notice

and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within ..... days upon request in person or within ..... days upon request by mail will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

In witness whereof this mortgage has been duly executed by the mortgagor.

In presence of:

SCHEDULE N  
BOND AND MORTGAGE

Statutory Form MN.

This bond and mortgage, made the ..... day of .....,  
nineteen hundred and ....., between .....,  

(insert residence)

  
herein referred to as the mortgagor, and .....,  

(insert residence)

  
herein referred to as the mortgagee.

Witnesseth, that the mortgagor, do hereby acknowledge .....  
to be indebted to the mortgagee in the sum of ..... dollars,  
lawful money of the United States, which the mortgagor do hereby agree  
and bind ..... to pay to the mortgagee ..... on  
the ..... day of ....., nineteen hundred and .....,  
with interest thereon to be computed from .....,  
at the rate of ..... per centum per annum, and to be paid  
.....

(insert terms of payment of interest and/or principal)  
and to secure the payment of which the mortgagor hereby mortgages to  
the mortgagee .....  
(description)

And the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore  
provided.

2. That the mortgagor will keep the buildings on the premises insured  
against loss by fire for the benefit of the mortgagee; that he will  
assign and deliver the policies to the mortgagee; and that he will  
reimburse the mortgagee for any premiums paid for insurance made by the  
mortgagee on the mortgagor's default in so insuring the buildings or in  
so assigning and delivering the policies.

3. That no building on the premises shall be removed or demolished  
without the consent of the mortgagee.

4. That the whole of said principal sum and interest shall become due  
at the option of the mortgagee: after default in the payment of any  
installment of principal or of interest for ..... days; or after  
default in the payment of any tax, water rate or assessment for  
..... days after notice and demand; or after default after notice  
and demand either in assigning and delivering the policies insuring the  
buildings against loss by fire or in reimbursing the mortgagee for  
premiums paid on such insurance, as hereinbefore provided; or after

default upon request in furnishing a statement of the amount due on the bond and mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided.

5. That the holder of this bond and mortgage, in any action to foreclose the mortgage, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within ..... days upon request in person or within ..... days upon request by mail will furnish a written statement duly acknowledged of the amount due on this bond and mortgage and whether any offsets or defenses exist against the mortgage debt.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

In witness whereof this bond and mortgage has been duly signed and sealed by the mortgagor.

In the presence of:

SCHEDULE O.  
ASSIGNMENT OF MORTGAGE.

Statutory Form I.

Without Covenant.

Know that ....., assignor, in consideration of ..... dollars, paid by ....., assignee, hereby assigns unto the assignee, a certain mortgage made by ....., given to secure payment of the sum of ..... dollars and interest, dated the ..... day of ....., recorded on the ..... day of ....., in the office of the ..... of the county of ....., in liber ..... of mortgages, at page ....., covering premises ....., together with the bond or obligation described in said mortgage, and the moneys due and to grow

due thereon with the interest,

To have and to hold the same unto the assignee, and to the successors, legal representatives and assigns of the assignee forever.

In witness whereof, the assignor has hereunto set his hand and seal this ..... day of ....., nineteen hundred and .....

In presence of:

SCHEDULE P  
ASSIGNMENT OF MORTGAGE

Statutory form J.

With covenant

Know that ....., assignor, in consideration of ..... dollars, paid by ....., assignee, hereby assigns unto the assignee, a certain mortgage made by ....., given to secure payment of the sum of ..... dollars and interest, dated the ..... day of ....., recorded on the ..... day of ....., in the office of the ..... of the county of ....., in liber ..... of mortgages, at page ....., covering premises ....., together with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest,

To have and to hold the same unto the assignee, and to the successors, legal representatives and assigns of the assignee forever.

And the assignor covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of ..... dollars, with interest thereon at ..... per centum per annum from the ..... day of ....., nineteen hundred and .....

In witness whereof, the assignor has hereunto set his hand and seal this ..... day of ....., nineteen hundred and .....

In presence of:

SCHEDULE Q  
RELEASE OF PART OF MORTGAGED PREMISES

Statutory form K.

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., party of the first part, and ....., party of the second part,

Whereas, ..... by indenture of mortgage, bearing date the ..... day of ....., nineteen hundred and ....., recorded in the office of the ..... of the county of ....., in liber ..... of mortgages, of section ....., page ....., on the ..... day of ....., nineteen hundred and ....., for the consideration therein mentioned, and to secure the payment of the money therein specified, did mortgage certain lands and tenements of which the lands hereinafter described are part, unto .....,

And whereas, the party of the first part, at the request of the party of the second part, has agreed to give up and surrender the lands hereinafter described unto the party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on said mortgage,

Now this indenture witnesseth, that the party of the first part, in pursuance of said agreement, and in consideration of ..... dollars, lawful money of the United States, ..... paid by the party of the second part, does grant, release and quitclaim unto the party of the second part, all that part of said mortgaged lands described as follows: ..... (description),

Together with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the party of the first part, of, in and to the same, to the intent that the lands hereby released may be discharged from said mortgage, and that the rest of the land in said mortgage specified may remain mortgaged to the party of the first part as heretofore,

To have and to hold the lands and premises hereby released and quitclaimed to the party of the second part, ..... and assigns,

to ..... and their own proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

In witness whereof, the party of the first part has signed and sealed these presents the day and year first above written.

In presence of:

SCHEDULE R.  
SATISFACTION OF MORTGAGE.

Statutory Form L.

Know all men by these presents, that ..... do hereby certify that a certain indenture of mortgage, bearing date the ..... day of ....., nineteen hundred and ....., made and executed by ....., to secure payment of the principal sum of ..... dollars and interest, and duly recorded in the office of the ..... of the county of ....., in liber ..... of mortgages, of section ....., page ....., on the ..... day of ....., nineteen hundred and ....., is paid, and do hereby consent that the same be discharged of record.

Dated the ..... day of ....., nineteen hundred and .....

In presence of:

**§ 259-c. Provision in lease of real property for waiver of trial by jury in actions for personal injury or property damage.** Any provision in a lease, executed after the effective date of this act, that a trial by jury is waived in any action, proceeding or counterclaim brought by either of the parties thereto against the other in any action for personal injury or property damage, is null and void.

**§ 260. Lands adversely held may be conveyed or mortgaged.** No grant, conveyance or mortgage of real property or interest therein shall be void for the reason that at the time of the delivery thereof such real

property is in the actual possession of a person claiming under a title adverse to that of the grantor.

**§ 261. Maintenance of telegraph or other electric wires raises no presumption of grant.** Whenever any wire or cable used for any telegraph, telephone, electric light or other electric purpose, or for the purpose of communication otherwise than by the aid of electricity, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescription of any perpetual right to, such attachment or extension.

**§ 265. Fraudulent intent, question of fact.** The question of fraudulent intent in a case arising under this article, shall be deemed a question of fact and not of law; and a conveyance or charge shall not be adjudged fraudulent as against creditors, purchasers or incumbrancers, solely on the ground that it was not founded on a valuable consideration.

**§ 265-a. Home equity theft prevention.** 1. (a) The legislature finds and declares that homeowners who are in default on their mortgages or in foreclosure may be vulnerable to fraud, deception, and unfair dealing by home equity purchasers. The recent rapid escalation of home values throughout urban and rural areas has resulted in a significant increase in home equity, which constitutes the greatest financial asset held by many homeowners of this state. During the time period between the default on the mortgage and the scheduled foreclosure sale date, homeowners in financial distress, especially poor, elderly, and financially unsophisticated homeowners, are vulnerable to aggressive "equity purchasers" who induce homeowners to sell their homes for a small fraction of their fair market values, or in some cases even sign away their homes, through the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices.

(b) The legislature declares that it is the express policy of the



state to preserve and guard the precious asset of home equity, and the social as well as the economic value of homeownership.

(c) The legislature further finds that equity purchasers may have a significant impact upon the economy and well-being of this state and its local communities, and therefore the provisions of this section are necessary to promote the public welfare.

(d) The intent and purposes of this section are to provide a homeowner with information necessary to make an informed and intelligent decision regarding the sale or transfer of his or her home to an equity purchaser; to require that the sales agreement be expressed in writing; to safeguard equity sellers against deceit and financial hardship; to ensure, foster and encourage fair dealing in the sale and purchase of homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to provide a cooling off period for equity sellers who enter into covered contracts; to afford equity sellers a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equity for the homeowners of this state.

2. The following definitions shall apply to this section:

(a) "Bona fide purchaser or encumbrancer for value" means anyone acting in good faith who purchases the residential real property from the equity purchaser for valuable consideration or provides the equity purchaser with a mortgage or provides a subsequent bona fide purchaser with a mortgage, provided that he or she had no notice of the equity seller's continuing right to, or equity in, the property prior to the acquisition of title or encumbrance, or of any violation of this section by the equity purchaser as related to the subject property.

(b) "Business day" means any calendar day except Sunday or the public holidays as set forth in section twenty-four of the general construction law.

(c) "Covered contract" means any contract, agreement, or arrangement, or any term thereof, between an equity purchaser and equity seller which:

(i) is incident to the sale of a residence in foreclosure; or

(ii) is incident to the sale of a residence in foreclosure or default where such contract, agreement or arrangement includes a reconveyance

arrangement; or

(iii) is incident to the sale of a residence that is the collateral for a "distressed home loan" as defined in paragraph (d) of subdivision one of section two hundred sixty-five-b of this article.

For purposes of this section, any reference to the "sale" of a residence by an equity seller to an equity purchaser shall include a transaction where an equity seller receives consideration from the equity purchaser, and a transaction involving a transfer of title to the equity purchaser where no consideration is provided to the equity seller.

(d) "Default" means that the equity seller is two months or more behind in his or her mortgage payments.

(e) "Equity purchaser" means any person who or entity which acquires title to any residence in foreclosure or, where applicable, default, or the representative of such person or entity as defined in this subdivision, except a person who acquires such title as follows:

(i) to use, and who uses, such property as his or her primary residence;

(ii) by a deed from a referee in a foreclosure sale conducted pursuant to article thirteen of the real property actions and proceedings law;

(iii) at any sale of property authorized by statute;

(iv) by order or judgment of any court;

(v) from a spouse, or from a parent, grandparent, child, grandchild or sibling of such person or such person's spouse;

(vi) as a not-for-profit housing organization or as a public housing agency; or

(vii) a bona fide purchaser or encumbrancer for value.

(f) "Equity seller" means a natural person who is a property owner or homeowner at the time of the equity sale.

(g) "Foreclosure" means that there is an active notice of pendency filed in court pursuant to article thirteen of the real property actions and proceedings law, or a foreclosure action pursuant to article eleven or thirteen of the real property actions and proceedings law has been commenced against the subject property, or an action to enforce a mortgage note has been commenced against the borrower whose property is secured by a mortgage loan, or the subject property is on an active

property tax or utility lien sale list.

(h) "Property owner" or "homeowner" means any or all record title owners of the residential real property in foreclosure or, where applicable, default at the time of the equity sale.

(i) "Reconveyance arrangement" means:

(i) the transfer of title to residential real property by an equity seller who is in default or foreclosure, either by transfer of interest from an equity seller to an equity purchaser or by creation of a mortgage or other lien or encumbrance during the time of default or foreclosure that allows the equity purchaser to obtain legal or equitable title to all or part of the property, and

(ii) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the equity seller by the equity purchaser that allows the equity seller to regain possession of the property, which interest shall include but not be limited to a purchase agreement, option to purchase, or lease.

(j) "Representative" means a person who in any manner solicits, induces, arranges, or causes any equity seller to transfer title or solicits any member of the equity seller's family or household to induce or cause any equity seller to transfer title to the residence in foreclosure or, where applicable, default to the equity purchaser.

(k) "Residence" and "residential real property" means residential real property consisting of one- to four-family dwelling units, one of which the equity seller occupies or occupied at a time immediately prior to the equity sale as his or her primary residence.

3. Every covered contract and notice of cancellation attached thereto shall be written in letters of a size equal to at least twelve-point bold type, in English or in both English and Spanish if Spanish is the primary language of the equity seller, and shall be fully completed and signed and dated by the equity seller and equity purchaser. Any instrument of conveyance shall become effective no sooner than midnight of the fifth business day after the date on which the covered contract is executed.

4. All covered contracts shall contain the entire agreement of the parties and shall include, but not be limited to, the following terms:

(a) The name, business address, and the telephone number of the equity purchaser;

(b) The address of the residence in foreclosure or, where applicable, default;

(c) The total consideration to be given by the equity purchaser in connection with or incident to the sale;

(d) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature which the equity purchaser represents he or she will perform for the equity seller before or after the sale;

(e) The time, if any, at which physical possession of the residence is to be transferred to the equity purchaser and the residence vacated by the equity seller;

(f) The terms of any rental or lease agreement;

(g) The terms of any reconveyance arrangement;

(h) A notice of cancellation as provided in paragraph (a) of subdivision six of this section; and

(i) The following notice shall appear on the contract in immediate proximity to the space reserved for the equity seller's signature and shall be in at least fourteen-point bold type if the covered contract is printed or in capital letters if the covered contract is typed. The notice must contain the name of the equity purchaser and the date and time by which the covered contract must be cancelled. The notice shall be completed by the equity purchaser:

"NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract at any time before midnight of

\_\_\_\_\_.

(Date)

\_\_\_\_\_  
(Name of Equity Purchaser)

or anyone working for \_\_\_\_\_ CANNOT ask you to

\_\_\_\_\_  
(Name of Equity Purchaser)

sign or have you sign any deed or any other document until your right to cancel this contract has ended. See attached notice of cancellation form for an explanation of this right. You should always consult an attorney or community organization before signing any legal documents concerning your home. It is advisable that you find your own attorney,

and not consult with an attorney who has been provided to you by the purchaser. The law requires that this contract contain the entire agreement. You should not rely upon any other written or oral agreement or promise."

The equity purchaser shall accurately enter the date on which the right to cancel ends. The covered contract required by this section shall survive delivery of any instrument of conveyance of the residence in foreclosure or, where applicable, default, and shall have no effect on persons other than the parties to the covered contract.

5. (a) In addition to the right of rescission described in subdivision eight of this section, the equity seller has the right to cancel any covered contract with an equity purchaser until midnight of the fourteenth business day following the day on which the equity seller and equity purchaser sign a covered contract that complies with this section.

(b) Cancellation occurs when the equity seller, or a representative of the equity seller, personally delivers written notice of cancellation to the address specified in the covered contract or sends a letter via facsimile or other means of written communication, United States mail, or through an established commercial letter delivery service, indicating cancellation to the business address of the equity purchaser listed on the covered contract. Proof of facsimile delivery or proof of mailing creates a presumption that the notice of cancellation has been delivered.

(c) A notice of cancellation given by the equity seller pursuant to paragraph (a) of this subdivision need not take the particular form as provided with the covered contract and, however expressed, is effective if it indicates the intention of the equity seller not to be bound by the covered contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance with this subdivision, the equity purchaser shall return without condition any original covered contract and any other documents signed by the equity seller as well as any fee or other consideration received by the equity purchaser from the equity seller. Cancellation of the contract shall release the equity seller of all

obligations to pay fees to the equity purchaser.

6. (a) The covered contract shall be accompanied by a form completed by the equity purchaser in duplicate, captioned "notice of cancellation" in at least twelve-point bold type if the covered contract is printed or in capital letters if the covered contract is typed. This form shall be attached to the covered contract, shall be easily detachable, and shall contain in type of at least twelve-point if the covered contract is printed or in capital letters if the covered contract is typed, the following statement written in the same language as used in the covered contract:

"NOTICE OF CANCELLATION

This contract was entered into on \_\_\_\_\_

(Enter date covered contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before midnight of \_\_\_\_\_. (Enter date)

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice, or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to \_\_\_\_\_, at (Name of purchaser) \_\_\_\_\_

(Street address of purchaser's place of business and facsimile number if any) NOT LATER THAN midnight of \_\_\_\_\_.

(Enter date)

If you wish to cancel this contract, sign and date both copies and return one copy immediately to the purchaser.

I hereby cancel this transaction.

\_\_\_\_\_/\_\_\_\_\_"

(Seller's signature)

(Date)

(b) The equity purchaser shall provide each equity seller with two copies of the covered contract and attached notice of cancellation. The equity purchaser shall accurately enter the date on which the right to cancel ends.

7. (a) Before midnight of the fourteenth business day after the date on which the covered contract is executed, the equity purchaser shall

not do any of the following:

- (i) accept from any equity seller an execution of, or induce any equity seller to execute, any instrument of conveyance of any interest in the residence in foreclosure or, where applicable, default;

- (ii) record with the county clerk any document, including, but not limited to, any instrument of conveyance, signed by the equity seller;

- (iii) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure or, where applicable, default to any third party;

- (iv) pay the equity seller any consideration; or

- (v) suggest, encourage, or provide any form which allows the equity seller to waive his or her right to cancel or rescind under this section.

(b) An equity purchaser shall make no false or misleading statement regarding the value of the residence in foreclosure or, where applicable, default; the amount of proceeds the equity seller will receive after a foreclosure sale; the timing of the judicial foreclosure process; any contract term; the equity seller's rights or obligations incident to or arising out of the sale transaction; the nature of any document which the equity purchaser induces the equity seller to sign; or any other false or misleading statement concerning the sale of the residence in foreclosure or, where applicable, default, or concerning the reconveyance arrangement.

(c) An equity purchaser is prohibited from representing, directly or indirectly, that:

- (i) the equity purchaser is acting as an advisor or a consultant, or in any other manner represents that the equity purchaser is acting on behalf of the equity seller;

- (ii) the equity purchaser has certification or licensure that the equity purchaser does not have, or that the equity purchaser is not a member of a licensed profession if he or she is actually such a member;

- (iii) the equity purchaser is assisting the equity seller to save the house unless the equity purchaser has a good faith basis for the representation; or

- (iv) the equity purchaser is assisting the equity seller in preventing a completed foreclosure unless the equity purchaser has a good faith basis for the representation.

(d) It is unlawful for any equity purchaser to initiate, enter into, negotiate, or consummate any covered contract involving residential real property in foreclosure or, where applicable, default if such equity purchaser, by the terms of such covered contract, takes undue advantage of the equity seller.

8. (a) Any transaction involving residential real property in foreclosure or, where applicable, default which is in material violation of subdivision three, four, six, seven or eleven of this section is voidable and the transaction may be rescinded by the equity seller within two years of the date of the recording of the conveyance of the residential real property in foreclosure or, where applicable, default.

(b) Such rescission shall be effected by giving written notice to the equity purchaser and his or her successor in interest, if the successor is not a bona fide purchaser or encumbrancer for value as set forth in paragraph (c) of this subdivision, and by recording such notice with the county clerk of the county in which the property is located, within two years of the date of the recording of the conveyance to the equity purchaser. The notice of rescission shall contain the name of the equity seller and the name of the equity purchaser in addition to any successor in interest holding record title to the residential real property and shall particularly describe such residential real property. The equity purchaser and his or her successor in interest if the successor is not a bona fide purchaser or encumbrancer for value as set forth in paragraph (c) of this subdivision, shall have twenty days after the delivery of the notice in which to reconvey title to the property free and clear of encumbrances created subsequent to the rescinded transaction and which are due to the actions of the equity purchaser. As a condition of the reconveyance of title, the equity seller shall return to the equity purchaser any consideration received from the equity purchaser as part of the original transaction. Upon failure to reconvey title within such time, the equity seller may bring an action to enforce the rescission and for cancellation of the covered contract and deed.

(c) The provisions of this subdivision shall not affect the interest of a bona fide purchaser or encumbrancer for value if such purchase or encumbrance occurred prior to the recording of the notice of rescission pursuant to paragraph (b) of this subdivision. Knowledge that the



property was residential real property in foreclosure or, where applicable, default shall not impair the status of such persons or entities as bona fide purchasers or encumbrancers for value. This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure or, where applicable, default.

(d) In any action brought to enforce a rescission pursuant to this section, a court may award to a prevailing equity seller costs and reasonable attorneys' fees.

9. An equity seller may bring an action for the recovery of damages or equitable relief against an equity purchaser for a violation of subdivision three, four, six, seven or eleven of this section. A court may award to a prevailing equity seller actual damages plus reasonable attorneys' fees and costs. In addition, the court may award equitable relief, or increase the award in an amount not to exceed three times the equity seller's actual damages, or both, if the court deems such award proper. Any action brought pursuant to this section shall be commenced within six years after the date of the alleged violation.

10. (a)(i) Any equity purchaser who, with intent to defraud, violates subdivision seven of this section or engages in any practice which would operate as a criminal fraud or deceit upon an equity seller shall, upon conviction, be guilty of a class E felony and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both.

(ii) Any equity purchaser who knowingly violates subdivision seven of this section shall, upon conviction, be guilty of a class A misdemeanor and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both. A second offense within five years shall be a class E felony and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both.

(b) An equity purchaser who, when acting in good faith, violates subdivision seven of this section, shall not be deemed to have violated such subdivision if the equity purchaser:

(i) establishes by a preponderance of the evidence that the compliance

failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors;

(ii) notifies the equity seller within ninety days of the contract date of the compliance failure; and

(iii) makes appropriate restitution to the equity seller and appropriate adjustments to the transaction within ninety days of the contract date. Examples of bona fide errors include, but are not limited to, 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, nor is a failure to provide notices or other material information required by this section.

11. (a) In any transaction in which an equity seller purports to grant a residence in foreclosure or default to an equity purchaser by any instrument which appears to be an absolute conveyance and reserves to himself or herself or is given by the equity purchaser an option to repurchase, such transaction shall create a presumption that the transaction is a loan transaction, which may be overcome by clear and convincing evidence to the contrary, and that the purported absolute conveyance is a mortgage.

(b) An equity purchaser shall not enter into a reconveyance arrangement unless:

(i) The equity purchaser verifies by appropriate documentation that the equity seller has or is likely to have a reasonable ability to pay for the subsequent conveyance of an interest back to the equity seller. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to purchase the property within the term of the option to purchase. There is a rebuttable presumption that the equity purchaser has not verified reasonable payment ability if the equity purchaser has not obtained documents other than a statement by the equity seller of assets, liabilities and income. The standard for determining a reasonable ability to pay shall be the same standard as set forth in paragraph (k) of subdivision two of section six-l of the banking law;

(ii) the equity purchaser and the equity seller complete a closing for

any reconveyance arrangement in which the equity purchaser obtains a deed or mortgage from an equity seller. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by an attorney who is not employed by or an affiliate of the equity purchaser;

(iii) the equity purchaser obtains the written consent from the equity seller before the equity purchaser grants any interest in the property to anyone else during such time as the equity seller maintains an interest in the property, including an option to repurchase; and

(iv) the equity purchaser notifies all existing mortgage lien holders of his or her intent to accept conveyance of an interest in the property from the equity seller, and fully complies with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions or meeting all qualification requirements for assuming the repayment of the mortgage.

(c) An equity purchaser shall not enter into repurchase or lease terms as part of the reconveyance arrangement that are unfair or commercially unreasonable, and is prohibited from engaging in any other unfair or unconscionable conduct.

(d) As part of a reconveyance arrangement, an equity purchaser shall either:

(i) ensure that title to the residence is reconveyed to the equity seller; or

(ii) make a payment to the equity seller such that the equity seller has received consideration in an amount of at least eighty-two percent of the fair market value of the property within one hundred twenty days of either the eviction or voluntary relinquishment of possession of the residence by the equity seller. The equity purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within such one hundred twenty-day period. The accounting shall be on a form prescribed by the department of financial services. For purposes of this subparagraph, the following applies:

(A) there is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this

state to appraise real estate establishes the fair market value of the property;

(B) the time for determining the fair market value amount shall be determined in the reconveyance arrangement as either at the time of the execution of the reconveyance arrangement or at resale to a bona fide purchaser. If the covered contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within one hundred twenty days of the eviction or voluntary relinquishment of the property by the equity seller. If the covered contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within one hundred twenty days of the eviction or voluntary relinquishment of the property by the equity seller, the fair market value shall be determined by an appraisal conducted within ten days after the end of such one hundred twenty-day period and payment, if required, shall be made to the equity seller. If payment is not made to the equity seller at such time, the fair market value shall be recalculated as the resale price on resale and payment shall be made to the equity seller within fifteen days of resale. A detailed accounting of the basis for the payment amount shall be made within fifteen days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the department of financial services;

(C) "consideration" shall mean any payment or thing of value provided to the equity seller, including unpaid lease payments owed by the equity seller prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the reconveyance transaction, payment of money to satisfy a debt or legal obligation of the equity seller or the reasonable cost of repairs for damage to the dwelling caused by the equity seller beyond ordinary wear and tear; but shall not include amounts imputed as any fee paid directly or indirectly to the equity purchaser, or his or her representative, incident to a reconveyance arrangement, except for reasonable costs paid to third parties necessary to complete the reconveyance.

(D) "resale" means a bona fide market sale of the property subject to the reconveyance arrangement by the equity purchaser to an unaffiliated

third party.

(E) "resale price" means the purchase price of the property on resale.

(e) This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure or default.

(f) All deeds or conveyances subject to a reconveyance arrangement shall state explicitly on the face of the document that the conveyance is subject to a reconveyance arrangement, and shall state the terms of the reconveyance arrangement. Moreover, all reconveyance arrangements must be simultaneously recorded by the equity purchaser with the subject deed in the county clerk's office where the property is located.

12. Any provision of a covered contract which attempts or purports to limit the liability of the equity purchaser under this section shall be null and void. Inclusion of such provision shall at the option of the equity seller render the covered contract void. The equity purchaser shall be liable to the equity seller for all damages proximately caused by such provision. Any provision in a covered contract which attempts or purports to require arbitration of any dispute arising under this section shall be void at the option of the equity seller.

13. In addition to the other remedies provided, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than twenty-five thousand dollars for

each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

14. This section shall not apply to a prior lien holder where the lien was properly recorded prior to the execution of any covered contract by both the equity seller and the equity purchaser nor shall any provision of this section be deemed to impair any equity or other available rights of any such prior lien holder.

15. The provisions of this section shall be liberally construed to effectuate the intent and to achieve the purposes set forth in subdivision one of this section.

16. The provisions of this section are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

17. Any waiver of the provisions of this section shall be void and unenforceable as contrary to the public policy.

18. If any provision of this section, or if any application thereof to any person or circumstances is held unconstitutional, the remainder of this section and the application of its provisions to other persons and circumstances shall not be affected thereby.

**§ 265-b. Distressed property consulting contracts.** 1. Definitions. The following definitions shall apply to this section:

(a) "Homeowner" means a natural person who is the mortgagor with respect to a distressed home loan or who is in danger of losing a home for nonpayment of taxes.

(b) "Consulting contract" or "contract" means an agreement between a homeowner and a distressed property consultant under which the consultant agrees to provide consulting services.

(c) "Consulting services" means services provided by a distressed

property consultant to a homeowner that the consultant represents will help to achieve any of the following:

- (i) stop, enjoin, delay, void, set aside, annul, stay or postpone a foreclosure filing, a foreclosure sale or the loss of a home for nonpayment of taxes;

- (ii) obtain forbearance from any servicer, beneficiary or mortgagee or relief with respect to the potential loss of the home for nonpayment of taxes;

- (iii) assist the homeowner to exercise a right of reinstatement or similar right provided in the mortgage documents or any law or to refinance a distressed home loan;

- (iv) obtain any extension of the period within which the homeowner may reinstate or otherwise restore his or her rights with respect to the property;

- (v) obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a property in foreclosure;

- (vi) assist the homeowner to obtain a loan or advance of funds;

- (vii) assist the homeowner in answering or responding to a summons and complaint, or otherwise providing information regarding the foreclosure complaint and process;

- (viii) avoid or ameliorate the impairment of the homeowner's credit resulting from the commencement of a foreclosure proceeding or tax sale; or

- (ix) save the homeowner's property from foreclosure or loss for non-payment of taxes.

(d) "Distressed home loan" means a home loan for which an installment payment is more than sixty days past due, or a home loan where the lender has commenced a foreclosure action. For purposes of this paragraph, a "home loan" is a loan in which the debt is incurred by the homeowner primarily for personal, family or household purposes, and the loan is secured by a mortgage or deed of trust on property upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied by the homeowner as the homeowner's principal dwelling.

(e) "Distressed property consultant" or "consultant" means an

individual or a corporation, partnership, limited liability company or other business entity that, directly or indirectly, solicits or undertakes employment to provide consulting services to a homeowner for compensation or promise of compensation with respect to a distressed home loan or a potential loss of the home for nonpayment of taxes. A distressed property consultant does not include the following:

(i) an attorney admitted to practice in the state of New York when the attorney is directly providing legal representation to a homeowner pursuant to a retainer agreement, and has entered an appearance on behalf of a homeowner, in the course of his or her regular legal practice. This exception shall not apply to non-attorney individuals engaged in activities covered by subdivision two of this section who are employed by, associated with, or consultants for law firms when such law firms are not providing legal representation to a homeowner in a foreclosure action pursuant to a retainer agreement;

(ii) a person or entity who holds or is owed an obligation secured by a lien on any property in foreclosure while the person or entity performs services in connection with the obligation or lien;

(iii) a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company, credit union or insurance company organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such entity or a foreign banking corporation licensed by the superintendent of financial services or the comptroller of the currency;

(iv) a federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of such mortgagee, and any agent or employee of these persons while engaged in the business of such mortgagee;

(v) a judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale is sent;

(vi) a title insurer authorized to do business in this state, while performing title insurance and settlement services;

(vii) a person licensed as a mortgage banker or registered as a mortgage broker or registered as a mortgage loan servicer as defined in article twelve-D of the banking law, provided that no such person shall take any upfront fee in conjunction with activities constituting the business of a distressed property consultant;



(viii) a bona fide not-for-profit organization that offers counseling or advice to homeowners in foreclosure or loan default; or

(ix) a person licensed or registered in the state to engage in the practice of other professions that the superintendent of financial services has determined should not be subject to this section.

(f) "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.

(g) "Business day" shall mean any calendar day except Sunday or the public holidays as set forth in section twenty-four of the general construction law.

2. Prohibitions. A distressed property consultant is prohibited from doing the following:

(a) performing consulting services without a written, fully executed consulting contract with a homeowner;

(b) charging for or accepting any payment for consulting services before the full completion of all such services, including a payment to be placed in escrow pending the completion of such services;

(c) taking a power of attorney from a homeowner;

(d) retaining any original loan document or other original document related to the distressed home loan, the property or the potential loss of the home for nonpayment of taxes;

(e) inducing or attempting to induce a homeowner to enter a consulting contract that does not fully comply with the provisions of this article;

(f) inducing the transfer of a deed to any person or entity, including to the distressed property consultant;

(g) accepting or taking ownership of a deed from a homeowner for any period of time whatsoever;

(h) simulating in any manner a law enforcement officer, or a representative of any governmental agency;

(i) disclosing or threatening to disclose information affecting the homeowner's reputation for credit worthiness with knowledge or reason to know that the information is false;

(j) communicating with the homeowner or any member of his family or

household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the homeowner;

(k) claiming, attempting, or threatening to enforce a right with knowledge or reason to know that the right does not exist;

(l) using a communication which simulates in any manner legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency, or attorney at law when it is not; or

(m) encumbering the property with a lien without any contractual or legal basis.

If any provision of this subdivision or the application thereof to any person or circumstances is held invalid, the invalidity thereof shall not affect other provisions or applications of this subdivision which can be given effect without the invalid provision or application, and to this end the provisions of this subdivision are severable.

3. Distressed property consulting contracts. (a) A distressed property consulting contract shall:

(i) contain the entire agreement of the parties;

(ii) be provided in writing to the homeowner for review before signing;

(iii) be printed in at least twelve point type and written in the same language that is used by the homeowner and was used in discussions between the consultant and the homeowner to describe the consultant's services or to negotiate the contract;

(iv) fully disclose the exact nature of the distressed property consulting services to be provided by the distressed property consultant or anyone working in association with the distressed property consultant;

(v) fully disclose the total amount and terms of compensation for such consulting services;

(vi) contain the name, business address and telephone number of the consultant and the street address (if different) and facsimile number or email address of the distressed property consultant where communications from the homeowner may be delivered;

(vii) be dated and personally signed by the homeowner and the

distressed property consultant and be witnessed and acknowledged by a New York notary public; and

(viii) contain the following notice, which shall be printed in at least fourteen point boldface type, completed with the name of the distressed property consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

"NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract, without any penalty or obligation, at any time before midnight of (fifth business day after execution).

(Name of Distressed Property Consultant) (the "Consultant") or anyone working for the Consultant may not take any money from you or ask you for money until the Consultant has completely finished doing everything this Contract says the Consultant will do.

You should consider consulting an attorney or a government-approved housing counselor before signing any legal document concerning your home. It is advisable that you find your own attorney, and not consult with an attorney recommended or provided to you by the Consultant. A list of housing counselors may be found on the website of the New York State Department of Financial Services, (enter web address) or by calling the Department of Financial Services toll-free at (enter number). The law requires that this contract contain the entire agreement between you and the Consultant. You should not rely upon any other written or oral agreement or promise."

The distressed property consultant shall accurately enter the date on which the right to cancel ends.

(b)(i) The homeowner has the right to cancel, without any penalty or obligation, any contract with a distressed property consultant until midnight of the fifth business day following the day on which the distressed property consultant and the homeowner sign a consulting contract. Cancellation occurs when the homeowner, or a representative of the homeowner, either delivers written notice of cancellation in person to the address specified in the consulting contract or sends a written communication by facsimile, by United States mail or by an established commercial letter delivery service. A dated proof of facsimile delivery or proof of mailing creates a presumption that the notice of

cancellation has been delivered on the date the facsimile is sent or the notice is deposited in the mail or with the delivery service. Cancellation of the contract shall release the homeowner of all obligations to pay fees or any other compensation to the distressed property consultant.

(ii) The consulting contract shall be accompanied by two copies of a form, captioned "notice of cancellation" in at least twelve-point bold type. This form shall be attached to the contract, shall be easily detachable, and shall contain the following statement written in the same language as used in the contract, and the contractor shall insert accurate information as to the date on which the right to cancel ends and the contractor's contact information:

"NOTICE OF CANCELLATION

Note: You may cancel this contract, without any penalty or obligation, at any time before midnight of \_\_\_\_\_. (Enter date)

To cancel this contract, sign and date both copies of this cancellation notice and personally deliver one copy or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to the Distressed Property Consultant at one of the following:

Name of Contractor\_\_\_\_\_

Street Address\_\_\_\_\_

City, State, Zip\_\_\_\_\_

Facsimile:\_\_\_\_\_

I hereby cancel this transaction.

Name of Homeowner:\_\_\_\_\_

Signature of Homeowner:\_\_\_\_\_

Date:\_\_\_\_\_ "

(iii) Within ten days following receipt of a notice of cancellation given in accordance with this subdivision, the distressed property consultant shall return any original contract and any other documents signed by or provided by the homeowner. Cancellation shall release the homeowner of all obligations to pay any fees or compensation to the distressed property consultant.

3-a. Distressed property consultant advertisements. (a) All advertisements disseminated by a distressed property consultant must

prominently include the following statement: "In New York State, Housing Counselors, who are approved by the U.S. Department of Housing & Urban Development or the New York State Department of Financial Services, may provide the same or similar services as a distressed property consultant for free. A list of approved Housing Counselors can be found on the New York State Department of Financial Services website at (enter web address) or by contacting the New York State Department of Financial Services toll-free at (enter number). You should consider consulting an attorney or a government-approved housing counselor before signing any legal document concerning a distressed property consultant." Such statement, if disseminated by print media or the internet, shall be clearly and legibly printed or displayed in not less than twelve-point bold type, or, if the advertisement is printed to be displayed in print that is smaller than twelve point, in bold type print that is no smaller than the print in which the text of the advertisement is printed or displayed.

(b) For the purposes of this subdivision, the term "advertisement" shall include, but is not limited to, all forms of marketing, solicitation, or dissemination of information related, directly or indirectly, to securing or obtaining a consulting contract or services. Further, it shall include any and all commonly recognized forms of media marketing via television, radio, print media, all forms of electronic communication via the internet, and all prepared sales presentations given in person or over the internet to the general public.

(c) The advertising provisions of this subdivision shall apply to all distressed property consultants who disseminate advertisements in the state of New York or who intend to directly or indirectly contact a homeowner who has property located in New York state. Distressed property consultants shall establish and at all times maintain control over the content, form and method of dissemination of all advertisements of its services. Further, all advertisements shall be sufficiently complete and clear to avoid the possibility of deception or the ability to mislead or deceive.

4. Penalties and other provisions. (a) If a court finds that a distressed property consultant has violated any provision of this section, the court may make null and void any agreement between the

distressed homeowner and the distressed property consultant.

(b) If the distressed property consultant violates any provision of this section and the homeowner suffers damage because of the violation, the homeowner may recover actual and consequential damages and costs from the distressed property consultant in an action based on this section. If the distressed property consultant intentionally or recklessly violates any provision of this section, the court may award the homeowner treble damages, attorneys' fees and costs.

(c) Any provision of a consulting contract that attempts or purports to limit the liability of the distressed property consultant under this section shall be null and void. Inclusion of such provision shall at the option of the homeowner render the consulting contract void. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this section shall be void at the option of the homeowner. Any waiver of the provisions of this section shall be void and unenforceable as contrary to public policy.

(d) In addition to the other remedies provided, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(e) The provisions of this section are not exclusive and are in

addition to any other requirements, rights, remedies, and penalties provided by law.

5. The department of financial services shall prescribe the telephone number and web address to be included in the notice.

**§ 266. Rights of purchaser or incumbrancer for valuable consideration protected.** This article does not in any manner affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appears that such purchaser or incumbrancer had previous notice, whether actual or constructive, of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. There shall be a rebuttable presumption that a purchaser or incumbrancer had notice of fraud or fraudulent intent in the case of a transfer of mortgaged real property, between a purchaser and seller who are not associated parties, that is not accompanied by the recording with the clerk of the county or with the commissioner of deeds in which the property is located, of a statement, executed by the mortgagee, and duly acknowledged, stating, substantially, that (a) a party is assuming the seller's indebtedness secured by the mortgage; or (b) that the indebtedness secured by the mortgage has been satisfied.

For the purposes of this section, "associated parties" means spouses, ex-spouses, parents and children, siblings, a homeowner and that homeowner's family trust, or a homeowner and that homeowner's wholly-owned limited liability company.

**§ 267. Conveyances with power to revoke, determine or alter.** A conveyance of, or charge on, an estate or interest in real property, containing a provision for the revocation, determination or alteration of the estate or interest, or any part thereof, at the will of the grantor, is void, as against subsequent purchasers and incumbrancers, from the grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by the grantor, by virtue of

the power reserved or expressed in the prior conveyance or charge. Where a power to revoke a conveyance of real property or the rents and profits thereof, and to reconvey the same, is given to any person, other than the grantor in such conveyance, and such person thereafter conveys the same real property, rents or profits to a purchaser or incumbrancer for a valuable consideration, such subsequent conveyance is valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared. If a conveyance to a purchaser or incumbrancer, under this section, be made before the person making it is entitled to execute his power of revocation, it is nevertheless valid, from the time the power of revocation actually vests in such person, in the same manner, and to the same extent, as if then made.

**§ 268. Disaffirmance of fraudulent act by executor and others.** An executor, administrator, receiver, assignee or other trustee, may, for the benefit of creditors, or of others interested in real property held in trust, disaffirm, treat as void and resist any act done or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate or property; and a person who fraudulently receives, takes, or in any manner interferes with the real property of a deceased person, or an insolvent corporation, association, partnership, or individual, is liable to such executor, administrator, receiver or other trustee for the same, or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim or demand exceeding one hundred dollars against such deceased, may, for the benefit of creditors or others interested in the real property of such deceased, disaffirm, treat as void, and resist any act done or conveyance, transfer or agreement made by such deceased in fraud of the rights of any creditor, including himself, and may maintain an action to set aside such act, conveyance, transfer or agreement, without having first obtained a judgment on such claim or demand; but the same, if disputed, may be established on the trial. The judgment in such action may provide for the sale of the premises or property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought



into court or paid into the proper surrogate's court to be administered according to law.

**§ 269. When remainderman may pay interest owed by life tenant.** Whenever real property held by any person for life is incumbered by mortgage or other lien, the interest on which should be paid by the life tenant, and such life tenant neglects or refuses to pay such interest, the remainderman may pay such interest, and recover the amount thereof, together with interest thereon from the time of such payment, of the life tenant.

**§ 270. Powers of courts of equity not abridged.** Nothing contained in this article abridges the powers of courts of equity to compel the specific performance of agreements in cases of part performance.

**§ 271. Construction of covenants in mortgages on leases of real property and bonds or notes.** In mortgages on leases of real property and in bonds or notes secured thereby, the following or similar covenants or agreements must be construed as follows:

1. In default of payment, mortgagee to have power to sell.--- A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee or obligee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor or obligor shall well and truly pay unto the mortgagee or obligee the said sum of money mentioned in the condition of the said bond, note or obligation, and the interest thereon, according to the condition of the said bond, note or obligation. And if default shall be made in the payment of the said sum of money therein mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said mortgagee or obligee, his legal representative or assigns, to sell, transfer and set over, all the rest, residue and remainder of the said term of years then

yet to come, and all other, the right, title and interest of the said mortgagor or obligor of, in and to the same, at public auction, according to the act in such case made and provided. And as the attorney of the said mortgagor or obligor for that purpose by these presents duly authorized, constituted and appointed, to make, seal, execute and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer or other conveyance in the law, for the said premises, with the appurtenances; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond, note or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said mortgagor or obligor, his legal representatives or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said mortgagor or obligor, and against all persons claiming or to claim the premises or any part thereof, by, from or under him or them, or any of them.

2. Mortgagor to keep buildings insured.--- A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the said mortgagor or obligor shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurance, and in an amount approved by the said mortgagee or obligee and his assigns, and either assign the policy and certificates thereof or have such insurance made payable to the said mortgagee or obligee or his assigns, and in default thereof it shall be lawful for the said mortgagee or obligee and his assigns to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond, note or obligation, and secured by these presents, and payable on demand, with legal interest.

3. Mortgagor to pay rent and charges on premises.--- A covenant that the mortgagor "will pay the rent and other charges mentioned in and made payable by said indenture of lease within ..... days after said rent or charges are payable," must be construed as meaning that the said

mortgagor or obligor and his legal representatives and assigns, will pay or cause to be paid, and discharge all rent and rents mentioned in and made payable by the indenture of lease aforesaid, and also all taxes, assessments or other charges that now are a lien, or hereafter shall or may be levied, assessed or imposed and become a lien upon the premises above described or any part thereof; and in default thereof, for the space of ..... after such taxes or assessments or ..... after the said rent or rents, or any of them shall have become due and payable by the terms of said lease or by law, then and in each and every such case the said mortgagee or obligee, his legal representatives or assigns may, at option, and without notice, pay such rent or rents, taxes, assessments or other charges and expenses, and the amount so paid, and interest thereon, from the time of such payment, shall forthwith be due and payable from the said mortgagor or obligor, his legal representatives or assigns, to the said mortgagee or obligee, his legal representatives or assigns, and shall be deemed to be secured by these presents, and shall be collectable in the same manner, and at the same time, and upon the same conditions as the interest then next maturing upon the principal sum hereinbefore mentioned.

4. Agreement that whole sum shall become due.--- The words "And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any instalment of principal or after default in the payment of interest for ..... days, or after default in the payment of any rent or other charge made payable by said indenture of lease for ..... days, or after default in the payment of any tax or assessment for ..... days after notice and demand," must be construed as meaning that should any default be made in the payment of any instalment of principal or any part thereof, or of said interest or any part thereof, or of any rent or other charge made payable by said indenture or lease, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due and payable, and should the said interest, rent or other charge aforesaid, remain unpaid and in arrear for the space of ..... days, or such tax or assessment remain unpaid and in arrear for ..... days after written notice by the mortgagee or

obligee, his executors, administrators or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, rent and other charges paid by the mortgagee or obligee, shall, at the option of the said mortgagee or obligee, his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anyway notwithstanding.

**§ 272. Construction of grant of appurtenances, and all of the rights and estate of the mortgagor.** In any mortgage on a lease of real property the words "together with the appurtenances and all the estate and rights of the part ..... of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease," must be construed as meaning, together with all and singular the edifices, buildings, rights, members, privileges and appurtenances thereunto belonging or in anyway appertaining; and also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim and demand whatsoever, as well in law as in equity, of the said mortgagor or obligor, of, in and to the said demised premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and the renewal therein provided for, and every clause, article and condition therein expressed and contained.

**§ 273. What form of mortgage on lease of real property.** The use of the following form of instrument for mortgages on leases of real property is lawful, but this section does not prevent or invalidate the use of other forms.

#### SCHEDULE D.

##### MORTGAGE ON LEASE OF REAL PROPERTY.

This indenture, made the ..... day of ....., in the year one thousand ..... hundred and ....., between ..... of (insert residence) of the first part and ..... of (insert

residence) of the second part; whereas ..... did, by a certain indenture of lease, bearing date the ..... day of ....., in the year one thousand nine hundred and ....., demise, lease and to farm let unto ..... and to ..... executors, administrators and assigns, all and singular the premises hereinafter mentioned and described, together with their appurtenances; to have and to hold the same unto the said ..... and to ..... executors, administrators and assigns, for and during and until the full end and term of ..... years, from the ..... day of ....., one thousand nine hundred and ....., fully to be complete and ended, yielding and paying therefor unto the said ..... and to ..... or assigns, the yearly rent or sum of .....

And whereas, the said part ..... of the first part justly indebted to the said part ..... of the second part, in the sum of ..... lawful money of the United States of America, secured to be paid by ..... certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..... on the ..... day of ....., nineteen hundred and ..... and the interest thereon to be computed from ..... at the rate of ..... per centum per annum and to be paid .....

It being thereby expressly agreed that the whole of the said principal sum shall become due at the option of the mortgagee or obligee after default in the payment of interest, taxes or assessments or rents as hereinafter provided.

Now this indenture witnesseth that the said part ..... of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of the sum of one dollar, paid by the said part ..... of the second part, the receipt whereof is hereby acknowledged, doth grant and release, assign, transfer and set over unto said part ..... of the second part, and to his heirs (or successors) and assigns forever.

(Description.)

Together with the appurtenances and all the estate and rights of the part ..... of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease.

To have and hold the said indenture of lease and renewal, and the above granted premises, unto the said part ..... of the second part, his heirs and assigns, for and during all the rest, residue and remainder of the said term of years yet to come and unexpired, in said indenture of lease and in the renewals therein provided for; subject, nevertheless, to the rents, covenants, conditions and provisions in the said indenture of lease mentioned.

Provided always that if the said part ..... of the first part shall pay unto the said part ..... of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted, shall cease, determine and be void.

And the said part ..... of the first part covenant ..... with the said part ..... of the second part as follows:

First. That the part ..... of the first part will pay the indebtedness as hereinbefore provided.

And if default shall be made in the payment of any part thereof the said part ..... of the second part shall have power to sell the premises therein described according to law.

Second. That the said premises now are free and clear of all incumbrances whatsoever, and that ..... ha ..... good right and lawful authority to convey the same in manner and form hereby conveyed.

Third. That the part ..... of the first part will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee.

Fourth. That the part ..... of the first part will pay the rents and other charges mentioned in and made payable by said indenture of lease within ..... days after said rent or charges are payable.

Fifth. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the said mortgagee or obligee after default in the payment of any instalment of principal, or after default in the payment of interest for ..... days, or after default in the payment of any rent or other charge made payable by said indenture of lease for ..... days, or after default in the payment of any tax or assessment for ..... days after notice and demand.

In witness whereof, the said part ..... of the first part to these presents ha ..... hereunto set ..... hand ..... and seal ..... the day and year first above written.

Sealed and delivered }  
in the presence of }

#### **§ 274. Transfers and mortgages of interest in decedents' estates.**

Every conveyance, assignment, or other transfer of, and every mortgage or other charge upon the interest, or any part thereof, of any person in the estate of a decedent which is situated within this state, shall be in writing, and shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded. Any such instrument may also be recorded as hereinafter provided; and if not so recorded, it is void against any subsequent purchaser or mortgagee of the same interest or any part thereof, in good faith and for a valuable consideration, whose conveyance or mortgage is first duly recorded. If such interest is entirely in the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the recording officer where such real property is situated. If such interest is in both the personal and the real property of a decedent the conveyance or mortgage shall be recorded in the office of the surrogate issuing letters testamentary or letters of administration upon the said decedent's estate, or if no such letters have been issued, then in the office of the surrogate having jurisdiction to issue the same, and also

in the office of the said recording officer. Such a conveyance or mortgage when so recorded, shall be indexed under the name of the decedent, in a book to be kept for the purpose by each recording officer. The person presenting any such instrument for record shall pay to the clerk of the surrogate's court a fee of ten cents for each folio. Such filing or recording shall not be deemed notice of such conveyance, assignment or other transfer of, or mortgage or other lien or charge upon the interest, or any part thereof of any person in the estate of a decedent which is situated within the state, so as to charge the legal representative of the estate with liability for payment to a legatee or other beneficiary of an estate unless and until he shall have received actual notice of such conveyance, assignment or other transfer.

**§ 274-a. Certificate of principal amount unpaid on mortgages of real property.** 1. The holder of a mortgage upon real property shall execute and deliver to the owner of the real property upon which such mortgage is a lien a written instrument setting forth the amount of the principal of said mortgage remaining unpaid, the date to which interest has been paid, and the amounts, if any, claimed to be unpaid upon said mortgage for principal and interest, itemizing the same, provided, however, that prior written demand by registered or certified mail has been made upon the holder of such mortgage by such owner of the real property and that such owner of the real property shall have executed and delivered to another a written contract to convey, or shall have received a written commitment to make a mortgage loan upon, the real property or an interest therein. The written instrument hereinbefore required of the holder of the mortgage shall be a certificate duly executed and acknowledged in the same manner as required by law to entitle a conveyance of real property to be recorded, except that a bank, savings bank, private banker, trust company, savings and loan association or any other banking organization, as defined in the banking law, a national bank or trust company or any other federally-chartered or federally-regulated savings and loan association or other banking institution and an insurance company duly organized or licensed to do business in this state under the insurance law of this state and the state of New York, or an agency thereof and a political subdivision of



the state of New York or an agency thereof may, in lieu of the said certificate, furnish a letter signed by a duly authorized officer, or employee or agent, containing the information required to be set forth in such certificate. An owner of real property who shall have complied with the foregoing requirements and who shall not have received the written instrument from the holder of the mortgage thereon within twenty days after such compliance shall be entitled to petition a court of competent jurisdiction for an order requiring such holder of the mortgage to comply with this section.

2. (a) The mortgagee of an owner-occupied, one-to-six family residential structure or residential condominium unit, shall deliver within thirty days, any mortgage related documents to an authorized individual making a bona fide written demand for such documents. The mortgagee shall not charge for providing the mortgage-related documents, provided, however, the mortgagee may charge not more than twenty dollars, or such amount as may be fixed by the superintendent of financial services, for each subsequent payoff statement provided under this subdivision. If the mortgagee fails to deliver the mortgage-related documents, the mortgagee shall be liable for the actual damages to the mortgagor by reason of such failure. In computing actual damages the court may consider the actual rate of interest on the mortgage debt and current prevailing rate or rates of interest on comparable debts. However, actual damages do not include pain and suffering, mental or emotional distress or the like. The replacement costs of a lost abstract of title required to be delivered hereunder, may be deducted from the amount required to satisfy the mortgage.

(b) When used in this section:

(i) "Authorized individual" means the mortgagor, the mortgagor's attorney, or the attorney representing a banking organization which has agreed to make a loan secured by the same real property securing the mortgage for which the mortgage related documents have been requested.

(ii) "Mortgagee" means (1) the current holder of the mortgage of record or the current holder of the mortgage, (2) any person to whom payments are required to be made and (3) their personal representatives, successors and assigns.

(iii) "Bona fide written demand" means a written demand made by an

authorized individual in connection with a sale or refinancing of the mortgaged property or some other event where the mortgage is reasonably expected to be paid off or assigned. Such demand shall either be delivered personally, or by registered or certified mail, postage prepaid, return receipt requested. The demand shall include the names of the mortgagor and mortgagee, the address of the mortgaged property, loan number, the date of the mortgage or the date it was recorded, the mortgage related documents demanded and the proposed payoff date or date of assignment of the mortgage, if applicable. If the demand includes a request for the abstract of title, the demand shall include the agreement by the mortgagor to pay for a replacement abstract of title, the cost of which may not exceed the actual replacement cost of such abstract of title, in the event that the mortgage is not paid off or the abstract of title is not returned within thirty days of the proposed payoff date. Such demand shall include the following in capital letters:

"THIS DEMAND IS MADE UNDER SECTION 274-a OF THE REAL PROPERTY LAW.

FAILURE TO COMPLY WITH THIS DEMAND MAY RESULT IN SEVERE PENALTIES."

(iv) "Mortgage-related documents" means:

(1) the abstract of title for the real property securing the mortgage if such document is in the possession and control of the mortgagee. In the event that the mortgage is not paid off, the authorized individual receiving the abstract of title shall within thirty days of the proposed payoff date return the abstract of title to the mortgagee or other person so designated by the mortgagee; upon a failure to so return the abstract of title, the mortgagee may obtain a replacement abstract of title, the cost of which may not exceed the actual replacement cost of such abstract of title and which shall be paid by the mortgagor;

(2) a payoff statement setting forth the balance of the mortgage, including principal, interest and other charges assessed pursuant to the loan documents, together with a per diem rate for interest accruing after the date to which the balance has been calculated. The payoff statement may, in the event that the statement reflects payments which may have not yet cleared, require the authorized individual to obtain from the mortgagee a day of payoff verification of the payoff statement. A payoff statement requiring day of payoff verification shall include, in addition to the address of the mortgagee, the telephone number of the mortgagee and, if a banking organization or corporation, the name or

department, and its telephone number and facsimile phone number. Unless the payoff statement requires a day of payoff verification, a mortgagee furnishing a payoff statement shall be obligated to make its best effort to furnish a satisfaction of mortgage upon receipt of the amount set forth in such statement unless such person subsequently notifies the authorized individual of an error in the payoff statement. The payoff statement furnished by a mortgagee shall include a name or department in addition to the address of the banking organization or corporation for use in connection with preparation of an affidavit under subdivision five of section nineteen hundred twenty-one of the real property actions and proceedings law;

(3) if requested and if the title insurance policy is in the possession and control of the mortgagee, a copy of such policy or a statement setting forth the name of the insurer and the number of such policy.

(v) "Banking organization" shall have the same meaning as provided in subdivision eleven of section two of the banking law and shall include any institution chartered or licensed by the United States or any state.

**§ 275. Certificate of discharge of mortgage required.** 1. Whenever a mortgage upon real property is due and payable, and the full amount of principal and interest due on the mortgage is paid, a certificate of discharge of mortgage shall be given to the mortgagor or person designated by him or her, signed by the person or persons specified in section three hundred twenty-one of this chapter. The person signing the certificate shall, within thirty days thereafter, arrange to have the certificate presented for recording to the recording officer of the county where the mortgage is recorded. Failure by a mortgagee to present a certificate of discharge for recording shall result in the mortgagee being liable to the mortgagor in the amount of five hundred dollars if he or she fails to present such certificate within thirty days, shall result in the mortgagee being liable to the mortgagor in the amount of one thousand dollars if he or she fails to present a certificate of discharge for recording within sixty days and shall result in the mortgagee being liable to the mortgagor in the amount of one thousand five hundred dollars if he or she fails to present a certificate of

discharge for recording within ninety days. For the purposes of such liability under this subdivision, the term "mortgagee" shall not include a person, partnership, association, corporation or other entity which makes less than five mortgage loans in any calendar year. The provisions of this section shall not apply to any mortgage granted to or made by the state of New York, or any agency or instrumentality thereof or any political subdivision of the state or any agency or instrumentality thereof.

2. (a) For purposes of this section, the full amount of principal and interest due on a mortgage shall not be considered to be paid whenever such mortgage continues to secure a bona fide debt and an enforceable lien continues to exist, such as may occur in the following situations:

(i) the commercial practice of lenders trading or selling mortgages on the secondary market;

(ii) the replacement of a construction loan with permanent financing;

(iii) the refinancing of an existing loan with a new lender, such as where the original lender assigns a note and the mortgage securing its payment to another lender in return for consideration and such mortgage is consolidated with another mortgage which secures any funds advanced by the new lender to the mortgagor;

(iv) the modification of the terms of a loan by a mortgagor and mortgagee in order to avoid foreclosure; and

(v) a refinancing that occurs in conjunction with the sale of property such that the seller conveys property to the purchaser subject to the lien of the mortgage and the original lender assigns its note and mortgage on the property to the purchaser's lender.

(b) No mortgagee shall return, destroy, or otherwise refuse to accept a payment made pursuant to the terms of a payoff letter, including but not limited to terms regarding the location and the manner of payment specified by the mortgagee, even if such payment does not cover the full amount of principal, interest, and any other amounts due and owing under the mortgage, provided, however, if there is a defect with the payment that prevents the mortgagee from identifying with reasonable diligence the mortgage for which such payment is made, the mortgagee may refuse to accept such payment and return the payment to the remitter. The mortgagee shall apply such payment to the unpaid principal, interest or

any other amounts due under the mortgage, provided that a payment made pursuant to a payoff statement shall not result in the issuance of a certificate of discharge of mortgage pursuant to subdivision one of this section or in the execution of a satisfaction of mortgage pursuant to subdivision one of section nineteen hundred twenty-one of the real property actions and proceedings law unless the payment covers the full amount of principal, interest, and any other amounts due and owing under the mortgage.

3. Except with respect to the assignment of a mortgage in connection with a transaction described in subparagraph (i) of paragraph (a) of subdivision two of this section, in order to record an assignment of a mortgage there must be set forth in the assignment document or attached thereto and recorded as part thereof a statement under oath signed by the mortgagor or any other party to the transaction having knowledge of the facts (provided such other party asserts such knowledge), that the assignee is not acting as a nominee of the mortgagor and that the mortgage continues to secure a bona fide obligation. With respect to the assignment of a mortgage in connection with a transaction described in subparagraph (i) of paragraph (a) of subdivision two of this section, such assignment shall contain the following statement: "This assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market."

**§ 276. Effect of certain easements on the right to invest in mortgages.** The existence of an easement in real property acquired or reserved by a municipal corporation, a railroad corporation or other transportation corporation, shall not be deemed an encumbrance upon such real property under any law relating to investments in mortgages upon real property by corporations, trustees, executors, administrators, guardians or other persons holding trust funds, but the effect of such an easement upon the real property which it affects, shall be taken into consideration in determining the value thereof.

**§ 277. Modification and extension of mortgage investment. 1.**

Corporations, trustees, executors, administrators, guardians, committees, conservators and other persons holding trust funds, savings banks and other corporations that shall have made or shall own or hold an investment, with the specified ratio of real property security, in a bond and mortgage or share or part thereof or series or group of bonds and mortgages or in any instrument evidencing any collateral or other interest in such a bond and mortgage or share or part thereof or such series or group of bonds and mortgages, or in any participation or other certificate secured by the deposit of, or evidencing any share, part or interest in the principal sum of any such bond and mortgage or share or part thereof or series or group of bonds and mortgages, whether any of such investments, instruments or certificates be guaranteed or not, 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, due or to become due and extend or re-extend or agree to extend or re-extend such bond and mortgage or share or part thereof, or such series or group or such evidencing instrument or participation or other certificate 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 of such bond and mortgage or bonds and mortgages or by agreement with the issuer or guarantor of any such evidencing instrument or participation or other certificate, 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, any such holder thereof 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 or conditions thereof, including the rate of interest due or to become due.

2. In addition to the provisions of subdivision one hereof, any corporation, trustee, executor, administrator, guardian, committee,

conservator or other person, including any official of the state or any political subdivision thereof, holding trust funds, or any savings bank or other corporation that shall have made or shall own or hold such investment, may prior to April first, nineteen hundred sixty-nine join in promulgating, participate in, consent to or pay any assessment under or incur any necessary expense in connection with participation in any plan providing for the readjustment, modification or reorganization of such investment, which plan is required by the terms thereof or the provisions of law applicable thereto to be approved by a court of this or any other state or of the United States, having competent jurisdiction over proceedings for such readjustment, modification or reorganization, and if such plan shall have been or shall hereafter be duly approved by any such court, may execute such instruments and do such acts as may be required thereby, and as may be necessary or desirable for the consummation thereof, and may accept and hold, as legal investments, any securities or obligations, secured or unsecured, issued pursuant to such plan so approved, notwithstanding, without limiting the generality of the foregoing, that such plan may provide for the extension of the maturity or reduction of the principal, or of the rate of interest, or for any other modification of such investment or of any bond and mortgage or bonds and mortgages held as security for or for the benefit of the holders of such investment.

3. This section shall be construed so as to effectuate its purpose as a grant of powers. The limitations and restrictions contained herein shall not apply to powers granted by any other law but only to the powers granted herein.

**§ 277-a. Powers of fiduciaries and others holding guaranteed mortgages or mortgage investments.** Trustees, executors, administrators, guardians, committees for incompetents, conservators of conservatees and all other persons acting in any fiduciary capacity, including all officials of the state or any political subdivision thereof, and corporations organized under, or subject to the provisions of the banking law or the insurance law, who hold any mortgage investment or any wholly owned mortgage guaranteed by a guaranty corporation, or who hold any claim against a

guaranty corporation, may assent to a plan of reorganization or readjustment of the guaranty corporation or of the business thereof, or to any proposal, however designated, to buy any assets of such guaranty corporation, which has been or shall be approved by the supreme court; and in connection therewith may assign such claims, execute such instruments and do such acts as may be required by such plan or proposal, or as may be necessary or desirable for the consummation thereof; and may accept in exchange for such claims, and hold same as legal investments, any stock, securities or obligations, secured or unsecured, issued pursuant to such plan or proposal; and may join in any voting trust agreement provided for by such plan or proposal. The terms "mortgage investment" and "guaranty corporation" as used herein shall be construed as said terms are defined by section two of chapter seven hundred forty-five of the laws of nineteen hundred thirty-three, as amended, and by section three of chapter nineteen of the laws of nineteen hundred thirty-five, as amended.

**§ 278. Exchange of mortgage investment.** Trustees, executors, administrators, guardians, committees, conservators, receivers, the town treasurer of any town and other persons and corporations holding trust funds, corporations and private bankers organized under or subject to the provisions of the banking law, the superintendent of financial services as conservator, liquidator or rehabilitator of any such corporation or private banker organized under and subject to the provisions of the banking law, persons, partnerships, and corporations organized under or subject to the provisions of the insurance law, the superintendent of financial services as conservator, liquidator or rehabilitator of any such person, partnership or corporation organized under or subject to the provisions of the insurance law, and other domestic corporations, that shall have made or shall hold an investment, whether with or without a specified ratio of real property security, in a bond secured by mortgage on real property or share or part thereof, whether guaranteed or not, may, at any time without an order of the court or other authority, exchange, prior or subsequent to maturity, such bond and mortgage or share or part thereof and any rights in respect thereto, for bonds of Home Owners' Loan Corporation, a



corporation created under home owners' loan act of nineteen hundred and thirty-three, and may hold such bonds of Home Owners' Loan Corporation as authorized and lawful investments for any and all purposes, notwithstanding the provisions of any general or special law of this state inconsistent with the provisions of this section.

**§ 278-a. Sale or exchange of certain real property or mortgage investments therein authorized.** Trustees, executors, administrators, guardians, committees, conservators and all other persons or corporations holding trust funds or acting in a fiduciary capacity, corporations and private bankers organized under or subject to the provisions of the banking law, the superintendent of financial services as conservator, liquidator or rehabilitator of any such corporation or private banker organized under and subject to the provisions of the banking law, persons, partnerships and corporations organized under or subject to the provisions of the insurance law, the superintendent of financial services as conservator, liquidator or rehabilitator of any such person, partnership or corporation organized under or subject to the provisions of the insurance law who or which (1) own any property on which there is a building defined in the multiple dwelling law as an old law tenement or who or which hold a mortgage or other lien on such property, or

(2) own any property, improved or unimproved, or any mortgage or other lien thereon, within any section of a municipality included in a map showing sections containing areas for clearance, replanning and low rent housing, adopted by the planning commission of the municipality as a whole or part of the master plan, or

(3) own any property, improved or unimproved, or any mortgage or other lien thereon, within any section of a municipality which may be designated by the planning commission or the housing authority of the municipality as substandard or insanitary, may sell such property, mortgage or lien, and may, notwithstanding any other provision of law, receive and hold in exchange therefor securities issued by a corporation owning or acquiring title to such property, if such corporation shall agree in writing at the time of such sale, to reconstruct, improve, alter, repair or demolish such property or to construct a new building

on such property, or on such property and on any contiguous property owned or to be acquired by such corporation.

**§ 279. Graduated payment mortgage.** 1. A "graduated payment mortgage" means a mortgage which provides: (i) monthly payments of principal and interest which are lower during the initial years of the mortgage; and (ii) that the graduation rate for the monthly payments, the term of graduation and the interest rate are fixed throughout the term of the loan; and (iii) monthly payments of principal and interest shall be sufficient to pay all interest and to effect full repayment of principal within the term of the mortgage as fixed at its origination.

2. Every graduated payment mortgage shall be subject to the following:

(a) the average annual rate of increase for principal and interest payments shall not exceed:

(i) 7.5 percent per annum for a mortgage with a graduation period of five years or less;

(ii) 6.5 percent per annum for a mortgage with a graduation period of six years;

(iii) 5.5 percent per annum for a mortgage with a graduation period of seven years;

(iv) 4.5 percent per annum for a mortgage with a graduation period of eight years;

(v) 3.5 percent per annum for a mortgage with a graduation period of nine years; and

(vi) 3 percent per annum for a mortgage with a graduation period of ten years.

(b) periodic payments of principal and interest shall not change more than once per annum and increases shall be limited to the first ten years of the term of the mortgage.

(c) payments of principal and interest are required in amounts sufficient to pay all interest and full repayment of principal within a period not to exceed forty years.

3. Graduated payment mortgages may be offered only if the lender:

(a) offers the prospective borrower a non-graduated payment mortgage

loan at the prevailing rate being offered by that lender;

(b) provides the mortgagor with the option to convert the graduated payment mortgage loan to a non-graduated payment mortgage loan at a pre-determined time agreed upon between the borrower and lender and at the same rate of interest provided for the graduated payment mortgage loan; and

(c) discloses in advance on a uniform disclosure statement, prescribed by the superintendent of financial services, the relevant provisions of the graduated payment mortgage loan including:

(i) a side by side comparison of interest rates and other terms that differ between a non-graduated payment mortgage loan and a graduated payment mortgage loan;

(ii) payment schedules for both types of loans and the total payment in dollars over the full term of each loan;

(iii) a statement prominently displayed that borrowers have the option to elect a non-graduated payment mortgage loan; and

(iv) a description of the conversion option.

4. Failure of any lender to comply with any of the foregoing provisions shall not render the mortgage void or unenforceable unless otherwise provided by law.

5. The provisions of this section shall be applicable only to a mortgage on real property improved by a one to six family residence given by a natural person to secure a loan or to any agreement or note made by a natural person in pursuance of 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 would otherwise conform to the provisions of this section but is not otherwise entitled to be recorded as a mortgage.

**§ 280. Reverse mortgage loans for persons sixty years of age or older.**

1. For purposes of this section the following terms shall have the following meanings:

(a) Reverse mortgage loans. A loan which is secured by a first mortgage on real property improved by a one- to four-family residence or condominium that is the residence of the mortgagor(s) the proceeds of which are advanced to the mortgagor(s) during the term of the loan in equal installments, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof.

(b) Term reverse mortgage loan. Any reverse mortgage loan that has a fixed term to maturity.

(c) Tenure reverse mortgage loan. Any reverse mortgage loan that does not have a fixed term to maturity, but rather matures solely upon contingent events, such as events including but not limited to death or the real property securing the loan no longer being the mortgagors' principal residence.

(d) 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 of financial services or any entity exempted from licensing pursuant to section five hundred ninety of the banking law and approved for the making of reverse mortgage loans by the superintendent of financial services.

(e) Mortgagor. A tenant in severalty who is sixty years of age or older, or if the real property is held by tenants by the entirety or by joint tenancy, the youngest of which is sixty years of age or older.

(f) Superintendent of financial services. The superintendent established pursuant to section two hundred two of the financial services law.

2. A reverse mortgage loan pursuant to this section shall be subject to the following:

(a) the loan to value ratio shall be determined by the superintendent of financial services; and

(b) subject to such rules or regulations as the superintendent of financial services shall adopt, any authorized lender or any successor

or assign of such authorized lender which suspends, ceases or makes late payments to a mortgagor under a reverse mortgage loan shall be subject to forfeiture (as liquidated damages to such mortgagor and not as a penalty) of twice the interest which would otherwise have been earned during the period in which payments were suspended, ceased or made late, provided that said authorized lender or any successor or assign of such authorized lender shall have the right to make payments pursuant to said loan agreement within fifteen days of each payment date, without penalty; and

(c) the outstanding balance may be prepaid in full by the mortgagor without penalty at any time during the term and/or tenure of the loan; and

(d) an authorized lender is prohibited from using or attaching any property or asset of the mortgagor except the real property securing the reverse mortgage loan in settlement of a reverse mortgage obligation; and

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

(i) except for a tenure reverse mortgage loan, a schedule of payments to and from the mortgagor and the total payments in dollars over the term of the reverse mortgage loan for both the mortgagor and mortgagee depending on the type of reverse mortgage loan being offered;

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

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

(iv) the interest rate and, except for a tenure reverse mortgage loan, the total interest payable on the loan;

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

(vi) a statement setting forth those events which would terminate the

reverse mortgage loan; and

(f) in the event that an authorized lender or holder of the reverse mortgage loan intends to initiate foreclosure proceedings the mortgagor shall have the right to designate a third party who shall be notified. In the event that the mortgagor has not designated a third party to receive such notice of foreclosure, then the authorized lender or the holder of said reverse mortgage 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 mortgagor; and

(g) an authorized lender must deliver to the applicant, upon application, if available, a statement prepared by the local or county office for the aging on the advisability and availability of independent counseling and information services. Further, no reverse mortgage commitment shall be issued by an authorized lender until the applicant presents, in writing, a statement that the terms of the reverse mortgage loan have been explained by an attorney, a housing and urban development certified counselor or any other counseling service as indicated on the statement supplied by the county or local office for the aging or a signed affidavit indicating that the applicant, although made aware of the importance of counseling and its local availability through the provision of such information by the authorized lender, chooses not to utilize any of the aforementioned available services. The form of such statement and affidavit shall be developed by the New York state office for the aging; and

(h) any such reverse mortgage shall expressly and conspicuously bear a legend identifying it as such; and

(i) subject to such rules or regulations as the superintendent of financial services may adopt, a reverse mortgage loan shall be made at either a fixed or variable rate of interest.

### 3. A reverse mortgage loan pursuant to this section may:

(a) provide that the mortgagor's closing costs, including but not limited to loan or commitment fees, if any, insurance premiums, house repairs, legal fees, the cost of annuities, the costs of third-party counseling, the costs of existing mortgages or liens, and other appropriate costs be included in the principal of the reverse mortgage

loan and disbursed out of the loan proceeds at closing;

(b) provide for the maintenance of an escrow account by the authorized lender for purposes of payment of real property taxes, insurance on the property securing the loan, or any other fees and expenses as may be permitted by superintendent of financial services regulation;

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

4. The superintendent of financial services shall adopt those rules or regulations as it considers appropriate to govern reverse mortgage loans made pursuant to this section. No reverse mortgage loan shall be made unless it conforms to the requirements of this section and such rules and regulations as the superintendent of financial services may adopt except those reverse mortgage loans made pursuant to section two hundred eighty-a of this article. A reverse mortgage loan made by any authorized lender, national banking association, federal savings and loan association or federal credit union in conformity with applicable federal laws and regulations specifically regulating reverse mortgage loans shall be deemed to conform to the requirements of this section unless such reverse mortgage loan fails to conform to such rules and regulations as the superintendent of financial services has expressly declared to be neither preempted by, nor otherwise inconsistent with such federal laws or regulations. Those rules or regulations shall include, but are not limited to, the form and contents of any disclosure statement, with the exception of the counseling statement prepared by the New York state office for the aging pursuant to paragraph (g) of subdivision two of this section, that authorized lenders must provide to mortgagors.

5. Notwithstanding any inconsistent provision of law, the priority of the lien of a reverse mortgage, including the lien for all principal, interest, fees, costs, shared appreciation and other charges assessed in connection with the reverse mortgage, shall date from the recording of the reverse mortgage irrespective of the date of any advance of reverse mortgage loan proceeds or the date by which an authorized lender shall

be entitled to shared appreciation or accrued but unpaid interest, fees, costs or other charges.

6. 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 recorded or filed prior to the effective date of this section.

7. The sale or transfer of the real property securing the reverse mortgage loan to a person other than an original mortgagor or mortgagors shall result in the termination of the loan.

8. In a term reverse mortgage loan, the real property securing the reverse mortgage loan may be reappraised by an independent appraiser at the end of the loan term. If the value of the real property has appreciated, the term of the reverse mortgage may be extended or refinanced, however, the total reverse mortgage loan amount may not exceed such amount or ratio as may be determined by the superintendent of financial services. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by any other authorized lender designated by the mortgagee.

9. The principal, including any accrued but unpaid interest, of a reverse mortgage loan agreement entered into pursuant to this section may be insured by the mortgagor. If such insurance is purchased from or otherwise provided by any agency of the state of New York the mortgagor shall be granted the right, for a term reverse mortgage loan, to refinance or extend the reverse mortgage loan at the end of the term, subject to such rules or regulations as the superintendent of financial services may adopt. The authorized lender shall have the option to choose between refinancing or extending the reverse mortgage loan. Subject to obtaining an adequate increase in the insurance and subject to such rules and regulations as the superintendent of financial services may adopt, the total reverse mortgage loan amount shall not exceed such amount or loan to value ratio as may be determined by the superintendent of financial services. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by



any other authorized lender designated by the mortgagee.

10. Any authorized lender offering reverse mortgage loans pursuant to this section shall also offer reverse mortgage loans pursuant to section two hundred eighty-a of this article. Subject to this section in the event that an authorized lender makes reverse mortgage loans under this section then that lender must make an equal number of reverse mortgage loans pursuant to section two hundred eighty-a of this article. Such loans shall be made to individuals who meet the requirements promulgated in section two hundred eighty-a of this article provided that such individual seeking the loan would otherwise qualify and be approved for that loan. In the event that no or insufficient applications for reverse mortgage loans pursuant to section two hundred eighty-a of this article are made to a lender who has previously made reverse mortgage loans pursuant to this section then there shall be no requirement for that lender to make a reverse mortgage loan pursuant to section two hundred eighty-a of this article. It shall also not be a requirement that an authorized lender make any reverse mortgage loan to any individual who would not qualify for such loan and/or would not otherwise be approved for such loan.

11. Nothing contained in this section, section six-h of the banking law or any other provision of law shall be construed to prohibit a banking organization or licensed mortgage banker from providing reverse mortgages to homeowners in this state under the federal housing administration's home equity conversion mortgage insurance demonstration program.

**§ 280-a. Reverse mortgage loans for persons seventy years of age or older.** 1. For purposes of this section, the following terms shall have the following meanings:

(a) Reverse mortgage loan. A loan which is secured by a first mortgage on real property improved by a one to four-family residence or condominium that is the residence of the mortgagor(s) the proceeds of which are advanced to the mortgagor(s) during the term of the loan in equal installments, or in advances through a line of credit or

otherwise, in lump sums, or through a combination thereof.

(b) Term reverse mortgage loan. As used in this section, any reverse mortgage loan that has a fixed term for payments to the mortgagor(s).

(c) Tenure reverse mortgage loan. As used in this section, any reverse mortgage loan that does not have a fixed term for payments to the mortgagor(s).

(d) 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 of financial services or any entity exempted from licensing pursuant to section five hundred ninety of the banking law and approved for the making of reverse mortgage loans by the superintendent of financial services.

(e) Mortgagor. A tenant in severalty who is seventy years of age or older, or if the real property is held by tenants by the entirety or by joint tenancy, the youngest of which is seventy years of age or older and whose income does not exceed eighty percent of the median income of the county in which he or she resides.

(f) Superintendent of financial services. The superintendent established pursuant to section two hundred two of the financial services law.

2. A reverse mortgage loan pursuant to this section shall be subject to the following:

(a) the mortgagor shall be granted lifetime possession of the subject premises of the real property which is the security for the reverse mortgage loan, as long as such real property remains the mortgagors' principal residence and subject to a limited waiver of the right of foreclosure as determined by the superintendent of financial services; and

(b) the term of the reverse mortgage, except for a tenure reverse mortgage loan, shall be for a period of ten years or less; and

(c) the loan to value ratio shall be determined by the superintendent of financial services; and

(d) subject to such rules or regulations as the superintendent of financial services shall adopt, for that period of time commencing at

the end of the loan term or ten years after the reverse mortgage loan commences, whichever occurs first, and ending at such time as the reverse mortgage loan is paid in full, the authorized lender, at its option, may receive no more than twenty percent of the future appreciation of the property securing the reverse mortgage loan as full or partial consideration for the making of a reverse mortgage loan; provided, however, that such future appreciation shall be limited by such rules and regulations as the superintendent of financial services may adopt or the authorized lender may charge a fixed rate of interest on the outstanding balance of monies advanced under the reverse mortgage agreement or any combination thereof. Said reverse mortgage loan shall not come due and shall be extended until the voluntary relinquishment by the mortgagors of possessory interest in such real property, the real property no longer being the mortgagors' principal residence, the death of the mortgagors, or such other events as may be determined by the superintendent of financial services. Any such appreciation shall not be considered interest for the purposes of any law regulating the maximum rate of interest which may be charged, taken or received including sections 190.40 and 190.42 of the penal law; and

(e) the authorized lender shall maintain an escrow account for the purposes of paying real property taxes, insurance premiums of the property securing the reverse mortgage loan, or for the payment of any other fees and expenses as may be permitted by the superintendent of financial services regulation; and

(f) subject to such rules or regulations as the superintendent of financial services may adopt, an authorized lender or any successor or assign of such authorized lender which may suspends, ceases or makes late payments to a mortgagor under a reverse mortgage loan shall be subject to forfeiture (as liquidated damages to such mortgagor and not as a penalty) of twice the interest which would otherwise have been earned during the period in which payments were suspended, ceased, or made late, provided that said authorized lender or any successor or assign of such authorized lender shall have the right to make payments pursuant to said loan agreement within fifteen days of each payment date without penalty; and

(g) an authorized lender must deliver to an applicant such disclosures as may be required by the superintendent of financial services which

shall describe the relevant portions of the reverse mortgage being offered, and shall include but not be limited to the following items:

(i) except for a tenure reverse mortgage loan, a schedule of payments to and from the mortgagor and the total payments in dollars over the term of the reverse mortgage loan for both the mortgagor and mortgagee, depending on the type of reverse mortgage loan being offered;

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

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

(iv) to the extent determinable at or prior to the inception of the reverse mortgage loan, the interest rate and, except for a tenure reverse mortgage loan, the total interest payable on the reverse mortgage loan;

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

(vi) a statement setting forth those events which would terminate the reverse mortgage loan; and

(h) the outstanding balance may be prepaid in full by the mortgagor without penalty at any time during the reverse mortgage loan term; and

(i) an authorized lender is prohibited from using or attaching any property or asset of the mortgagor except the real property securing the reverse mortgage loan in settlement of a reverse mortgage obligation; and

(j) an authorized lender must deliver to the applicant upon application, if available, a statement prepared by the local or county office for the aging on the advisability and availability of independent counseling and information services. Further, no reverse mortgage commitment shall be issued by the authorized lender until the applicant presents, in writing, a statement that the terms of the reverse mortgage loan have been explained to them by an attorney, a housing and urban development certified counselor or any other counseling service as indicated on the statement supplied by the county or local office for the aging or a signed affidavit indicating that the applicant, although

made aware of the importance of counseling and its local availability through the provision of such information by the authorized lender, chooses not to utilize any of the aforementioned available services. The form of such statement and affidavit shall be developed by the New York state office for the aging; and

(k) a reverse mortgage pursuant to this section shall expressly and conspicuously bear a legend identifying it as such; and

(l) subject to such rules or regulations as the superintendent of financial services may adopt, a reverse mortgage loan shall be made at either a fixed or variable rate of interest; and

(m) in the event that an authorized lender or holder of the reverse mortgage loan intends to initiate foreclosure proceedings the mortgagor shall have the right to designate a third party who shall be notified. In the event that the mortgagor has not designated a third party to receive such notice of foreclosure, then the authorized lender or the holder of said reverse mortgage 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 mortgagor.

3. A reverse mortgage 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 mortgage loan agreement and at its option exercise and enforce such clause in accordance with its terms;

(b) provide that the mortgagor's closing costs, including but not limited to loan or commitment fees if any, insurance premiums, house repairs, legal fees, the costs of annuities, the costs of third party counseling, the costs of existing mortgages or liens, and other appropriate costs be included in the principal of the reverse mortgage loan and disbursed out of the loan proceeds at closing.

4. The superintendent of financial services shall adopt those rules or regulations as it considers appropriate to govern reverse mortgage loans made pursuant to this section. No reverse mortgage loan shall be made unless it conforms to the requirements of this section and such rules and regulations as the superintendent of financial services may adopt

except those reverse mortgage loans made pursuant to section two hundred eighty of this article. A reverse mortgage loan made by any authorized lender, national banking association, federal savings and loan association or federal credit union in conformity with applicable federal laws and regulations specifically regulating reverse mortgage loans shall be deemed to conform to the requirements of this section unless such reverse mortgage loan fails to conform to such rules and regulations as the superintendent of financial services has expressly declared to be neither preempted by, nor otherwise inconsistent with such federal laws or regulations. Those rules or regulations shall include, but are not limited to:

(a) any limitations on the taking of a percentage of the future appreciation of the real property securing the reverse mortgage loan as consideration for making the reverse mortgage loan;

(b) the execution by an authorized lender of a limited waiver of the right of foreclosure;

(c) with the exception of the counseling statement prepared by the New York state office for the aging pursuant to paragraph (j) of subdivision two of this section, the form and contents of any disclosure statement that authorized lenders must provide to mortgagors.

5. Notwithstanding any inconsistent provision of law, the priority of the lien of a reverse mortgage, including the lien for all principal, interest, fees, costs, shared appreciation and other charges assessed in connection with the reverse mortgage, shall date from the recording of the mortgage irrespective of the date of any advance of reverse mortgage loan proceeds or the date by which an authorized lender shall be entitled to shared appreciation or accrued but unpaid interest, fees, costs or other charges.

6. 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 recorded or filed prior to the effective date of this section.

7. The sale or transfer of the real estate securing the reverse mortgage loan to a person other than an original mortgagor or mortgagors

shall result in the termination of the reverse mortgage loan.

8. In a term reverse mortgage loan, the real property securing the reverse mortgage may be reappraised by an independent appraiser at the end of the loan term. If the value of the property has appreciated, the term of the reverse mortgage may be extended or refinanced; however the total reverse mortgage loan amount may not exceed such amount or loan to value ratio as may be determined by the superintendent of financial services. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by any other authorized lender designated by the mortgagee.

9. The principal, including any accrued but unpaid interest, of a reverse mortgage loan agreement entered into pursuant to this section must be insured by the mortgagor. If such insurance is purchased from or otherwise provided by any agency of the state of New York, the mortgagor shall be granted the right, for a term reverse mortgage loan, to refinance or extend the reverse mortgage loan at the end of the term, subject to such rules and regulations as the superintendent of financial services may adopt. The authorized lender shall have the option to choose between refinancing or extending the reverse mortgage loan. Subject to obtaining an adequate increase in the insurance and subject to such rules and regulations as the superintendent of financial services may adopt, the total reverse mortgage loan amount shall not exceed such amount or ratio as may be determined by the superintendent of financial services. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by any other authorized lender designated by the mortgagee.

**§ 280-b. Federal home equity conversion mortgage regulation.** 1. For the purposes of this section, the following terms shall have the following meanings:

(a) Reverse mortgage loan. A reverse mortgage loan as defined in section two hundred eighty of this article, which is issued in this state pursuant to the home equity conversion mortgage for seniors program operated by the federal Department of Housing and Urban

Development.

(b) Authorized lender. An authorized lender as defined in section two hundred eighty of this article authorized to make reverse mortgage loans, as defined in this section.

(c) Superintendent. The superintendent of financial services established pursuant to section two hundred two of the financial services law.

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

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

(b) use the words "government insured" or other similar language in a manner that falsely represents that reverse mortgage 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.

3. (a) Every authorized lender or its agent shall provide, with any solicitation for reverse mortgage 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.

(b) Every authorized lender shall provide each applicant or potential applicant for a reverse mortgage loan with the telephone number and internet website address provided by the federal Department of Housing and Urban Development for the purposes of acquiring home equity conversion mortgage counseling.

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

4. (a) Reverse mortgages secured by residential real property within the state shall be subject to the rules and regulations of the federal Department of Housing and Urban Development relating to the home equity



conversion mortgage program.

(b) For all borrowers whose tax payments, 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 mortgage, the authorized lender shall provide on the borrower's periodic 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 twelve point type: "YOUR TAXES AND INSURANCE ARE CURRENTLY BEING PAID BY THE PROCEEDS OF THIS MORTGAGE. THE FUNDS THAT HAVE BEEN SET ASIDE ARE EXPECTED TO BE EXHAUSTED AFTER THE TAX AND INSURANCE PAYMENTS OF (SPECIFY EXPECTED MONTH AND YEAR). IF THE PROCEEDS OF THIS MORTGAGE CANNOT PAY THE TAXES AND INSURANCE, YOU MUST PAY THESE OBLIGATIONS OR YOUR HOME MAY BE LOST TO FORECLOSURE. PLEASE NOTE THAT AS TAX AND INSURANCE AMOUNTS CAN VARY YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR CHANGES."

(c) An authorized lender shall, by telephone and first class mail, inform and provide notice to a mortgagor when his or her home equity line of credit or life expectancy set aside is depleted to ten percent or less of its value. Such notice shall inform the mortgagor of his or her obligations relating to such real property 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.

(d) Each authorized lender shall, by telephone and first class mail, inform and provide notice to a mortgagor when his or her home equity line of credit or life expectancy set aside is depleted. Such notice shall inform the mortgagor of his or her obligations relating to the mortgaged real property 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.

5. No authorized lender shall make an advance payment for any obligation arising from mortgaged real property. Furthermore, in the event a mortgagor defaults upon the payment of mortgage insurance premium, homeowners' insurance premium or real property tax related to the mortgaged property, the authorized lender may only pay those premiums and/or taxes which are in arrears.

6. In the event that an authorized lender seeks to foreclose on a reverse mortgage loan on the basis that the mortgaged real property is no longer the primary residence of or occupied by the mortgagor, if during the verification of the mortgagor'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 mortgagor, or if the mortgagor is unreachable by telephone, a designated third-party specified by the mortgagor, and an in person visit to be made to the mortgagor at the mortgaged real property to be made prior to the commencement of any foreclosure proceeding. 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 mortgage, 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 mortgaged real property is no longer the primary residence of the mortgagor. If the mortgagor contacts the authorized lender and provides proof of residence or occupancy after such visit but before the commencement of a foreclosure action, the authorized lender shall be barred from initiating such foreclosure action. Furthermore, no authorized lender shall charge a mortgagor 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 mortgage, or any suspected or actual default condition.

7. Both the authorized lender and the mortgagor shall be represented by an attorney or attorneys at the time of the closing on the reverse mortgage, and each such party shall have at least one attorney present to conduct the closing.

8. Any person who has been injured by reason of any violation of this section or any violation of the rules and regulations of the federal Department of Housing and Urban Development relating to the home equity conversion mortgage 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 attorney's fees.

9. Compliance with the provisions of this section shall be conditions precedent to commencing an action to foreclose upon a home equity conversion mortgage which is subject to the provisions of this section, and the failure to comply therewith shall be a complete defense to a foreclosure action.

**§ 280-d. Federal home equity conversion mortgage default and foreclosure regulation.** 1. For the purposes of this section, the following terms shall have the following meanings:

(a) Reverse mortgage loan. A reverse mortgage loan as defined in section two hundred eighty of this article, which is issued in this state pursuant to the home equity conversion mortgage for seniors program operated by the federal Department of Housing and Urban Development.

(b) Authorized lender. An authorized lender as defined in section two hundred eighty of this article authorized to make reverse mortgage loans, as defined in this section.

(c) Department. The department of financial services established pursuant to section one hundred two of the financial services law.

2. In addition to the requirements of section one thousand three hundred four of the real property actions and proceedings law, an authorized lender shall include in the notice required by such section any additional information required by the department. The department is

hereby authorized to promulgate rules and regulations requiring that a notice issued pursuant to subdivision one-a of section one thousand three hundred four of the real property actions and proceedings law include additional information necessary to explain the mortgagor's rights in a foreclosure process.

3. In addition to the requirements of section one thousand three hundred six of the real property actions and proceedings law, each filing with the department that relates to a reverse mortgage loan shall include an affirmative statement that the lender, assignee or mortgage loan servicer either received final approval from the federal Department of Housing and Urban Development to accelerate the reverse mortgage loan that is the subject of the filing or that no such approval from the federal Department of Housing and Urban Development is required.

4. Authorized lenders shall comply with all applicable laws, regulations and any guidelines issued by the federal Department of Housing and Urban Development on loss mitigation for reverse mortgages and shall maintain policies on loss mitigation that shall be updated when necessary to ensure compliance with all applicable rules. Each authorized lender shall maintain loan level data and loss mitigation data for all loans associated with a repayment plan including, but not limited to:

- (a) monthly surplus income;
- (b) term of repayment plan;
- (c) amount of monthly repayment plan;
- (d) due date of each monthly payment;
- (e) when a mortgagor experiences a hardship; and
- (f) the nature of the hardship.

5. Any person who has been injured by reason of any violation of this section may bring an action in his or her own name to recover treble his or her actual damages, plus the prevailing plaintiff's reasonable attorney's fees.

6. The requirements of this section shall be conditions precedent to commencing an action to foreclose upon a home equity conversion mortgage

which is subject to the provisions of this section, and failure to comply therewith shall be a complete defense to a foreclosure action.

**§ 281. Credit line mortgage.** 1. (a) For the purposes of this section, a "credit line mortgage" shall mean any mortgage or deed of trust, other than a mortgage or deed of trust made pursuant to a building loan contract as defined in subdivision thirteen of section two of the lien law, which states that it secures indebtedness under a note, credit agreement or other financing agreement that reflects the fact that the parties reasonably contemplate entering into a series of advances, payments and readvances, and that limits the aggregate amount at any time outstanding to a maximum amount specified in such mortgage or deed of trust. For purposes of this section, "credit line mortgage" shall include a reverse mortgage loan as defined in sections two hundred eighty and two hundred eighty-a of this article except that such a credit line mortgage of the reverse mortgage loan type shall not be subject to the twenty year limitation set forth in subdivision two of this section.

(b) Payments made by an authorized lender pursuant to any credit line reverse mortgage made in accordance with section two hundred eighty-a of this article during any one year shall be limited to such amount or ratio as may be determined by the superintendent of financial services. In the event that a borrower does not take payment under such credit line during the course of any year then that borrower shall have the ability to increase the yearly payments by that amount available but not borrowed during previous years.

2. Any credit line mortgage may, and when so expressed therein, shall secure not only the original indebtedness but also the indebtedness created by future advances thereunder made within thirty years from the date of the recording of such credit line mortgage, whether such advances are obligatory or are to be made at the option of the lender or otherwise, to the same extent and with the same priority of lien as if such future advances had been made at the time such credit line mortgage was recorded pursuant to section two hundred ninety-one of this chapter, although there may have been no advances made at the time of the

execution and acknowledgment of such credit line mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The total amount of indebtedness that may be so secured by a credit line mortgage may increase or decrease from time to time, but the amount so secured at any one time shall not exceed the maximum amount specified in such credit line mortgage, plus interest thereon at the rate provided therein, and plus any disbursements made to protect the security of such credit line mortgage, with interest on such disbursements at the rate provided therein.

3. Nothing in this section shall affect the priority of a lien under article two of the lien law with respect to future advances made under a credit line mortgage after the filing of the notice of such lien under the lien law.

4. This section shall apply to advances made after the effective date of this section under a credit line mortgage, whether such credit line mortgage is recorded on or after, or was recorded prior to, the effective date of this section.

5. Nothing in this section shall be construed to limit, impair or otherwise affect the priority under applicable law without reference to this section of a mortgage, deed of trust, encumbrance or lien which was recorded or filed prior to the effective date of this section.

**§ 282. Mortgagor's right to recover attorneys' fees in actions or proceedings arising out of foreclosures of residential property. 1.**

Whenever a covenant contained in a mortgage on residential real property shall provide that in any action or proceeding to foreclose the mortgage that the mortgagee may recover attorneys' fees and/or expenses incurred as the result of the failure of the mortgagor to perform any covenant or agreement contained in such mortgage, or that amounts paid by the mortgagee therefor shall be paid by the mortgagor as additional payment, there shall be implied in such mortgage a covenant by the mortgagee to pay to the mortgagor the reasonable attorneys' fees and/or expenses incurred by the mortgagor as the result of the failure of the mortgagee

to perform any covenant or agreement on its part to be performed under the mortgage or in the successful defense of any action or proceeding commenced by the mortgagee against the mortgagor arising out of the contract, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the mortgagee or by way of counterclaim in any action or proceeding commenced by the mortgagee against the mortgagor. Any waiver of this section shall be void as against public policy.

2. For the purposes of this section, "residential real property" means real property improved by a one- to four-family residence, a condominium that is occupied by the mortgagor or a cooperative unit that is occupied by the mortgagor.

**§ 283. Limits on amount of flood insurance required by mortgagee.** No mortgagee shall require a mortgagor to whom the mortgagee makes, increases, extends, or renews any loan or line of credit secured by improved residential real property to purchase or pay for flood insurance on such residential real property: (1) at a coverage amount that exceeds the lesser of the replacement value of the residential real property or the outstanding principal mortgage balance as of the beginning of the year for which the policy shall be in effect; or (2) that includes coverage for contents. In each instance where a mortgagee requires a mortgagor to purchase or pay for flood insurance on such residential real property, the mortgagee shall provide notice to the mortgagor at the time the mortgagee is notified of the need to purchase or pay for flood insurance that states the following in clear and conspicuous print: 'The flood insurance we are requiring you to purchase may not be sufficient to pay for many needed repairs after a flood and may not compensate you for your losses in the property due to the flood. If you wish to protect your home or investment, you may wish to purchase more flood insurance than the amount we are requiring you to buy.'

## ARTICLE 9

### RECORDING INSTRUMENTS AFFECTING REAL PROPERTY

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- 291. Recording of conveyances.
  - 291-a. Recording conveyances of land in towns in Chautauqua county; duties of county and town clerks.
  - 291-b. Recording conveyances of land in towns in Cattaraugus county; duties of county and town clerks.
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  - 291-cc. 1. Recording modifications of leases.
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**§ 290. Definitions; effect of article.** 1. The term "real property," as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

2. The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate.

3. The term "conveyance" includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument postponing or subordinating a mortgage lien; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property.

4. The term "recording officer" means the county clerk of the county, except in a county having a register, where it means the register of the county.

5. "Recording" or "recorded" means the entry, at length, upon the pages of the proper record books in a plain and legible hand writing, or in print or in symbols of drawing or by photographic process or partly in writing, partly in printing, partly in symbols of drawing or partly by photographic process or by any combination of writing, printing, drawing or photography or either or any two of them, or by an electronic process by which a record or instrument affecting real property, after delivery is incorporated into the public record. "Recording" or "recorded" also means the reproduction of instruments by microphotography or other photographic process on film which is kept in appropriate files.

6. "Electronic" means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

7. "Electronic record" means information evidencing any act, transaction, occurrence, event or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.

8. "Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.

9. "Paper document" means a document in a form that is not electronic.

10. "Digitized paper document" means a digitized image of a paper document that accurately depicts the information on the paper document in a format that cannot be altered without detection.

11. "Wet signature" means a signature affixed in ink or pencil or other material to a paper document.

12. This article does not apply to leases for life or lives, or for years, heretofore made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

**§ 291. Recording of conveyances.** A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated, and such county clerk or city registrar where applicable shall, upon the request of any party, on tender of the lawful fees therefor, record the same in said office. Every such conveyance not so recorded is void as against any person who subsequently purchases or acquires by exchange or

contracts to purchase or acquire by exchange, the same real property or any portion thereof, or acquires by assignment the rent to accrue therefrom as provided in section two hundred ninety-four-a of this article, in good faith and for a valuable consideration, from the same vendor or assignor, his distributees or devisees, and whose conveyance, contract or assignment is first duly recorded, and is void as against the lien upon the same real property or any portion thereof arising from payments made upon the execution of or pursuant to the terms of a contract with the same vendor, his distributees or devisees, if such contract is made in good faith and is first duly recorded.

Notwithstanding the foregoing, any increase in the principal balance of a mortgage lien by virtue of the addition thereto of unpaid interest in accordance with the terms of the mortgage shall retain the priority of the original mortgage lien as so increased provided that any such mortgage instrument sets forth its terms of repayment. The clerk of the county or city registrar where such conveyance of residential real property is recorded and maintained shall mail a written notice of such conveyance to the owner of record. The notice shall have the heading printed in 20 point bold type and read as follows:

"NOTICE OF SALE OR TRANSFER OF OWNERSHIP OF YOUR RESIDENTIAL PROPERTY.

To: \_\_\_\_\_

Name of owner of record

Our records show that you are listed as the current owner of record for residential property:

Block # \_\_\_\_\_ Lot # \_\_\_\_\_

Located At: \_\_\_\_\_

street address

in the county of \_\_\_\_\_ New York

On \_\_\_\_\_, documents were filed at this

date

office to change ownership and transfer title of your property.

To: \_\_\_\_\_

name of new owner

If you have any questions regarding the validity of the documents, and wish to dispute the recording of the transfer, you should obtain legal counsel. If you believe you are a victim of a crime related to this recording, contact your local law enforcement agency or, if in the City

of New York, the office of the sheriff."

The party seeking to record such conveyance shall bear the cost of such written notice. The clerk of the county or city registrar is entitled to charge a reasonable fee to cover the cost of mailing the envelope to the owner of record. Failure to mail such notice or the failure of any party to receive the same, shall not affect the validity of the conveyance of the property.

**§ 291-a. Recording conveyances of land in towns in Chautauqua county; duties of county and town clerks.** 1. Every deed and will relating to real property in Chautauqua county, outside the cities of Jamestown and Dunkirk, and every judicial decree establishing the right of inheritance to real property within Chautauqua county shall, before the same be hereafter recorded in the office of the clerk of Chautauqua county be presented to the clerk of said county together with a carbon copy or copies of the substance thereof, equal to the number of townships of the said county in which land is conveyed by the instrument. Such copy or copies shall set forth the date, consideration, the names of the grantors and grantees, the mail address of the grantee and a description of the property conveyed as set out in the instrument of conveyance.

Such copy or copies of an instrument of conveyance of land within the county of Chautauqua, outside the cities of Jamestown and Dunkirk, shall be retained by the clerk of the said county until the first day of the month succeeding the date on which it was received, and he thereafter shall transmit immediately all such copies received by him during the preceding month to the clerks of the towns in which such conveyances have occurred. Hereafter the clerk of Chautauqua county or any subordinate in the office of such clerk of Chautauqua county who shall record any instrument of conveyance of real property without receiving and transmitting to the town clerk of the town concerned, a copy thereof as provided herein shall be guilty of a misdemeanor. At the time a conveyance is offered for record a fee of twenty-five cents shall be paid to the county clerk in addition to any other moneys required to be paid to entitle the deed to be recorded.

The town clerks in each of the towns of Chautauqua county outside the cities of Jamestown and Dunkirk, shall enter the copies of conveyances and all appurtenant data so received from the clerk of Chautauqua county in a record book to be provided and kept for such purpose. Such book and the records contained therein shall be open to public inspection and shall be used by the local assessors in making assessments.

2. Any deed or instrument of conveyance relating to real property within the towns of Chautauqua, North Harmony, Ellicott, Ellery, Westfield and Busti or the village of Celoron, Chautauqua county, that for the first time conveys an interest in a paper street located within either such town or village to any grantee other than a not-for-profit corporation incorporated pursuant to the laws of this state or similar association or to a municipal corporation, notwithstanding the fact that such deed or instrument shall have been recorded by the clerk of the county of Chautauqua, shall be considered a nullity and given no force and effect unless accompanied by a resolution of the town board of the town or of the board of trustees of the village within which such paper street is located authorizing that such deed or instrument be recorded. For the purposes of this subdivision, a paper street shall mean a street that was designed in a subdivision map when originally filed but which was never subsequently developed or used as a public way.

**§ 291-b. Recording conveyances of land in towns in Cattaraugus county; duties of county and town clerks.** Every deed and will relating to real property in Cattaraugus county, outside the cities of Olean and Salamanca, and every judicial decree establishing the right of inheritance to real property within Cattaraugus county shall, before the same be hereafter recorded in the office of the clerk of Cattaraugus county be presented to the clerk of said county together with a carbon copy or copies of the substance thereof, equal to the number of townships of the said county in which land is conveyed by the instrument. Such copy or copies shall set forth the date, consideration, the names of the grantors and grantees, the mail address of the grantee and a description of the property conveyed as set out in the instrument of conveyance. Such copy or copies of an instrument of conveyance of

land within the county of Cattaraugus, outside the cities of Olean and Salamanca, shall be retained by the clerk of the said county until the first day of the month succeeding the date on which it was received, and he thereafter shall transmit immediately all such copies received by him during the preceding month to the clerks of the towns in which such conveyances have occurred. Hereafter the clerk of Cattaraugus county or any subordinate in the office of such clerk of Cattaraugus county who shall record any instrument of conveyance of real property without receiving and transmitting to the town clerk of the town concerned, a copy thereof as provided herein shall be guilty of a misdemeanor. At the time a conveyance is offered for a record a fee of twenty-five cents shall be paid to the county clerk in addition to any other moneys required to be paid to entitle the deed to be recorded.

The town clerks in each of the towns of Cattaraugus county outside the cities of Olean and Salamanca, shall enter the copies of conveyances and all appurtenant data so received from the Clerk of Cattaraugus county in a record book to be provided and kept for such purpose. Such book and the records contained therein shall be open to public inspection and shall be used by the local assessors in making assessments.

**§ 291-c. Recording memoranda of leases.** In lieu of the recording of a lease for a term exceeding three years, pursuant to section two hundred ninety-one of this chapter, there may be recorded with like effect a memorandum of such lease, executed by all persons who are parties to the lease, and acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded. A memorandum of lease thus entitled to be recorded shall contain at least the following information with respect to the lease: the name of the lessor and the name of the lessee and the addresses, if any, set forth in the lease as addresses of such parties; a reference to the lease, with its date of execution; a description of the leased premises in the form contained in the lease; the term of the lease, with the date of commencement and the date of termination of such term, and if there is a right of extension or renewal, the maximum period for which or date to which the lease may be extended or the number of times or date to which it may be renewed, and



the date or dates on which such rights of extension or renewal are exercisable.

Whenever a memorandum of lease is presented for recording, the lease shall also be submitted to the recording officer for the purpose of examination to determine whether or not such memorandum of lease is subject to the tax on mortgages provided by article eleven of the tax law.

**§ 291-cc. 1. Recording modifications of leases.** Where a lease or memorandum of such lease has been recorded, an unrecorded agreement modifying such lease or memorandum is void as against a subsequent purchaser in good faith and for a valuable consideration, and the possession of the tenant shall not be deemed notice of the modification, unless the agreement of modification or a memorandum thereof is recorded prior to the recording of the instrument by which the subsequent purchaser acquires his estate or interest.

2. A memorandum of an agreement modifying a lease shall contain at least the following information with respect to the agreement: the names of the parties and the addresses, if any, set forth in the agreement; a reference to the agreement with its date of execution; a brief description of the leased premises in form sufficient to identify the same; any changes made by the agreement in the term of the lease and the date of the termination of the lease as modified, and any changes in the provisions of the lease as to the rights of extension or renewal.

3. For the purpose of this section the word "purchaser" includes a person who purchases or acquires by exchange or contracts to purchase or acquire by exchange the leased premises or the real property of which the leased premises are part or any estate or interest therein, or acquires by assignment the rent to accrue from tenancies or subtenancies thereof in existence at the time of the assignment.

**§ 291-d. Recording of master forms of mortgage covenants and clauses;**

**incorporation thereof by reference.** 1. An instrument containing a form or forms of mortgage covenants, conditions, obligations, powers, releases, and other clauses may be recorded in the office of the recording officer of any county and such recording officer, upon the request of any person, on tender of the lawful fees therefor, shall record the same in his said office. Every such instrument shall be entitled on the face thereof as a "Master form recorded by ..... (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged or proved or certified to be entitled to record.

2. When any such instrument is recorded, the clerk or register shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real property.

3. Thereafter any of the provisions of such master form instrument may be incorporated by reference in any conveyance of real property situated within the state, if such reference in the conveyance states that the master form instrument was recorded in the county in which the conveyance is offered for record, the date when and the office, book and page or pages where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the conveyance. The recording of any conveyance which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the conveyance.

4. Whenever an instrument of conveyance is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subdivision one of this section and stating the date when it was recorded and the county, office, book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as part of the conveyance, in such manner that it will not appear upon a photographic reproduction of any page containing any part of the conveyance, such

matter shall not be recorded by the county clerk or register to whom the instrument is presented for recording; in such case the county clerk or register shall record only the conveyance apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

5. For the purposes of any provision of law relating to fees for recording, entering or indexing of conveyances, or relating to searches, furnishing of certified copies, reproduction by photographic method or otherwise, or destruction, or to any other matter pertaining to the powers and duties of recording officers with respect to conveyances, except manner of indexing thereof, the master form instrument provided for in subdivision one of this section shall be deemed a conveyance.

**§ 291-e. Exceptions, reservations and recitals referring to unrecorded conveyances and contracts for sale of real property.** 1. This section applies to any language, contained in a conveyance of real property in this state, which (a) excepts or reserves a part or any or all parts of the described premises which have been or may have been previously conveyed, or previously contracted to be sold or exchanged, by the grantor or by a previous owner, or (b) otherwise indicates that the premises or some part or parts thereof have been or may have been previously conveyed or that a contract has been or may have been previously made for the sale or exchange of all or some part or parts thereof, or (c) indicates that only such part of the premises described is intended to be conveyed as the grantor, or a previous owner, has not previously conveyed or has not previously contracted to sell or exchange, and, in any of the cases described in this subdivision, fails to identify the premises previously conveyed or contracted to be sold or exchanged in any other manner than by indicating that a conveyance or contract has previously been made or indicating the fact or possibility that one or more conveyances or contracts have been or may have been previously made.

2. An exception, reservation or recital described in subdivision one of this section is (a) void as against a subsequent purchaser in good

faith and for a valuable consideration, who has no other notice of the identity of the premises to which it refers, and (b) ineffective to give notice to such subsequent purchaser of the previous conveyance or contract so referred to or create any duty of inquiry with respect thereto, unless, in either case, such previous conveyance or contract is sufficient to identify the premises to which the exception, reservation or recital refers and is recorded as provided in this article before the recording of the instrument by which the subsequent purchaser acquires his estate or interest.

3. For the purposes of this section,

(a) "Purchaser" includes a person who purchases or acquires by exchange or contracts to purchase or acquire by exchange the same premises or any portion thereof or estate or interest therein, or acquires by assignment the rent to accrue from tenancies or subtenancies thereof in existence at the time of the assignment.

(b) Contract for sale includes an option to purchase or lease.

(c) A lease, or a contract or option, is recorded when a memorandum thereof is recorded as provided in section two hundred ninety-one-c or section two hundred ninety-four of this chapter.

(d) The recording of a contract or option, or memorandum thereof, pursuant to section two hundred ninety-four of this chapter, is effective up to and including the thirtieth day after the day fixed therein for the conveyance of title, or the thirtieth day after the last day fixed therein for the exercise of the option, provided, that if a written declaration of the exercise of the option has been recorded as provided in subdivision seven of section two hundred ninety-four, the recording of the option is effective to and including the thirtieth day after the last day fixed pursuant to the option agreement for the conveyance of title or the execution and delivery of the lease, as the case may be. An agreement extending the time for the conveyance of title, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded, and the recording shall be effective up to and including the thirtieth day after the day fixed by such agreement for the conveyance of title.

4. This section shall not impair the effect of an exception,

reservation or recital to limit any warranty of the grantor in the conveyance in which it is contained.

5. This section shall apply where the instrument by which the subsequent purchaser acquires his estate or interest is executed on or after September first, nineteen hundred sixty, except that where the conveyance containing an exception, reservation or recital described in subdivision one of this section was executed before September first, nineteen hundred sixty, this section shall apply only where the instrument by which the subsequent purchaser acquires his estate or interest is executed on or after September first, nineteen hundred sixty-one.

**§ 291-f. Rights where recorded mortgage restricts landlord's action in respect to leases.** An agreement, referring to this section, contained in a recorded mortgage of real property, or in a recorded instrument relating to such mortgage, restricting the right or power, as against the holder of the mortgage without his consent, of the owner of the mortgaged real property to cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases of the mortgaged real property in existence at the time of the agreement, or to accept prepayments of instalments of rent to become due thereunder, shall become binding on a tenant or subtenant after written notice of such agreement, accompanied by a copy of the text thereof; and any such cancellation, abridgement, modification or prepayment made by such tenant or subtenant, after such written notice, without the consent of the holder of such mortgage, shall be voidable as against the holder, at his option. The recording on or after July first, nineteen hundred sixty, of any such mortgage or instrument relating thereto shall for the purposes of this section be in itself a sufficient notice of the restrictive agreement to any tenant or subtenant who, after such recording, acquires by assignment, whether the assignment is by instrument or by operation of law, a leasehold estate in existence at the time of the restrictive agreement. This section shall not apply (1) to any tenancy, subtenancy, lease or sublease primarily for the residential purposes of the owner of the leasehold estate, or (2) to any

tenancy, subtenancy, lease or sublease having at the time of the restrictive agreement an unexpired term of less than five years.

**§ 291-g. Recording insurance information.** Every owner of a multiple dwelling, as defined in subdivision two of section two hundred thirty-nine-a of this chapter, which is located in a city with a population in excess of one million persons shall file with the department of housing preservation and development an instrument containing the name or names of the insurer issuing a fire, casualty and/or liability insurance policy for the multiple dwelling, the address of the insurance company and the policy number.

**§ 291-h. Recording of liens by the state.** The state may cause to be filed in the appropriate office of the city register of the city of New York or in the county clerk's office of the county of Richmond or in the county clerk's office of any other county of the state where the real property is situated a notice of lien created by the application for and receipt of state aid provided pursuant to section 41.27 of the mental hygiene law or by the application for and receipt of state aid provided pursuant to section 25.03 of the mental hygiene law and any regulations promulgated in connection therewith. Such notice shall briefly state the recipient of the state aid, conditions of the provision of the state aid and shall contain a general description by metes and bounds or by section, block and lot number of the real property to be acquired thereby.

**§ 291-i. Validity of electronic recording.** 1. Notwithstanding any law to the contrary, (a) where a law, rule or regulation requires, as a condition for recording, that an instrument affecting real property be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by a digitized paper document or an electronic record of such instrument;

(b) where a law, rule or regulation requires, as a condition for recording, that an instrument affecting real property be signed, the

requirement is satisfied, where the instrument exists as a digitized paper document, if the digitized image of a wet signature of the person executing such instrument appears on such digitized paper document or, where the instrument exists as an electronic record, if the instrument is signed by use of an electronic signature;

(c) where a law, rule or regulation requires, as a condition of recording, that an instrument affecting real property or a signature associated with such an instrument be notarized, acknowledged, verified, witnessed or made under oath, the signature requirement is satisfied if: (i) the digitized image of a wet signature of the person authorized to perform that act and any stamp, impression or seal required by law to be included, appears on a digitized paper document of such instrument; or (ii) the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with an electronic record of such instrument, provided, however that no physical or electronic image of a stamp, impression or seal shall be required to accompany such electronic signature.

(d) where a law, rule or regulation requires, as a condition of recording an instrument affecting real property, that any accompanying document be filed therewith, the requirement is satisfied if, in the case of recording by electronic means, a digitized paper document or electronic record of any such accompanying document is presented to the recording officer at the same time as such instrument is recorded by electronic means; provided that each such document or record shall be presented to the recording officer as a separate digitized paper document or electronic record unto itself.

2. A digitized paper document or documents shall be created using a software application or other electronic process which stores an image of the original paper document or documents, and which does not permit additions, deletions or other changes to the digitized image, or if additions, deletions or changes are permitted, a media trail exists which creates an electronic record which makes it possible to identify these changes.

3. Nothing in this section or any other provision of law shall be

construed to require the recording by electronic means of instruments affecting real property. The decision by each county clerk to participate in electronic recording is discretionary. Once a county clerk permits electronic recording, the county shall accept such electronic recordings.

4. Where any recording officer permits instruments affecting real property and any accompanying documents to be presented for recording or filing as digitized paper documents or electronic records pursuant to this section, such recording by electronic means shall be in accordance with the rules and regulations established by the electronic facilitator pursuant to subdivision five of this section.

5. In order to ensure consistency in the standards and practices of, and the technology used by recording officers in the state, the electronic facilitator, as described in section three hundred three of the state technology law, shall, consistent with the provisions of article three of the state technology law, promulgate rules and regulations, and amendments thereto, as appropriate governing the use and acceptance of digitized paper documents, electronic records and electronic signatures under this article. Such authority shall address and be limited to standards requiring adequate information security protection to ensure that electronic records of instruments affecting real property documents are accurate, authentic, adequately preserved for long-term electronic storage and resistant to tampering. When promulgating rules and regulations, the electronic facilitator may take into consideration: (a) the most recent standards promulgated by national standard-setting bodies such as, without limitation, the property records industry association; (b) the views of interested persons and governmental officials and entities, including but not limited to recording officers and representatives of the state title, legal and banking industries; and (c) the needs of counties of varying size, population, and resources.

6. Nothing contained in this section shall be construed to authorize a recording officer to furnish digitized paper documents of the reports required by section five hundred seventy-four of the real property tax



law. Such reports shall be furnished as paper documents with the requisite notations thereon, except where the state board of real property services has agreed to accept data submissions in lieu thereof or has provided for the electronic transmission of such data pursuant to law.

**§ 291-j. Recording of declarations by the New York state energy research and development authority.** Pursuant to subdivision five of section eighteen hundred ninety-six of the public authorities law, the New York state energy research and development authority shall record or cause to be recorded, in the office of the appropriate recording officer, a declaration evidencing the existence of a loan as described therein and, upon satisfaction of such loan, such authority shall file a declaration of repayment and full satisfaction of the loan repayment utility meter charge. The recording officer shall record such declarations in the same book, provided under section three hundred fifteen of the real property law, in which such recording officer records deeds.

**§ 292. By whom conveyance must be acknowledged or proved.** Except as otherwise provided by this article, such acknowledgment can be made only by the person who executed the conveyance, and such proof can be made only by some other person, who was a witness of its execution, and at the same time subscribed his name to the conveyance as a witness.

**§ 292-a. Conveyances by certain corporations executed and acknowledged by attorneys in fact entitled to recordation.** A conveyance of real property, within the state, or of any interest therein, including an instrument discharging or satisfying a lien created by any such conveyance, executed and acknowledged by an attorney in fact of any corporation wholly owned, directly or indirectly, by the United States of America, or any other corporation which has so filed a power of attorney, whether heretofore or hereafter so executed and acknowledged, shall be entitled to recordation under this article on tender of the

lawful fees therefor, even though the corporate seal of such corporation be not annexed or affixed, if the power of attorney pursuant to which such attorney in fact has executed such conveyance, duly acknowledged or proved by such corporation, and certified, as required by section two hundred ninety-four, is filed or recorded in the office of the clerk of the county where the real property, which is the subject of such conveyance, is located.

**§ 293. Recording of conveyances heretofore acknowledged or proved.** A conveyance of real property, within the state, heretofore executed, and heretofore acknowledged or proved, and certified, so as to be entitled to be read in evidence, or recorded, under the laws in force at the time when so acknowledged or proved, but which has not been recorded is entitled to be read in evidence, and recorded in the same manner, and with the like effect, as if this chapter had not been passed. If heretofore executed, but not proved or acknowledged, it may be proved or acknowledged in the same manner as conveyances hereafter executed and with like effect.

**§ 294. Recording executory contracts and powers of attorney.** 1. An executory contract for the sale, purchase or exchange of real property, or an instrument canceling such a contract, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded in the office of the recording officer of any county in which any of the real property to which it relates is situated, and such recording officer shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office.

2. In lieu of the recording of an executory contract, there may be recorded a memorandum thereof, executed by the parties, and acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, containing at least the following information with respect to the contract: the names of the parties to the contract, the time fixed

by the contract for the conveyance of title, and a description of the property. The executory contract shall be deemed duly recorded upon the recording of a memorandum in conformity with this subdivision.

If the purchaser is entitled to possession of the property under the terms of the contract, the memorandum must so state. The provisions of article eleven of the tax law shall not be applicable to an executory contract for the sale, purchase or exchange of real property, or memorandum thereof, unless the contract provides that the purchaser is entitled to possession of the property.

3. Every executory contract for the sale, purchase or exchange of real property not recorded as provided in this section shall be void as against any person who subsequently purchases or acquires by exchange or contracts to purchase or acquire by exchange, the same real property or any portion thereof, or acquires by assignment the rent to accrue therefrom as provided in section two hundred ninety-four-a of the real property law, in good faith and for a valuable consideration, from the same vendor or assignor, his distributees or devisees, and whose conveyance, contract or assignment is first duly recorded, and shall be void as against the lien upon the same real property or any portion thereof arising from payments made upon the execution of or pursuant to the terms of a contract with the same vendor, his distributees or devisees, if such contract is made in good faith and is first duly recorded.

4. (a) Where an executory contract is duly recorded as provided in this section the right of the purchaser to performance of the contract is enforceable against a person who, subsequent to the recording and while the recording is effective as provided in this section, purchases or acquires by exchange the same real property or any part thereof, from the same vendor, his distributees or devisees.

(b) If the recorded contract provides for payments made or to be made by the purchaser before conveyance of title, including payments made at the execution of the contract, or if the recorded memorandum states that the contract so provides, the lien of the purchaser arising from any such payments actually made is enforceable against any such person

described in paragraph (a) to the extent of such payments, not exceeding the total amount specified in the recorded contract or memorandum, and is so enforceable without regard to any notice of the estate or interest of such person.

5. The recording of the executory contract or memorandum shall be effective for the purposes of subdivision four up to and including the thirtieth day after the day fixed by the contract for the conveyance of title. An agreement extending the time for the conveyance of title, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded, and the recording shall be effective up to and including the thirtieth day after the day fixed by such agreement for the conveyance of title.

6. An executory contract or memorandum thereof shall not be deemed recorded as provided in this section if it is recorded more than one year previous to the date on which the vendor acquired title to the real property to which the contract relates.

An executory contract recorded before the date when the vendor acquired title shall not be deemed recorded as provided in this section as against a person to whom the real property is conveyed or contracted to be sold or exchanged, by a conveyance or contract which is part of the transaction in which the vendor acquired title.

7. An option to purchase or lease real property shall be deemed an executory contract within the meaning of this section, except that the recording of the option agreement shall be effective only up to and including the thirtieth day after the last day fixed by the agreement for the exercise of the option. If the option is exercised in accordance with the terms of the option agreement, the optionee may extend the effectiveness of the recording of the option agreement to and including the thirtieth day after the day fixed pursuant to the option agreement for the conveyance of title or the execution and delivery of the lease, as the case may be, by recording, within thirty days after the last day fixed by the option agreement for the exercise of the option, a written declaration executed by the optionor and the optionee, or by the

optionee alone, and acknowledged or proved and certified in the manner to entitle a conveyance to be recorded, stating that the said option has been duly exercised and setting forth the day fixed pursuant to the option agreement for the conveyance of title or the execution and delivery of the lease, as the case may be. In the event that such declaration is executed by the optionee alone, it shall be verified by the optionee and shall also set forth the time and manner in which such option was exercised and, if the last day for the conveyance of title or the execution and delivery of the lease is not specified in the option agreement, the extension of the effectiveness of the recording of the option agreement shall in no event exceed ninety days from the date of the recording of such declaration.

8. (a) After the recording of an executory contract or memorandum has ceased to be effective as provided in subdivision five, or the recording of an option to purchase or lease real property has ceased to be effective as provided in subdivision seven, such executory contract, memorandum or option shall be (1) void as against a subsequent purchaser in good faith and for a valuable consideration, who has no other notice of an estate or interest of the contract vendee or optionee in the premises to which such contract, memorandum or option refers, or of any claim thereof, and (2) ineffective to give notice to such subsequent purchaser of any estate or interest of the contract vendee or optionee in such premises, or of any claim thereof, or to create any duty of inquiry with respect thereto.

(b) For the purposes of this subdivision, "purchaser" includes a person who purchases or acquires by exchange or contracts to purchase or acquire by exchange the same premises or any portion thereof or estate or interest therein, or acquires by assignment the rent to accrue from tenancies or subtenancies thereof in existence at the time of the assignment.

**§ 294-a. Recording assignments of rent.** 1. An assignment of rent to accrue from tenancies, subtenancies, leases or subleases of real property, irrespective of the term of their duration, in existence at the time of the assignment, made, subscribed and acknowledged or proved,

and certified in a manner to entitle a conveyance to be recorded may be recorded in the office of the recording officer of any county in which any of the real property to which the tenancies, subtenancies, leases or subleases relate is situated, and such recording officer shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office.

2. Every such assignment not so recorded shall be void as against any person who subsequently purchases or acquires by exchange, or contracts to purchase or acquire by exchange, the same real property, or any portion thereof, or acquires by assignment the rent to accrue therefrom as provided in this section, in good faith and for a valuable consideration, from the same vendor or assignor, his distributees or devisees, and whose conveyance, contract or assignment is first duly recorded.

3. The recording of such assignment shall not be in itself a notice of the assignment to a lessee or tenant, his distributees or devisees, so as to invalidate a payment of rent made by the lessee or tenant, his distributees or devisees, to the assignor or a prior assignee of the rent.

**§ 294-b. Recording brokers affidavit of entitlement to commission for completed brokerage services.** 1. A duly licensed real estate broker who asserts that he or she has produced a person who was ready, able and willing to purchase or lease all or any part of a parcel of real property or any interest in a cooperative apartment pursuant to a written or oral contract of brokerage employment between the owner of said parcel of real property or interest in a cooperative apartment and such broker, and who asserts that such person or a party acting on his or her behalf subsequently contracted to purchase or lease, or did purchase or lease such real property or any part thereof, or any interest in a cooperative apartment and who asserts that he or she is entitled to a commission pursuant to such written or oral contract, may file an affidavit of entitlement to commission for completed brokerage services in the office of the recording officer of any county in which

any of the real property is situated.

2. Such affidavit shall include: (i) the name and license number of the broker claiming the commission; (ii) the name of the seller or person responsible for commission; (iii) the name of the person authorizing the sale on behalf of the seller, if any, and the date of such authorization; (iv) a copy of the written agreement, if any; (v) a description of the real property or interest in the cooperative apartment involved; (vi) the amount of commission claimed; (vii) a description of the brokerage services performed; and (viii) the dates thereof. Recording such affidavit shall not invalidate any transfer of real property or lease thereof. Such affidavit shall not be deemed to create a lien and shall be discharged one year after filing.

3. Upon receipt by the county clerk of a broker's affidavit of entitlement to commission for completed brokerage services for the purpose of recording, entering and indexing, the clerk shall record such affidavit in the lien docket and shall note thereon that such notice does not constitute a lien nor shall it invalidate any transfer or lease. In payment for said services the county clerk shall be entitled to receive a fee equivalent to that received for recording a deed and pages thereof.

4. (a) Within five business days after filing the affidavit of entitlement, the broker shall serve a copy of such affidavit, along with the fee required pursuant to paragraph (c) of subdivision five of this section, upon the seller by registered or certified mail, return receipt requested or by personal delivery, to the address set forth in the written contract of brokerage employment. If the delivery of the deed or delivery of the stock certificate and/or proprietary lease will occur in five business days or less from the filing of the affidavit of entitlement, then the broker shall personally deliver a copy of the affidavit of entitlement to the seller. Where there is more than one seller, service upon one seller shall be deemed sufficient to meet the requirements of this paragraph. Failure to serve the affidavit of entitlement upon the seller pursuant to this paragraph shall cause a forfeiture of the broker's rights under subdivision five of this

section. In the event the seller fails to deposit any monies pursuant to paragraph (a) of subdivision five of this section, the seller shall immediately return the fee provided by the broker.

(b) If the seller is represented by an attorney and has provided the attorney's contact information to the broker prior to the filing of the affidavit of entitlement, the broker shall provide a copy of the affidavit of entitlement to the seller's attorney via mail, facsimile, e-mail, personal delivery or any other agreed upon method within five business days of the filing of the affidavit of entitlement. Failure to deliver a copy of the affidavit of entitlement to the seller's attorney pursuant to this paragraph shall not cause a forfeiture of the brokers rights under subdivision five of this section.

5. (a) Whenever an affidavit of entitlement by a duly licensed real estate broker, which includes a written contract of brokerage employment containing the notices set forth in paragraph (j) of this subdivision, has been recorded pursuant to this section prior to the delivery of a deed in connection with a sale of all or any part of a parcel of real property, or delivery of the stock certificate and/or proprietary lease in connection with the sale of a cooperative apartment, and the broker does not receive the compensation called for under the terms of such written contract at or prior to the delivery of the deed or delivery of the stock certificate and/or proprietary lease, the lesser of the net proceeds of the sale or the amount of the unpaid portion of the compensation agreed to in such written contract shall be deposited by the seller, at the time of delivery of the deed or delivery of the stock certificate and/or proprietary lease, with the recording officer in whose office such affidavit of entitlement had been recorded.

(b) In the event multiple affidavits of entitlement are filed in connection with a sale of real property or any interest in a cooperative apartment pursuant to this section, the seller shall be obligated to deposit an amount equal to the lesser of the net proceeds of the sale or the greatest amount of the unpaid portion of the compensation agreed to in the written contracts of brokerage employment attached to the multiple affidavits of entitlement.

(c) Upon deposit of any monies pursuant to paragraph (a) of this subdivision, the recording officers shall be entitled to receive a fee



of twenty-five dollars, which shall be paid by the real estate broker. The real estate broker shall make the twenty-five dollar fee payable to the recording officer in such form of payment that is accepted by the recording officer.

(d) The monies deposited with the recording officer pursuant to this subdivision shall be held pursuant to subdivision (b) of section twenty-six hundred one of the civil practice law and rules until the rights of the seller and broker to such monies have been determined by order of a court of competent jurisdiction as provided in this paragraph. All deposits of money pursuant to this subdivision shall be deemed paid into court and shall be subject to the provisions of article twenty-six of the civil practice law and rules, except as otherwise provided in this subdivision. An order for the payment of such monies to the broker or seller may be made in any action or proceeding determining or declaring the entitlement, if any, of the broker to compensation under the written contract of brokerage employment recorded with the affidavit of entitlement or as otherwise provided in rule twenty-six hundred six of the civil practice law and rules or, whether or not an action or proceeding has been commenced, may be based upon a stipulation signed by the seller and the broker. Any application for an order pursuant to this paragraph made by the broker or the seller shall be on motion with notice to the other party, except that an application based upon a stipulation signed by the seller and the broker may be submitted without notice if the stipulation so provides.

(e) If neither the broker nor the seller commences an action or proceeding described in paragraph (d) of this subdivision within sixty days from the day of deposit of monies pursuant to paragraph (a) of this subdivision, which time limit shall not be extended, the seller, upon petition, shall be entitled to an order directing the payment to the seller of such monies out of court, including any accrued interest thereon, less any fees to which any public officer may be entitled pursuant to law, but such an order shall not be deemed to determine the broker's claim for a commission.

(f) Notwithstanding any other provision of law to the contrary, upon the seller making the deposit required by paragraph (a) of this subdivision, any action or proceeding based upon the contractual obligation to pay a commission under the contract of brokerage of

employment shall be commenced by the broker within six months of the deposit of the monies pursuant to paragraph (a) of this subdivision.

(g) The obligation to deposit monies pursuant to this subdivision or the seller's failure to do so shall not constitute or be deemed to create a lien or encumbrance against any real property. Any violation of this subdivision shall not invalidate any transfer of real property.

(h) In any action or proceeding commenced pursuant to this subdivision when the seller has not made the deposit required by this subdivision, and it is determined by a court that the broker is entitled to compensation pursuant to the written contract of brokerage employment, the broker shall be awarded costs, including the fee paid pursuant to paragraph (c) of this subdivision, and reasonable attorneys' fees.

(i) Nothing in this subdivision shall be construed to prohibit a broker from waiving a seller's obligation to deposit money under this subdivision, provided such waiver is set forth in an instrument signed by or on behalf of the broker. Such instrument may be a written contract of brokerage employment or any other instrument.

(j) The provisions of this subdivision shall only apply when the written contract of brokerage employment contains the following statement to the seller in clear and conspicuous bold face type:

"At the time of closing, you may be required to deposit the broker's commission with the county clerk in the event that you do not pay the broker his or her commission as set forth herein. Your obligation to deposit the broker's commission with the county clerk may be waived by the broker."

(k) The provisions of this subdivision shall only apply to real property improved by a one to four family dwelling and to individual condominium units and individual cooperative apartments where the one to four family dwelling, condominium unit or cooperative apartment is used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons.

**§ 295. Recording of letters patent.** Letters patent, issued under the great seal of the state, granting real property, may be recorded in the county where such property is situated, in the same manner and with like effect, as a conveyance duly acknowledged or proved and certified so as

to entitle it to be recorded.

**§ 296. Recording copies of instruments which are in secretary of state's office.** A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate in the office of any recording officer of the state.

**§ 297. Certified copies may be recorded.** A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties, certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument authenticated as required by section three hundred and ten of this chapter were so recorded.

**§ 297-a. Recording of certified copies of bankruptcy papers; constructive notice.** 1. A copy of a petition in bankruptcy with the schedules omitted, of a decree of adjudication of bankruptcy and of an order approving the bond of a trustee in bankruptcy, or any of them, in each case certified in accordance with the laws of the United States applicable at the time of certification, may be recorded in the office of the recording officer of any county, irrespective of the location of the United States district court having jurisdiction of the bankruptcy proceeding or in which such petition was filed or order of adjudication or approval of the trustee's bond was made.

2. (a) Each paper, together with the certification thereof, recorded

pursuant to this section shall, for the purposes of recording, transcription, reproduction and indexing, be regarded as a deed by the bankrupt or alleged bankrupt to the trustee in bankruptcy named therein or, if no trustee be named, to the trustee appointed, or thereafter to be appointed.

(b) In counties where, under certain circumstances and pursuant to law, deeds or other instruments are recordable among miscellaneous instruments, or indexed in the index of such instruments, each of the papers shall be similarly recorded or indexed. In other counties or cases, it shall be recorded or indexed as a deed.

(c) Where the paper so recorded does not reveal the name of the trustee in bankruptcy, the recording officer shall substitute, for the name of the grantee in the index or indices in his office where the name of the grantee in a deed is required to be entered, the words "Trustee in bankruptcy"; but any irregularity or failure of the recording officer in compliance with this paragraph shall not invalidate the record thereof.

(d) The recording of the paper and the certification thereof shall have the same effect as constructive notice as if it were a conveyance to a named grantee, duly acknowledged or proved and recorded.

(e) The petition, decree or order referred to in subdivision 1 of this section may be one either heretofore or hereafter filed or made pursuant to any law of the United States relating to bankruptcy.

**§ 297-b. Recording of certified copies of judgments affecting real property.** When a judgment, final order or decree is rendered by a New York state court of record or a United States district court affecting the title to or possession, use or enjoyment of real property, a copy of such judgment, order or decree, duly certified by the clerk of the court wherein said judgment was rendered, may be recorded in the office of the recording officer of the county in which such property is situated, in the same manner as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded, and such recording officer shall upon request and on tender of the lawful fees therefor, record the same in his said office.

For purposes of recording and indexing such judgment, order or decree, the prevailing party or parties named therein shall be deemed grantees and all other persons named therein shall be deemed grantors.

**§ 298. Acknowledgments and proofs within the state.** The acknowledgment or proof, within this state, of a conveyance of real property situate in this state may be made: 1. At any place within the state, before (a) a justice of the supreme court; (b) an official examiner of title; (c) an official referee; or (d) a notary public.

2. Within the district wherein such officer is authorized to perform official duties, before (a) a judge or clerk of any court of record; (b) a commissioner of deeds outside of the city of New York, or a commissioner of deeds of the city of New York within the five counties comprising the city of New York; (c) the mayor or recorder of a city; (d) a surrogate, special surrogate, or special county judge; or (e) the county clerk or other recording officer of a county.

3. Before a justice of the peace, town council member, village police justice or a judge of any court of inferior local jurisdiction, anywhere within the county containing the town, village or city in which they are authorized to perform official duties.

**§ 299. Acknowledgments and proofs without the state, but within the United States or any territory, possession, or dependency thereof.** 1. The acknowledgment or proof of a conveyance of real property situate in this state, if made without the state but within the United States, within any territory, possession, or dependency of the United States, or within any place over which the United States, at the time when such acknowledgment or proof is taken, has or exercises jurisdiction, sovereignty, control, or a protectorate, may be made before any of the following officers acting within his territorial jurisdiction or within that of the court of which he is an officer:

(a) A judge or other presiding officer of any court having a seal, or the clerk or other certifying officer thereof.

(b) A mayor or other chief civil officer of any city or other political subdivision.

(c) A notary public.

(d) A commissioner of deeds appointed pursuant to the laws of this state to take acknowledgments or proofs without this state.

(e) Any person authorized, by the laws of the state, District of Columbia, territory, possession, dependency, or other place where the acknowledgment or proof is made, to take the acknowledgment or proof of deeds to be recorded therein.

2. The signature and title of an officer listed in subdivision one of this section who performs a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

3. The signature and title of a notarial officer described in paragraph (a), (c) or (d) of subdivision one of this section conclusively establish the authority of the officer to perform the acknowledgment or proof of a conveyance.

**§ 299-a. Acknowledgment to conform to law of New York or of place where taken; certificate of conformity.** 1. An acknowledgment or proof made pursuant to the provisions of section two hundred ninety-nine of this article may be taken in the manner prescribed either by the laws of the state of New York or by the laws of the state, District of Columbia, territory, possession, dependency, or other place where the acknowledgment or proof is taken. Except as provided in subdivision three of this section acknowledgment or proof, if taken in the manner prescribed by such state, District of Columbia, territory, possession, dependency, or other place, must be accompanied by a certificate to the effect that it conforms with such laws. Such certificate may be made by:

(a) An attorney-at-law admitted to practice in the state of New York, resident in the place where the acknowledgment or proof is taken, or by

(b) An attorney-at-law admitted to practice in the state, District of Columbia, territory, possession, dependency, or other place where the acknowledgment or proof is taken, or by

(c) Any other person deemed qualified by any court of the state of New York, if, in any action, proceeding, or other matter pending before such court, it be necessary to determine that such acknowledgment or proof conforms with the laws of such state, District of Columbia, territory, possession, dependency, or other place; or by the supreme court of the state of New York, on application for such determination. The justice, judge, surrogate, or other presiding judicial officer shall append to the instrument so acknowledged or proved his signed statement that he deemed such person qualified to make such certificate.

2. (a) The signature to such a certificate of conformity shall be presumptively genuine, and the qualification of the person whose name is so signed as a person authorized to make such certificate shall be presumptively established by the recital thereof in the certificate.

(b) The statement of a judicial officer appended to the instrument that he deemed the person making such certificate qualified shall establish the qualification of the person designated therein to make such certificate; and the recording, filing, registering or use as evidence of the instrument shall not depend on the power of the court to make the statement and proof shall not be required of any action, proceeding, matter or application in which or in connection with which the statement is made.

(c) Except as provided in subdivision four of this section, an instrument so acknowledged or proved is accompanied by the certificate of conformity and the statement of a judicial officer, if any be required, the acknowledgment or proof of the instrument, for the purpose of recording, filing or registering in any recording or filing office in this state or for use as evidence, shall be equivalent to one taken or made in the form prescribed by law for use in this state; and if the acknowledgment or proof is properly authenticated, where authentication is required by law, and if the instrument be otherwise entitled to record, filing or registering, such instrument, together with the acknowledgment or proof, the certificate of conformity and any certificate of authentication or statement of a judicial officer, may be recorded, filed or registered in any recording or filing office in this state, and shall be so recorded, filed or registered upon payment or tender of lawful fees therefor. In fixing the fees of a recording,

filing or registering officer, the certificate of conformity and the statement of a judicial officer appended, if any, shall be treated as certificates of authentication required by other provisions of this chapter.

3. No certificate of conformity may be required for an acknowledgment or proof taken without this state if the acknowledgment or proof is taken by and accompanied by the signature and title of a notarial officer listed in paragraph (a), (c) or (d) of subdivision one of section two hundred ninety-nine of this article.

4. An instrument acknowledged or proved taken by and accompanied by the signature and title of a notarial officer listed in paragraph (a), (c) or (d) of subdivision one of section two hundred ninety-nine of this article and taken in the manner prescribed by the laws of such notarial officer's jurisdiction shall be equivalent to one taken or made in the form prescribed by law for use in this state. Such instrument, if otherwise entitled to record, filing, or registering, may be recorded, filed, or registered in any recording or filing office in this state, and shall be so recorded, filed or registered upon payment or tender of lawful fees therefor.

**§ 300. Acknowledgments and proofs by persons in or with the armed forces of the United States.** The acknowledgment or proof of a conveyance of real property situate in this state, if made by a person enlisted or commissioned in or serving in or with the armed forces of the United States or by a dependent of any such person, wherever located, or by a person attached to or accompanying the armed forces of the United States, whether made within or without the United States, may be made before any officer in active service of the armed forces of the United States authorized to act as a notary in any component part of the armed forces of the United States.

In addition to the requirements of sections three hundred and three, three hundred and four, and three hundred and six of this chapter, the certificate of an acknowledgment or proof taken under this section shall



state (a) the rank and serial number of the officer taking the same, and the command to which he is attached, (b) that the person making such acknowledgment or proof was, at the time of making the same, enlisted or commissioned in or serving in or with the armed forces of the United States or the dependent of such a person, or a person attached to or accompanying the armed forces of the United States, and (c) the serial number of the person who makes, or whose dependent makes the acknowledgment or proof if such person is enlisted or commissioned in the armed forces of the United States. The place where such acknowledgment or proof is taken need not be disclosed.

No authentication of the officer's certificate of acknowledgment or proof shall be required.

Notwithstanding any of the provisions of this section, the acknowledgment or proof of a conveyance of real property situate in this state may also be made as provided in sections two hundred ninety-eight, two hundred ninety-nine, two hundred ninety-nine-a, three hundred one, and three hundred one-a, of this chapter.

**§ 301. Acknowledgments and proofs in foreign countries.** The acknowledgment or proof of a conveyance of real property situate in this state may be made in foreign countries before any of the following officers acting within his territorial jurisdiction or within that of the court of which he is an officer: 1. An ambassador, envoy, minister, charge d'affaires, secretary of legation, consul-general, consul, vice-consul, consular agent, vice-consular agent, or any other diplomatic or consular agent or representative of the United States, appointed or accredited to, and residing within, the country where the acknowledgment or proof is taken.

2. A judge or other presiding officer of any court having a seal, or the clerk or other certifying officer thereof.

3. A mayor or other chief civil officer of any city or other political subdivision.

4. A notary public.

5. A commissioner of deeds appointed pursuant to the laws of this state to take acknowledgments or proofs without this state.

6. A person residing in, or going to, the country where the acknowledgment or proof is to be taken, and specially authorized for that purpose by a commission issued to him under the seal of the supreme court of the state of New York.

7. Any person authorized, by the laws of the country where the acknowledgment or proof is made, to take acknowledgments of conveyances of real estate or to administer oaths in proof of the execution thereof.

**§ 301-a. Acknowledgment to conform to law of New York or of foreign country; certificate of conformity.** 1. An acknowledgment or proof made pursuant to the provisions of section three hundred one of this chapter may be taken in the manner prescribed either by the laws of the state of New York or by the laws of the country where the acknowledgment or proof is taken. The acknowledgment or proof, if taken in the manner prescribed by the laws of such foreign country, must be accompanied by a certificate to the effect that it conforms with such laws. Such certificate may be made by

(a) An attorney-at-law admitted to practice in the state of New York, resident in such foreign country, or by

(b) A consular officer of the United States, resident in such foreign country, under the seal of his office, or by

(c) A consular officer of such foreign country, resident in the state of New York, under the seal of his office, or by

(d) Any other person deemed qualified by any court of the state of New York, if, in any action, proceeding, or other matter pending before such court, it be necessary to determine that such acknowledgment or proof conforms with the laws of such foreign country; or by the supreme court of the state of New York, on application for such determination.

The justice, judge, surrogate, or other presiding judicial officer shall append to the instrument so acknowledged or proved his signed statement that he deemed such person qualified to make such certificate.

2. (a) The signature to such a certificate of conformity shall be presumptively genuine, and the qualification of the person whose name is so signed as a person authorized to make such certificate shall be presumptively established by the recital thereof in the certificate.

(b) The statement of a judicial officer appended to the instrument that he deemed the person making such certificate qualified shall establish the qualification of the person designated therein to make such certificate; and the recording, filing, registering or use as evidence of the instrument shall not depend on the power of the court to make the statement and proof shall not be required of any action, proceeding, matter or application in which or in connection with which the statement is made.

(c) When an instrument so acknowledged or proved is accompanied by the certificate of conformity and the statement of a judicial officer, if any be required, the acknowledgment or proof of the instrument, for the purpose of recording, filing or registering in any recording or filing office in this state or for use as evidence, shall be equivalent to one taken or made in the form prescribed by law for use in this state; and if the acknowledgment or proof is properly authenticated, where authentication is required by law, and if the instrument be otherwise entitled to record, filing or registering, such instrument, together with the acknowledgment or proof, the certificate of conformity and any certificate of authentication or statement of a judicial officer, may be recorded, filed or registered in any recording or filing office in this state, and shall be so recorded, filed or registered upon payment or tender of lawful fees therefor. In fixing the fees of a recording, filing or registering officer, the certificate of conformity and the statement of a judicial officer appended, if any, shall be treated as certificates of authentication required by other provisions of this chapter.

**§ 302. Acknowledgments and proofs by married women.** The acknowledgment

or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried.

**§ 303. Requisites of acknowledgments.** An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence, that the person making it is the person described in and who executed such instrument.

**§ 304. Proof by subscribing witness.** When the execution of a conveyance is proved by a subscribing witness, such witness must state his own place of residence, and if his place of residence is in a city, the street and street number, if any thereof, and that he knew the person described in and who executed the conveyance. The proof must not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to the conveyance.

**§ 305. Compelling witnesses to testify.** On the application of a grantee in a conveyance, his heir or personal representative, or a person claiming under either of them, verified by the oath of the applicant, stating that a witness to the conveyance, residing in the county where the application is made, refuses to appear and testify concerning its execution, and that such conveyance can not be proved without his testimony, any officer authorized to take, within the state, acknowledgment or proof of conveyance of real property may issue a subpoena, requiring such witness to attend and testify before him concerning the execution of the conveyance. A subpoena issued under this section shall be regulated by the civil practice law and rules.

**§ 306. Certificate of acknowledgment or proof.** A person taking the acknowledgement or proof of a conveyance must indorse thereupon or attach thereto, a certificate, signed by himself, stating all the

matters required to be done, known, or proved on the taking of such acknowledgement or proof; together with the name and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

Any conveyance which has heretofore been recorded, or which may hereafter be recorded, shall be deemed to have been duly acknowledged or proved and properly authenticated, when ten years have elapsed since such recording; saving, however, the rights of every purchaser in good faith and for a valuable consideration deriving title from the same vendor or grantor, his heirs or devisees, to the same property or any portion thereof, whose conveyance shall have been duly recorded before the said period of ten years shall have elapsed.

**§ 307. When certificate to state time and place.** When the acknowledgment or proof is taken by a commissioner of deeds appointed pursuant to the laws of this state to take acknowledgments or proofs without this state, whether within or without the United States, the certificate must also state the day on which, and the city or other political subdivision, and the state or country or other place in which, the same was taken.

**§ 308. When certificate must be under seal.** 1. When a certificate of acknowledgment or proof is made without this state, whether within or without the United States, (a) if made by a judge or other presiding officer of a court having a seal, or by the clerk or other certifying officer thereof, such certificate must be under the seal of such court; (b) if made by a commissioner of deeds appointed pursuant to the laws of this state to take acknowledgments or proofs without this state, such certificate must be under his seal of office; (c) if made by any officer specified in subdivision one of section three hundred one of this chapter, such certificate must be under the seal of the legation or consulate to which such officer is attached.

2. Any certificate, required by the provisions of section three

hundred eleven of this chapter to be authenticated, must be so authenticated, in addition to being under seal as provided in this section.

**§ 309. Acknowledgment by corporation and form of certificate.** 1. The acknowledgment of a conveyance or other instrument by a corporation, must be made by an officer or attorney in fact duly appointed, or in case of a dissolved corporation, by an officer, director or attorney in fact duly appointed thereof authorized to execute the same by the board of directors of said corporation.

2. The certificate of acknowledgment must conform substantially with one of the following alternative forms, the blanks being properly filled:

State of New York }ss.:

County of.....}

On the..... day of..... in the year..... before me personally came..... to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in..... (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they is (are) the (president or other officer or director or attorney in fact duly appointed) of the (name of corporation), the corporation described in and which executed the above instrument; that he/she/they know(s) the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he/she/they signed his/her/their name(s) thereto by like authority.

(Signature and office of person taking acknowledgment.)

State of New York }ss.:

County of.....}

On the..... day of..... in the year..... before me personally came..... to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in..... (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they is (are) the (president or other officer or director or attorney in fact duly appointed) of the (name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

(Signature and office of person taking acknowledgment.)

3. Subdivision two of this section shall be inapplicable to the acknowledgment, within this state, of a conveyance or other instrument in respect to real property situate in this state executed on or after the first day of September, nineteen hundred ninety-nine. A certificate of such an acknowledgment shall be subject to the provisions of section three hundred nine-a of this article.

**§ 309-a. Uniform forms of certificates of acknowledgment or proof within this state.** 1. The certificate of an acknowledgment, within this state, of a conveyance or other instrument in respect to real property situate in this state, by a person, must conform substantially with the following form, the blanks being properly filled:

State of New York }ss.:

County of .....}

On the ..... day of ..... in the year ..... before me, the undersigned, personally appeared ....., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of individual taking acknowledgement.)

2. The certificate for a proof of execution by a subscribing witness,

within this state, of a conveyance or other instrument made by any person in respect to real property situate in this state, must conform substantially with the following form, the blanks being properly filled:  
State of New York }ss.:

County of .....}

On the ..... day of ..... in the year .... before me, the undersigned, personally appeared ....., the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in .....(if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they know(s).....to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said .....execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto.

(Signature and office of individual taking proof.)

3. A certificate of an acknowledgement or proof taken under section three hundred of this article shall include the additional information required by that section.

4. For the purposes of this section, the term "person" means any corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, attorney in fact, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

**§ 309-b. Uniform forms of certificates of acknowledgement or proof without this state.** 1. The certificate of an acknowledgement, without this state, of a conveyance or other instrument with respect to real property situate in this state, by a person, may conform substantially



with the following form, the blanks being properly filled:

State, District of Columbia, Territory, Possession, or Foreign Country  
 ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of individual taking acknowledgement.)

2. The certificate for a proof of execution by a subscribing witness, without this state, of a conveyance or other instrument made by any person in respect to real property situate in this state, may conform substantially with the following form, the blanks being properly filled:

State, District of Columbia, Territory, Possession, or Foreign Country  
 )ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she resides in \_\_\_\_\_ (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she knows \_\_\_\_\_ to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said \_\_\_\_\_ execute the same; and that said witness at the same time subscribed his/her name as a witness thereto.

(Signature and office of individual taking proof.)

3. No provision of this section shall be construed to:

(a) modify the choice of laws afforded by sections two hundred ninety-nine-a and three hundred one-a of this article pursuant to which an acknowledgement or proof may be taken;

(b) modify any requirement of section three hundred seven of this article;

(c) modify any requirement for a seal imposed by subdivision one of section three hundred eight of this article;

(d) modify any requirement concerning a certificate of authentication imposed by section three hundred eight, three hundred eleven, three hundred twelve, three hundred fourteen, or three hundred eighteen of this article; or

(e) modify any requirement imposed by any provision of this article when the certificate of acknowledgment or proof purports to be taken in the manner prescribed by the laws of another state, the District of Columbia, territory, possession, or foreign country.

4. A certificate of an acknowledgement or proof taken under section three hundred of this article shall include the additional information required by that section.

5. For the purposes of this section, the term "person" means a person as defined in subdivision four of section three hundred nine-a of this article.

6. The inclusion within the body (other than the jurat) of a certificate of acknowledgment or proof made under this section of the city or other political subdivision and the state or country or other place the acknowledgment was taken shall be deemed a non-substantial variance from the form of a certificate authorized by this section.

**§ 310. Authentication of acknowledgments and proofs made within the state.** 1. When a certificate of acknowledgment or proof is made, within this state, by a commissioner of deeds, a justice of the peace, town council member, village police justice, or a judge of any court of inferior local jurisdiction, such certificate does not entitle the conveyance so acknowledged or proved to be read in evidence or recorded in any county of this state except a county in which the officer making such certificate is authorized to act at the time of making the same, unless such certificate is authenticated by a certificate of the clerk of such county; provided, however, that all certificates of acknowledgment or proof, made by a commissioner of deeds of the city of

New York residing in any part therein, shall be authenticated by the clerk of any county within said city, in whose office such commissioner of deeds shall have filed a certificate under the hand and seal of the city clerk of said city, showing the appointment and term of office of such commissioner; and no other certificates shall be required from any other officer to entitle such conveyance to be read in evidence or recorded in any county of this state.

2. Except as provided in this section, no certificate of authentication shall be required to entitle a conveyance to be read in evidence or recorded in this state when acknowledged or proved before any officer designated in section two hundred ninety-eight of this article to take such acknowledgment or proof, nor shall such authentication be required for recording in the office of the city register of the city of New York of such acknowledgment or proof by a commissioner of deeds of the city of New York.

**§ 311. Authentication of acknowledgments and proofs made without the state.** 1. When a certificate of acknowledgment or proof is made, either within or without the United States, by a commissioner of deeds appointed pursuant to the laws of this state to take acknowledgments or proofs without this state, the conveyance so acknowledged or proved is not entitled to be read in evidence or recorded in this state, except as provided in subdivision five of section one hundred eight of the executive law, unless such certificate is authenticated by the certificate of the secretary of state of the state of New York.

2. When a certificate of acknowledgment or proof is made by a notary public in a foreign country other than Canada, the conveyance so acknowledged or proved is not entitled to be read in evidence or recorded in this state unless such certificate is authenticated (a) by the certificate of the clerk or other certifying officer of a court in the district in which such acknowledgment or proof was made, under the seal of such court, or (b) by the certificate of the clerk, register, recorder, or other recording officer of the district in which such acknowledgment or proof was made, or (c) by the certificate of the

officer having charge of the official records of the appointment of such notary, or having a record of the signature of such notary, or (d) by the certificate of a consular officer of the United States resident in such country.

3. When a certificate of acknowledgment or proof, made by the mayor or other chief civil officer of a city or other political subdivision, is not under the seal of such city or other political subdivision, the conveyance so acknowledged or proved is not entitled to be read in evidence or recorded in this state unless such certificate is authenticated by the certificate of the clerk of such city or other political subdivision, or by the certificate of a consular officer of the United States resident in the country where the acknowledgment or proof was made.

4. When a certificate of acknowledgment or proof is made pursuant to the provisions of paragraph (e) of subdivision one of section two hundred ninety-nine or of subdivision seven of section three hundred one of this article by an officer or person not elsewhere in either of said sections specifically designated to take acknowledgments or proofs, the conveyance so acknowledged or proved is not entitled to be read in evidence or recorded within this state unless such certificate is authenticated (a) by the certificate of the secretary of state of a state, or of the secretary of a territory, of the United States, or (b) by the certificate of any officer designated in subdivision three of this section to authenticate certificates of acknowledgment or proof, or (c) by the certificate of any officer designated in paragraph (a) or (b) of subdivision two of this section to authenticate certificates of acknowledgment or proof, or (d) by the certificate of the officer having charge of the official records showing that the person taking the acknowledgment or proof is such officer as he purports to be, or having a record of the signature of such person.

5. Except as provided in this section, no certificate of authentication or certificate of conformity shall be required to entitle a conveyance to be read in evidence or recorded in this state when acknowledged or proved before any officer designated in section two

hundred ninety-nine or in section three hundred one of this article to take such acknowledgment or proof.

**§ 312. Contents of certificate of authentication.** 1. An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand.

2. When the certificate of acknowledgment or proof is made by a notary public, without the state but within the United States or within any territory, possession, or dependency of the United States, or within any place over which the United States, at the time when such acknowledgment or proof is taken, has or exercises jurisdiction, sovereignty, control, or a protectorate, the certificate of authentication must state in substance that, at the time when such original certificate purports to have been made, the person whose name is subscribed to the certificate was such officer as he is therein represented to be.

In every other case the certificate of authentication must state in substance (a) that, at the time when such original certificate purports to have been made, the person whose name is subscribed to the original certificate was such officer as he is therein represented to be; (b) that the authenticating officer is acquainted with the handwriting of the officer making the original certificate, or has compared the signature of such officer upon the original certificate with a specimen of his signature filed or deposited in the office of such authenticating officer, or recorded, filed, or deposited, pursuant to law, in any other place, and believes the signature upon the original certificate is genuine; and (c), if the original certificate is required to be under seal, that the authenticating officer has compared the impression of the seal affixed thereto with a specimen impression thereof filed or deposited in his office, or recorded, filed, or deposited, pursuant to law, in any other place, and believes the impression of the seal upon the original certificate is genuine.

3. When such original certificate is made pursuant to paragraph (e) of subdivision one of section two hundred ninety-nine of this article, such

certificate of authentication must also specify that the person making such original certificate, at the time when it purports to have been made, was authorized, by the laws of the state, District of Columbia, territory, possession, dependency, or other place where the acknowledgment or proof was made, to take the acknowledgment or proof of deeds to be recorded therein.

4. When such original certificate is made pursuant to subdivision seven of section three hundred one of this chapter, such certificate of authentication must also specify that the person making such original certificate, at the time when it purports to have been made, was authorized, by the laws of the country where the acknowledgment or proof was made, to take acknowledgments of conveyances of real estate or to administer oaths in proof of the execution thereof.

**§ 313. Notary public.** The term "notary public, " as used in sections two hundred ninety-nine, three hundred one, three hundred eight, and three hundred eleven, of this chapter, includes any person appointed to perform notarial functions.

**§ 313-a. Deputies.** When any officer, designated by the provisions of this article to take acknowledgments or proofs of conveyances of real estate to be read in evidence or recorded in this state, or to authenticate certificates of such acknowledgment or proof, is authorized by law to appoint a deputy, or when such officer has by law a deputy, such deputy may take such acknowledgments or proofs, or may authenticate such certificates.

**§ 314. Recording of conveyances acknowledged or proved without the state, when parties and certifying officer are dead.** When the execution of a conveyance of real property within this state is acknowledged or proved according to the laws of any other state of the United States, and a certificate of the acknowledgment or proof signed by the officer taking it is annexed to or indorsed upon the instrument, if such officer

and the grantor or mortgagor be dead and the death of all of them be proved by affidavit, sworn to in such state before an officer authorized by its laws to administer an oath therein, the conveyance, with the affidavit or affidavits annexed thereto, on being authenticated as required by this section, may be read in evidence and recorded in the same manner, and with like effect, as if the conveyance was acknowledged or proved and certified as required by the laws of this state. To entitle such conveyance and affidavits to be read in evidence, or recorded, a certificate of the clerk, recorder, register or prothonotary of the county in which the deceased officer resided, authenticating his signature, and also certifying that the conveyance is acknowledged or proved in all respects, as required by the laws of such state, must be annexed to the original certificate; and a like certificate of such clerk, recorder, register or prothonotary, authenticating the signature of the officer, before whom the affidavits proving the deaths were taken, must be annexed to such affidavits. The affidavits on being recorded, are presumptive evidence of the matters of fact, required to be stated therein.

**§ 314-a. Proof when witnesses are dead.** When the witnesses to a conveyance, authorized to be recorded, are dead, its execution may be proved before any officer authorized to take within the state the acknowledgment and proof of conveyances, other than a commissioner of deeds, a notary public, or a justice of the peace. The proof of the execution must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor, which evidence, with the name and residence of each witness examined, must be set forth by the officer taking the same, in his certificate of proof. A conveyance so proved, and certified, may be recorded in the proper office, if the original conveyance be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same. If the conveyance affects real property in two or more counties, a certified copy of the conveyance, with the proof and certificates, may be recorded in each of such counties. Such recording and deposit are constructive notice of the execution of such conveyance to all

purchasers of the same real property, or any part thereof, from the same vendor, his heirs or assigns, subsequent to such recording, but do not entitle the conveyance or the record thereof, or a transcript of the record, to be read in evidence.

**§ 315. Recording books.** Different sets of books must be provided by the recording officer of each county, for the recording of deeds and mortgages; in one of which sets he must record all conveyances and other instruments absolute in their terms, which are not intended as mortgages or securities in the nature of mortgages, and all executory contracts for the sale, purchase or exchange of real property, or memoranda thereof, and all instruments canceling or extending such contracts, which conveyances, contracts or instruments are delivered to him, pursuant to law, to be so recorded, and all forms pertaining to commitments of land to continued agricultural production required to be so recorded pursuant to section three hundred six of the agriculture and markets law; and in the other set, such mortgages and securities, and assignments of rent, delivered to him; excepting that if the recording is by microphotography or other photographic process, the recording officer shall not be required to maintain books for such records, but shall provide such filing equipment as he may deem appropriate. The recording officer may, in his discretion, record in consecutive order the instruments received by him, and shall not be required to segregate mortgages from deeds or other classes of instruments.

**§ 316. Indexes.** Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the records in his office. There must be one set of indexes for mortgages or securities in the nature of mortgages and assignments of rent; and another set for conveyances and other instruments not intended as such mortgages or securities, and executory contracts for sale, purchase or exchange of real property, or memoranda thereof, and instruments canceling or extending such contracts. Each set must contain two lists in alphabetical order, one



consisting of the names of the grantors or mortgagors and assignors, followed by the names of their grantees, mortgagees or assignees, and the other list consisting of the names of the grantees or mortgagees and assignees, followed by the names of their grantors, mortgagors, or assignors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record. This section, so far as relates to the preparation of new indexes, shall not apply to a county where the recording officer now has general numerical indexes.

A recording officer who records a conveyance of real property or assignment of rent, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the head, "grantors" or "assignors", the name of the officer executing the conveyance, and of each person whose right, title or interest is so stated to have been sold.

Such indexes shall form a part of the record of each instrument hereafter recorded.

A county clerk may adopt a new indexing system utilizing electro-mechanical, electronic or any other method he deems suitable for maintaining the indexes.

**§ 316-a. Indexing and reindexing conveyances, mortgages and other instruments.** 1. Every instrument affecting real estate or chattels real, situated in the county of Suffolk, which shall be, or which shall have been recorded in the office of the clerk of said county on and after the first day of January, nineteen hundred fifty-one, shall be recorded and indexed pursuant to the provisions of this act.

2. The clerk of the county of Suffolk is hereby directed and required, immediately upon the passage of this act, to cause to be prepared one or more books for each town in the said county of Suffolk for the indexing therein, under the proper town so designated, of all instruments now

required by law to be recorded in the books of conveyances. And said clerk shall also cause to be prepared one or more books for each of said towns in said county for the indexing therein, under the proper town so designated, of all instruments now required by law to be recorded in the books of mortgages. Said indexes shall be deposited in the office of said clerk. They shall be prepared so as to contain the date of recording of each instrument, the names of the parties to each instrument and the liber and page of the record thereof and shall be substantially the forms of the schedules hereto annexed, designated respectively as schedule A, schedule B, schedule C, schedule D, which schedules shall be deemed and taken to be a part of this act. Said books shall be entitled "town indexes of conveyances and mortgages" respectively, and shall indicate the towns to which they respectively relate.

3. It shall be the duty of the said clerk to provide and keep in his office, besides said town indexes, a "daily index, or tickler of conveyances," and a "daily index, or tickler of mortgages," together with books or records in which shall be recorded at length conveyances and mortgages recorded in his office, each of which shall be endorsed in its proper liber number.

4. Every instrument presented to said clerk for record, and requiring to be indexed under this act after the date when this act shall go into operation, in order to entitle the same to be recorded, shall have included therein, in the description of the premises, a designation of the town in said county in which the land affected by the instrument lies, and if it lies in two or more towns of said county the name of each and every town in which the land affected by the instrument is situated. Every assignment of a mortgage, and every agreement respecting a mortgage, to entitle the same to be recorded, shall have included therein a designation of the town in said county in which the land lies which is affected by the mortgage to which such assignment or agreement relates, and if such land lies in two or more towns of said county the name of each and every town in which the land affected by the mortgage to which such assignment or agreement relates. And a record of the instrument shall not be effectual by way of notice to bona fide

purchasers or encumbrancers in respect to any land situated in any town of said county not so designated except as hereinafter provided.

5. Whenever any instrument affecting or relating to land in said county entitled to be recorded and required to be indexed under the provisions of this act shall be presented to the said clerk for record, he shall forthwith endorse thereupon the date, hour and minute of acceptance for recording by him, and enter in the proper index or tickler the name of every party executing said instrument, the date of record thereof and the name of every town designated as aforesaid for the indexing of such instrument and as soon as practicable thereafter shall cause the said instrument to be indexed in the proper book or books of the town indexes under the proper town designated in which such property is situated.

6. The entries made in said indexes in conformity with the requirements of this act shall for the purpose of notice be deemed and taken to be a part of the record of the instrument to which such entries respectively refer and shall be notice to such subsequent purchasers or encumbrancers to the same extent and with the like effect as the recording of such instruments in the office of said clerk now is or may be notice.

7. For the purposes of indexing under the provisions of this act all conveyances, mortgages, or other instruments recorded and indexed or reindexed under the provisions of this act shall be so indexed or reindexed under the proper town book of index indicated in the description hereinbefore provided for, and in an order and sequence known as the "first letter of the last name and first letter of the first named method". The corporate names shall be indexed under the first letter of the first substantive word of the name of the corporation, or in the event of a corporation using the proper name of an individual, such as John Smith, Inc., such index shall be under Smith, John, Inc., as well as John Smith, Inc.

8. In cases where any instrument shall have been recorded without such designation as required by this act, or with erroneous designation, the

said clerk shall, on presentation of proper proof thereof, enter such instrument in the proper index of the proper town, the designation of which shall have been erroneously stated or omitted, and shall at the same time make a note of such entry and the date thereof, in every place in which such instrument may have been erroneously indexed, opposite the entry thereof, and also upon the record of the instrument and upon the instrument itself, if the same be in his possession or produced to him for the purpose, and the record of such instrument shall be constructive notice as to the property in any town not duly designated at the time of such record, only from the time when the same shall be properly indexed.

9. No entry in any book or index in said clerk's office shall be erased so as to be illegible, but in case of any correction, the same shall be made without destroying the original by drawing a line through such original entry, and in such cases the date of such correction, attested by the signature of the clerk or his deputy, shall be entered upon the same page on which such correction is made, on the margin opposite such correction. In the event the indexes are in a microfilm the correction shall be made by a hole being punched in the margin adjacent to the corrected entry. No initials being required in this event.

10. Any person presenting to said clerk an instrument for record, under this act, shall pay to said clerk, in addition to the fees now required by law for recording like instruments, the further sum of one dollar for each additional town beyond one under which said instrument is required to be indexed, and the sum of one dollar for each town shall be payable whenever an instrument already recorded is required to be reindexed under section eight.

11. The provisions of this act shall not apply to the indexing of general assignments, wills, powers of attorney, executory contracts for sale or purchase of land or satisfaction of mortgages, but such instruments shall be filed or recorded as now required by law and when recorded they shall be indexed in separate alphabetical indexes.

12. For the purpose of carrying out the various provisions of this act

the clerk may employ such necessary clerical help as may in his judgment be required.

13. The board of supervisors of said county is hereby authorized and directed to appropriate, for the purpose of carrying out the provisions of this act, all such sums of money as may be necessary therefor.

14. The records and indexes herein provided to be made under the authority of this act shall be deposited in the office of the clerk of said county for public use and the same shall be public records.

15. To the extent that the provisions herein are inconsistent with any general or special law, this act shall be controlling.

16. This act shall be deemed and taken to be a public and not a private act.

17. The county clerk may adopt a new indexing system utilizing electro-mechanical, electronic, or any other method he deems suitable for maintaining the indexes. Such system shall be approved by the county legislature before being implemented.

**§ 316-b. Inactive hazardous waste disposal site registry index.** 1. On and after July first, nineteen hundred ninety-three, each recording officer must provide, at the expense of his county, proper books for making an index of present owners of inactive hazardous waste disposal sites contained in the registry required by section 27-1305 of the environmental conservation law. The index shall contain an alphabetical listing of all owners listed in such annual report completed by the department of environmental conservation, together with a reference, for each present owner, to the page and year of the report where information regarding the inactive hazardous waste site may be located. The index shall also contain the tax map parcel number or the section, block and lot number of the site.

2. (a) No recording officer shall be liable for the failure to comply

with the provisions of this section prior to July first, nineteen hundred ninety-three.

(b) Any entries, index or other listing contained in the books required to be provided by this section prior to July first, nineteen hundred ninety-three shall be null, void and of no effect, nor shall such entries, index or listing be considered to provide actual or constructive notice of inactive hazardous waste disposal sites for any purpose.

3. Each recording officer shall record and index such instruments as may be required to be recorded pursuant to title thirteen or fourteen of article twenty-seven of the environmental conservation law, or title five of article fifty-six of the environmental conservation law, or article twelve of the navigation law, or any regulation promulgated pursuant thereto, or any order or agreement entered into under authority thereof or of any such regulations.

**§ 317. Order of recording.** Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him or her therefor, during business hours maintained by the recording officer, and is considered recorded from the time of such delivery; provided, however, that a digitized paper document or an electronic record shall be considered delivered for purposes of this section at the date and time of receipt indicated on an electronic or other written notification which shall be provided by the recording officer immediately upon receipt of a digitized paper document or electronic record.

**§ 318. Certificate to be recorded.** The certificate of the acknowledgment or proof of the execution of an instrument, and the certificate authenticating the signature or seal of the officer so certifying, or both, if required, must be recorded together with the instrument so acknowledged or proved; otherwise neither the record of the instrument nor a transcript thereof can be read in evidence.

**§ 319. Time of recording.** The recording officer must make an entry in the record, immediately after the copy of every instrument recorded by him, stating the hour, day, month and year, when it was recorded, and must endorse upon every such instrument a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded. If the recording is by microphotography or other photographic process, the recording officer must endorse on the instrument the hour, day, month and year when it was recorded, and the serial number or such other designation as will permit easy reference to the record of such instrument, and he must, in addition, place thereon a certificate stating that the instrument has been recorded in deeds or mortgages as the case may be.

**§ 320. Certain deeds deemed mortgages.** A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time.

**§ 321. Recording discharge of mortgage.** 1. The recording officer shall mark on the record of a mortgage the word "discharged" when there is presented to him a certificate or certificates signed as hereinafter provided, and acknowledged or proved and certified in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid or otherwise satisfied and discharged.

(a) When it does not appear from the record that any interest in the mortgage has been assigned, the discharge shall be signed by the mortgagee or by his personal representative.

(b) When it appears from the record that the mortgage has been assigned, whether or not the assignment was made as collateral security, the discharge shall be signed by the person who appears from the record

to be the last assignee thereof or by his personal representative.

(c) When the mortgage or an assignment thereof names two or more persons as mortgagees or assignees, the discharge shall be signed by the person or persons designated by the mortgage or assignment to receive payment of the mortgage debt or to give full acquittance and discharge therefor. When no such person or persons are designated by the mortgage or assignment, the certificate of discharge shall be signed by all of the persons named, in the mortgage or assignment, as mortgagees or assignees, as the case may be, or by their personal representatives, if the mortgage or assignment (i) specifies their respective interest in terms of a sum of money, or in terms of a fraction or percentage, or (ii) states that such persons shall share equally in, or shall have equal shares in the mortgage, or (iii) describes such persons as tenants in common of the mortgage. When it appears from the record that the mortgage is held by trustees, the certificate of discharge shall be signed by a majority of such trustees or of the survivors of them or by the survivors or survivor of them, unless the instrument creating the trust provides otherwise. Except as required above, the discharge may be signed by any one of the persons named in the mortgage or assignment, as mortgagees or assignees, as the case may be, or by the personal representative of the last survivor of them. If the mortgage or assignment states that the persons named therein as mortgagees or assignees shall hold the mortgage jointly, or describes such persons as joint tenants or tenants by the entirety of the mortgage, or expressly creates a right of survivorship among them, the discharge may be signed by any one of such persons or by the personal representative of the last survivor of them notwithstanding that the mortgage or assignment specifies their respective interests in the mortgage or states that they shall share equally or have equal shares therein.

(d) When the mortgage has been partially assigned, the certificate of discharge shall be signed by all of the persons, or their personal representatives, who in the aggregate are the holders of all portions of the mortgage, including each partial assignee, and the assignor in case any portion of the mortgage has not been assigned; provided, however, that if any partial assignment names two or more persons as assignees, the person or persons who may sign the certificate discharging such partial interest shall be determined in accordance with the provisions



of paragraph (c) of this subdivision.

(e) Whenever two or more persons are required to execute a certificate of discharge as provided in this subdivision, there may be presented in lieu of such certificate, separately executed certificates of discharge as to the respective interests of each in the mortgage so that together the several certificates purport to discharge the entire mortgage.

(f) In place of any of the persons specified in paragraphs (a), (b), (c) or (d) of this subdivision, a certificate of discharge of the mortgage or of any interest therein may be signed (i) by an agent who has been authorized by any such person to demand or receive payment or to give a certificate of discharge of the mortgage by a power of attorney, provided such power of attorney is of record in the office where the mortgage is recorded, and no instrument of revocation has been recorded; or (ii) by any person in whom title to such mortgage or to such interest, or authority to act on behalf of or in exercise of the right or power of the holder of such mortgage or of such interest is vested, in a fiduciary capacity, by virtue of an order or decree of a court having jurisdiction thereof, including, but not limited to, the guardian of a minor, the committee of an incompetent person, or the conservator of a conservatee, whether domestic or foreign, and a receiver in bankruptcy or trustee in bankruptcy. A certificate executed by any person specified in clause (ii) of this paragraph shall recite the name of the court and the venue of the proceedings in which his appointment was made, or the order or decree vesting him with such title or authority was entered.

(g) If the mortgage is stated in the certificate of discharge to have been taken by the noncitizen property custodian under and pursuant to the trading with the enemy act adopted by the United States congress, and approved October sixth, nineteen hundred sixteen, or any act amendatory thereof, or supplemental thereto, such certificate may be executed by such noncitizen property custodian or such person as the president may appoint to give full acquittance and discharge for money or property belonging to an enemy or ally of an enemy which may be conveyed, assigned, delivered or transferred to said noncitizen property custodian, with like effect as if the same had been executed by the mortgagee, or the personal representative or assignee of such mortgagee. Such certificate may be recorded, and such certificate, the record

thereof and a certified copy of such record may be introduced in evidence in all courts of this state.

2. (a) The recording officer shall record and file such certificate or certificates together with the certificates of acknowledgment or proof, and shall note on the record of the mortgage the book and page containing such record of such certificate or certificates or the serial number of such record in the minute of the discharge of such mortgage, made by the officer upon the record thereof. The provisions of this paragraph shall not apply to the county of Suffolk, if the block method of index is in use, or a separate index of satisfactions recorded is maintained.

(b) The recording officer shall also record every other instrument relating to a mortgage which is presented to him, acknowledged or proved in like manner as to entitle a conveyance to be recorded, including certificates purporting to discharge a mortgage or an interest therein which are signed by persons other than those specified in the first subdivision of this section, and also including, but not limited to, assignments, releases, partial discharges, reductions, estoppel certificates, extensions, discharges of partial interest and partial discharges of partial interest, regardless by whom any such instrument has been executed. When any such instrument has been recorded, the recording officer, except in counties where the block method of indexing is in use, or in Suffolk county, if a separate index of said instruments is maintained, shall enter a minute upon the record of the mortgage to which such instrument relates, indicating the nature of such instrument and the book and page where it has been recorded or the serial number of such record.

3. Every certificate presented to the recording officer shall be executed and acknowledged or proved in like manner as to entitle a conveyance to be recorded. If the mortgage has been assigned, in whole or in part, the certificate shall set forth the date of each assignment in the chain of title of the person or persons signing the certificate, the names of the assignor and assignee, the interest assigned, and, if the assignment has been recorded, the book and page where it has been recorded or the serial number of such record; or if the assignment is

being recorded simultaneously with the certificate of discharge, the certificate of discharge shall so state. If the mortgage has not been assigned of record, the certificate shall so state.

No certificate presented to the recording officer shall purport to discharge more than one mortgage, except that one certificate may purport to discharge two or more mortgages where the certificate states that one of such mortgages corrects, perfects or modifies the other mortgage or mortgages, or spreads the lien of the other mortgage or mortgages over the property subject to the lien of such mortgage, or consolidates the lien of the other mortgage or mortgages with the lien of such mortgage to constitute a single lien, or where the certificate states that the liens of the mortgages which the certificate purports to discharge have been so spread or so consolidated by a separate instrument and such instrument has been recorded; provided that in such case the certificate of discharge shall identify and describe each mortgage which it purports to discharge, in a separate paragraph, in the same manner and with the same particularity, and setting forth the same information with respect to assignments thereof, as would be required for a separate certificate discharging that mortgage, and shall also state, in a separate paragraph for each instrument, the date of any such separate instrument by which the liens of the mortgages have been spread or consolidated, the names of the parties thereto, and the book and page where it has been recorded or the serial number of such record. In any such case, except where otherwise expressly provided by law, the fee or fees which the recording officer is entitled to receive for filing and entering a certificate of discharge of a mortgage and examining assignments of such mortgage shall be payable with respect to each mortgage which the certificate purports to discharge, to the same extent as if a separate certificate of discharge had been filed for such mortgage.

4. After the record of the mortgage has been marked with the word "discharged," the recording officer shall make and deliver to any person tendering the lawful fees therefor, his certificate setting forth the names of the mortgagor and the mortgagee, the book and page at which, the date when such mortgage was recorded, and the date on which the

record of such mortgage was so marked, except in a county where recording is done by microphotography or photostating in the manner permitted by law, in which case, after microphotography or photostating, such certificate of discharge and the certificates of its acknowledgment or proof shall, in lieu of filing as provided in paragraph (a) of subdivision two of this section, be returned to the party leaving same for record.

5. The term "personal representative" as used in this section shall include the following:

(a) An executor, administrator or voluntary administrator or one of two or more executors, administrators or voluntary administrators, whether domestic or foreign, including the public administrator, and an ancillary administrator appointed in this state. A certificate executed by any such personal representative shall recite the name of the court and the venue of the proceedings in which his letters testamentary or of administration were issued.

(b) All of the distributees of a person dying intestate for whom no administrator shall have been appointed, provided that two years shall have elapsed since the date of death of such intestate. A certificate executed by such distributees shall recite the date of death of the intestate, his place of residence at the time of death, the fact that he died intestate, that no administrator has been appointed and that they constitute all the distributees of the intestate.

6. The provisions of this section authorizing the recording officer to mark on the record of a mortgage the word "discharged" shall not be deemed to enlarge, diminish or alter the legal effect which a certificate executed by any person or persons, or any payment made by the mortgagor or other transaction with respect to the mortgage or the mortgage debt, would otherwise have upon the rights of the mortgagor or of any person claiming a right or interest in the mortgage, the mortgage debt or the property subject to the mortgage.

7. In a county in which recording is accomplished by microfilm process and in which a block index of mortgages is also maintained it will not be necessary to mark the record of the mortgage "discharged", but it

will be deemed sufficient compliance with this section if there is entered upon the block index of such mortgage the date of filing and the serial number of the certificate effecting the discharge.

7-a. If in any county, recording is accomplished by microfilm process and a separate index for satisfactions recorded is maintained or in which a block index of mortgages is also maintained it will not be necessary to mark the record of the mortgage "discharged", but it will be deemed sufficient compliance with this section if there is entered upon the index of such mortgage the date of filing and the serial number of the certificate effecting the discharge.

8. Certificates of discharge of mortgage and certificates of their acknowledgment or proof heretofore or hereafter recorded and filed, may be returned personally or by mail to the party leaving same for record or destroyed after microfilming or photostating where proper indices are maintained.

**§ 321-a. Recording discharge of rent assignment.** An assignment of rent to accrue from real property, heretofore recorded, or hereafter recorded pursuant to section two hundred ninety-four-a of this chapter, must be discharged upon the record thereof, by the recording officer, upon presentation to him of a certificate signed by the assignee, or by his personal representative or his assignee, and acknowledged or proved and certified in like manner to entitle a conveyance to be recorded, specifying that the obligation secured by the assignment of rent has been satisfied or discharged, or that the assignment of rent is canceled. When so signed and acknowledged or proved and certified, such certificate may be recorded, and such certificate, the record thereof, and a certified copy of such record may be introduced in evidence in all courts of this state. The certificate of discharge, and the certificates of its acknowledgment or proof, must be recorded and filed; and a reference must be made to the book and page containing such record in the minute of the discharge of such assignment of rent, made by the officer upon the record thereof. After such discharge has been recorded the recording officer shall make and deliver to the person in whose

interest such discharge of assignment of rent is executed and recorded, his certificate setting forth the names of the assignor and assignee, the liber and page at which, the time when such assignment of rent was recorded, and the date on which said assignment of rent was satisfied and discharged.

**§ 324. Effect of recording assignment of mortgage.** The recording of an assignment of a mortgage is not in itself a notice of such assignment to a mortgagor, his heirs or personal representatives, or to an owner of the mortgaged premises where such assignment is recorded subsequent to the recording of the conveyance of such premises to such owner, so as to invalidate a payment made by either of them to the mortgagee or to a prior assignee of the mortgage.

**§ 325. Recording of conveyances made by treasurer of Connecticut.** A conveyance of real property, executed at any time since the tenth day of March, eighteen hundred and twenty-five, by the treasurer of the state of Connecticut, acknowledged by him before the secretary of state of such state, and the acknowledgment of which is certified by such secretary of state under the seal of such state, in the manner required for the acknowledgment and certification of a conveyance within this state, may be recorded in the proper office within this state, without further proof thereof.

**§ 326. Revocation to be recorded.** A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

**§ 327. Penalty for using long forms of covenants.** The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in section two hundred and

fifty-three and two hundred and fifty-four of this chapter, at large, instead of the short forms thereof, in said sections contained, the sum of five dollars in addition to the fees chargeable by law for such recording.

**§ 327-a. Modification of restrictive covenants.** 1. As used in this section, the following terms shall have the following meanings:

(a) "Protected class" shall mean any class or category of persons protected from unlawful discriminatory practices under subdivision five of section two hundred ninety-six of the executive law.

(b) "Unlawful restrictions" shall mean any covenants, conditions, or restrictions that unlawfully discriminate on the basis of a protected class in violation of state or federal law.

2. If any unlawful restrictions exist in a document to be recorded, any seller shall:

(a) have such unlawful restrictions removed from such document by submitting a restrictive covenant modification document, which shall be available from the county recorder, either with the deed for recording, or separately;

(b) provide the purchaser or title insurance applicant with a copy of the appropriate restrictive covenant modification document prior to or at the closing of title; and

(c) record the restrictive covenant modification document, however, such seller shall not be required to pay filing fees for the recording of the restrictive covenant modification document.

3. Within one year of the effective date of this section, the board of managers of a condominium, the board of directors of a cooperative apartment corporation or a homeowners association if such real property is subject to the rules and regulations of such an association, shall delete or amend any unlawful restrictions that exist in a recorded document. Such deletions or amendments shall not be subject to the approval of property owners.

4. The restrictive covenant modification document that shall be made

available from the county recorder pursuant to subdivision six of this section shall be indexed in the same manner as any previously recorded document or documents to which the modification document refers and shall reference the original document by book and page number or instrument number and the date of recording.

5. Any person holding an ownership interest in real property that such person believes is subject to an unlawful restriction may record a restrictive covenant modification document pursuant to subdivision two of this section. Such recording shall include a complete copy of the original document containing the unlawful restriction with the unlawful restriction stricken and shall be signed under penalty of law.

6. The county recorder shall make available to the public forms for preparation of a restrictive covenant modification document.

7. If the holder of an ownership interest in property causes to be recorded a restrictive covenant modification document pursuant to this section which contains language not authorized by this section, any liability which derives from such recording shall be the sole responsibility of the holder of the ownership interest of record and the county recorder shall not incur any liability for recording such document.

8. This section shall not apply to any lawful covenants, conditions, or restrictions under state or federal law.

**§ 328. Certain acts not affected.** Nothing contained in this article repeals or affects any act providing for recording and indexing instruments affecting real property in the city of New York, according to city blocks or other limited areas.

**§ 329. Actions to have certain instruments canceled of record.** An owner of real property or of any undivided part thereof or interest therein or an owner of rent to accrue from a tenancy or subtenancy



thereof, may maintain an action to have any recorded instrument in writing relating to such real property or interest therein, other than those required by law to be recorded, or any recorded assignment of rent to accrue from a tenancy or subtenancy of such property or interest therein declared void or invalid, or to have the same canceled of record as to said real property, or his undivided part thereof or interest therein, or as to the rent to accrue therefrom belonging to him.

**§ 329-a. Lapse of oil and gas interest within Allegany state park.** The provisions of this section shall apply to oil and gas interests that were previously severed from interests in lands that are currently owned by the state within Allegany state park.

1. Any interest in oil and gas shall, if unused for a period of twenty years immediately prior to the effective date of this section, be extinguished, and the ownership thereof shall revert to the state, unless a statement of claim is filed within two years after the effective date of this section, in accordance with subdivision five of this section.

2. Such oil and gas interest shall mean the interest which is created by an instrument transferring, either by grant, assignment, or reservation or otherwise, an interest of any kind, in oil and gas located on or beneath lands owned by the state within Allegany state park; provided, however, that such interest shall not include a lease for a fixed term.

3. Such oil and gas interest shall be deemed to be used when: (a) oil and gas is produced; (b) operations are being conducted for injection, withdrawal, storage or disposal of water, gas or other fluid substances; (c) rentals or royalties are being paid by the owner thereof for the purpose of delaying or enjoying the use or exercise of such rights; (d) any such use is being carried out on any tract with which such oil and gas interest is being unitized or pooled for production purposes; or (e) taxes are paid on such oil and gas interest by the owner thereof. Any use pursuant to or authorized by the instrument creating such oil and

gas interest shall be effective to continue in force all rights granted by such instrument.

4. Within thirty days after the effective date of this section, the office of parks, recreation and historic preservation shall cause to be published in three successive issues of three newspapers of general circulation published in the county of Cattaraugus, a notice announcing the enactment of the provisions of this section, including a summary thereof in plain English.

5. The statement of claim provided in subdivision one of this section shall be filed by the owner of such oil and gas interest within two years immediately following the effective date of this section and shall contain the name and address of the owner of such interest and description of the land on or under which such oil and gas interest is located. Such statement of claim shall be accompanied by a copy of the instrument creating or reserving such interest and shall be filed in the office of the clerk of the county of Cattaraugus. Where such an interest is co-owned by more than one party, any one owner may file the statement of claim on behalf of all owners.

6. Failure to file a statement of claim within the time provided in subdivision five of this section shall not cause an oil and gas interest to be extinguished if the owner of such oil and gas interest:

(a) made diligent effort to preserve all of such interests as were not being used, and did within the period provided in subdivision five of this section preserve other oil and gas interests, in said county, by the filing of statements of claim as required by this section; and

(b) failed to preserve such interest through inadvertence; and

(c) filed the statement of claim required by this section within sixty days after publication of notice as provided in subdivision seven of this section or, if no such notice is published, within sixty days after receiving actual knowledge that such oil and gas interest had been extinguished.

7. At any time following the expiration of the period provided in subdivision five of this section, the office of parks, recreation and

historic preservation may give notice of the lapse of any such oil and gas interest by publishing the same in a newspaper of general circulation in the county of Cattaraugus, and, if the address of such oil and gas interest owner is shown of record or can be determined upon reasonable inquiry, by mailing within ten days after such publication a copy of such notice to the owner of such oil and gas interest. The notice shall state the name of the owner of such oil and gas interest as shown of record and a description of the land. If a copy of such notice, together with an affidavit of service thereof, shall be promptly filed in the office of the clerk in the county wherein such land is located, the record thereof shall be prima facie evidence in any legal proceedings that such notice was given.

8. Upon the filing of the statement of claim provided for in subdivision five of this section or the proof of service of notice as provided in subdivision seven of this section in the clerk's office for the county of Cattaraugus, the clerk shall record the same in a book to be kept for that purpose, which shall be known as the "dormant oil and gas interest record," and shall indicate by marginal notation on the instrument creating the original oil and gas interest the filing of the statement of claim or affidavit of publication and service of notice.

9. The filing of the statement of claim provided in this section shall not be evidence of title to or ownership of the interest claimed therein for any purpose other than that provided in this section.

**§ 330. Officers guilty of malfeasance liable for damages.** An officer authorized to take the acknowledgment or proof of a conveyance or other instrument, or to certify such proof or acknowledgment, or to record the same, who is guilty of malfeasance or fraudulent practice in the execution of any duty prescribed by law in relation thereto, is liable in damages to the person injured.

**§ 331. Laws and decrees of foreign countries appointing agents and attorneys and recording of the same.** A copy of a law of a foreign

country or of a decree of the executive power of such a country, appointing an agent or attorney with power to execute and deliver in the name or on behalf of such foreign country, any instrument in writing granting, assigning, surrendering or in any manner affecting any estate or interest of such government in real property within this state, or assigning or discharging any lien or claim of such government upon real property within this state, or of a law or decree revoking such an appointment, if in English, or a translation into English of any such law or decree, if the original thereof be in a language other than English, when certified and recorded as hereinafter provided, shall be presumptive evidence of the authority of such agent or attorney. Certification of such copy or translation shall be made under the great seal of such foreign country and shall be to the effect that the same is a true copy or translation of such law or decree. Such copy or translation of such law or decree, when so certified, may be recorded in the office of the clerk or register of any county of this state, and such copy or translation when so certified and recorded, or a certified copy of the record thereof, shall be received as evidence in any court of this state. The authority conferred under any instrument so recorded shall not be deemed revoked as to property situated in any county except by the recording in such county of a copy or translation of a law or decree to that effect, duly certified in the manner hereinbefore provided. Nothing in this section shall in any way affect the right or power of a foreign country to acquire, hold or convey real property in this state, or be construed to confer any such right or power.

**§ 332. The record of certain conveyances validated.** 1. The record made prior to July first, nineteen hundred fifty-five in the office of the recording officer of any county in this state of any deed, mortgage, assignment or satisfaction piece of a mortgage, or other conveyance or power of attorney, otherwise authorized to be recorded therein, notwithstanding that the certificate of acknowledgment or proof did not set forth the place of residence of a subscribing witness or of a corporate officer or director, or did not set it forth with sufficient particularity, and notwithstanding any other defect in the form of the certificate of acknowledgment or proof or the failure to append thereto

a certificate as to the authority of the person who took the acknowledgment or proof, to take the same, or any defect in the form of such certificate of authority, shall be in all respects as valid and effectual as though such certificate of acknowledgment or proof or certificate of authority had been in proper form or such certificate of authority had been appended to such instrument. Provided only that such person was duly authorized at the time of taking the proof or acknowledgment to take the same in the county where the instrument is recorded or in the place, whether within or without the United States, where the same was taken.

2. All acknowledgments or proofs of conveyance of real property made or taken prior to April tenth, nineteen hundred thirty, before a judge, clerk, deputy clerk or special deputy clerk of a court not of record of this state are confirmed.

3. All acts of the secretary of state of any state or territory of the United States in authenticating a certificate of acknowledgment or proof of a conveyance of real property within the state, performed before October first, nineteen hundred twenty-five, are hereby confirmed, provided that the said certificate of authentication is in the form required by the laws of this state on March twenty-third, nineteen hundred twenty-six or now required by law.

4. If an instrument is recorded hereafter notwithstanding the omission from the certificate of acknowledgment or proof of the street and street number of a subscribing witness or of a corporate officer or director contrary to the provisions of sections three hundred four, three hundred nine, three hundred nine-a and three hundred nine-b of this article, the record of such instrument shall not be invalidated by reason of such omission nor shall the title founded on such instrument be impaired thereby.

5. Nothing in this section shall effect any pending action or proceeding nor the rights of any purchaser in good faith and for a valuable consideration whose conveyance shall have been duly recorded before this section as amended shall take effect.

**§ 332-a. Validation of the record, execution and proof or acknowledgment of certain other instruments.** The record made prior to the day when this act takes effect in the office of the recording officer of any county in this state or, the execution and proof or acknowledgment made prior to the day when this act takes effect, of any deed, mortgage, assignment or satisfaction piece of a mortgage, discharge or release of part of mortgaged premises, or other conveyance or a power of attorney, the acknowledgment of the execution of which by a corporation was made by an officer thereof, or the execution of which was proven by a subscribing witness, such acknowledgment or proof having been taken or made before an officer or person thereto authorized, and the certificate or certification thereof or therefor being sufficient as to form in all respects except that it either did not state the place of residence of such officer of the corporation or of such subscribing witness or did not state it with sufficient particularity, shall be in all respects as valid and effectual as though such certificate or certification had contained a sufficient statement as to such place of residence; but this section shall not affect any action or proceeding pending at the time of the taking effect thereof.

**§ 332-b. The record of certain other conveyances validated.** 1. The record made subsequent to February thirteenth, nineteen hundred forty and prior to the time this section shall take effect in the office of the recording officer of any county in this state of any deed, mortgage, assignment or satisfaction piece of a mortgage, or other conveyance or power of attorney, otherwise authorized to be recorded therein, notwithstanding any defect in the form of the certificate of acknowledgment or proof or the failure to append thereto a certificate as to the authority of the person who took the acknowledgment or proof, to take the same, or any defect in the form of such certificate of authority, shall be in all respects as valid and effectual as though such certificate of acknowledgment or proof or certificate of authority had been in proper form or such certificate of authority had been appended to such instrument. Provided only that such person was duly

authorized at the time of taking the proof or acknowledgment to take the same in the county where the instrument is recorded or in the place, whether within or without the United States, where the same was taken.

2. Nothing in this section shall affect any pending action or proceeding nor the rights of any purchaser in good faith and for a valuable consideration whose conveyance shall have been duly recorded before this section shall take effect.

**§ 333. When conveyances of real property not to be recorded.** 1. After September thirtieth, nineteen hundred and ten, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said September thirtieth, nineteen hundred and ten, unless the residence of the purchaser and if in a city of over five hundred thousand inhabitants according to the last federal census the street number of the residence of the purchaser shall be stated therein and such residence and street number shall be recorded with the conveyance. After May first, nineteen hundred and fourteen, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said first day of May, nineteen hundred and fourteen, if in a city of over two hundred thousand inhabitants according to the last federal census, unless the street number of the residence of the purchaser shall be stated therein and such residence and street number shall be recorded with the conveyance; provided, however, that this section shall not operate to invalidate any conveyance of real property, heretofore or hereafter executed, in which the residence or street number of the purchaser shall not have been stated, nor affect the record of any such conveyance accepted for record and recorded, heretofore or hereafter, contrary to the provisions of this section, nor impair any title founded on such a conveyance or record. After July first, nineteen hundred thirty-five, a recording officer of the county of Nassau shall not record or accept for record any conveyance of real property executed subsequent to said first day of July, nineteen hundred thirty-five, unless the city or incorporated village in which such real property is located be stated therein, and if not located in a city or incorporated village, then the township in

which located shall be stated therein; provided, however, that this section shall not operate to invalidate any conveyance of real property, heretofore or hereafter executed, in which the description fails to designate the city or incorporated village in which the real property is located, nor affect the record of any such conveyance accepted for record and recorded, heretofore or hereafter contrary to the provisions of this section, nor impair any title founded on such a conveyance or record.

1-a. After September first, nineteen hundred forty, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said first day of September, nineteen hundred forty, unless the residence of the seller and of the purchaser, including the street and street number of the residence if any there be, shall be stated therein and such residences, including street and street number if any, shall be recorded with the conveyance; provided, however, that the provisions of this subdivision shall not operate to invalidate any conveyance of real property, executed subsequent to said first day of September, nineteen hundred forty, in which the residence, including street and street number if any, of the seller and of the purchaser shall not have been stated, nor affect the record contrary to the provisions of this subdivision, nor impair any title founded on such a conveyance or record.

1-b. With respect to instruments executed after September first, nineteen hundred forty-four, the terms seller and purchaser, as used in this section, shall include any party to a conveyance of real property.

1-c. With respect to instruments executed after September first, nineteen hundred forty-four, the term conveyance of real property as used in this section shall include any conveyance as defined in subdivision three of section two hundred ninety of the real property law and any instrument entitled to be recorded under section two hundred ninety-four of the real property law.

1-d. After September first, nineteen hundred fifty-five a recording officer shall not record or accept for record any deed transferring



title to real property executed subsequent to September first, nineteen hundred fifty-five, unless the city, town and village in which such real property is located be stated therein; provided, however, that this section shall not operate to invalidate any such deed, heretofore or hereafter executed, in which the description fails to designate the city, town and village in which the real property is located, nor affect the record of any such deed accepted for record and recorded, heretofore or hereafter contrary to the provisions of this section, nor impair any title founded on such deed or record.

1-e. i. A recording officer shall not record or accept for recording any conveyance of real property affecting land in New York state unless accompanied by one of the following:

(1) a receipt issued by the commissioner of taxation and finance pursuant to subdivision (c) of section fourteen hundred twenty-three of the tax law; or

(2) a transfer report form prescribed by the commissioner of taxation and finance, and the fee prescribed pursuant to subdivision three of this section.

ii. Such transfer report form shall contain information as required by such commissioner including:

(1) the mailing address of the new owner;

(2) the tax billing address, if different from the owner's mailing address;

(3) the appropriate tax map designation, if any;

(4) a statement of the full sales price relating thereto;

(5) a statement indicating whether the parcel is located in an agricultural district and, if so, whether a disclosure notice has been provided pursuant to section three hundred thirty-three-c of this article and section three hundred ten of the agriculture and markets law;

(6) a statement indicating whether the property described in such deed is the entire parcel owned by the transferor or transferors;

(7) in the event the parcel conveyed by such deed is a portion of the parcel owned by the transferor or transferors, a statement indicating whether the city, town or village in which such property is situated has

a planning board or other entity empowered to approve subdivisions; and

(8) in the event such planning board or other entity is empowered to approve subdivisions, a statement indicating whether the parcel conveyed by such deed is (a) not subject to such subdivision approval or (b) such subdivision has been approved by the respective city, town or village planning board or other entity empowered to approve subdivisions.

iii. Such transfer report form shall not constitute part of nor be retained with the record of conveyance.

iv. For the purposes of this subdivision:

(1) "Tax billing address" means the address designated by the owner to which tax bills shall be sent.

(2) "Full sales price" means the price actually paid or required to be paid for the real property or interest therein, whether paid or required to be paid by money, property, or any other thing of value, including the cancellation or discharge of an indebtedness or obligation, and the amount of any lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and which remains thereon after the delivery of the deed, but excluding the fair market value of any personal property received by the buyer.

(3) "Qualifying farm property" means property for which the property classification code on the latest final assessment roll, as reported on the transfer report form, is in the agricultural category.

(4) "Qualifying residential property" means property which satisfies at least one of the following conditions:

(a) The property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence, or

(b) The transfer report form indicates that the property is one, two or three family residential property that has been newly constructed on vacant land, or

(c) The transfer report form indicates that the property is a residential condominium.

v. (1) The provisions of this subdivision shall not operate to

invalidate any conveyance of real property where one or more of the items designated as subparagraphs one through eight of paragraph ii of this subdivision, have not been reported or which has been erroneously reported, nor affect the record contrary to the provisions of this subdivision, nor impair any title founded on such conveyance or record.

(2) Subject to the provisions of section fourteen hundred twenty-three of the tax law, such form shall contain an affirmation as to the accuracy of the contents made both by the transferor or transferors and by the transferee or transferees. Provided, however, that if the conveyance of real property occurs as a result of a taking by eminent domain, tax foreclosure, or other involuntary proceeding such affirmation may be made only by either the condemnor, tax district, or other party to whom the property has been conveyed, or by that party's attorney. The affirmations required by this paragraph shall be made in the form and manner prescribed by the commissioner, provided that notwithstanding any provision of law to the contrary, affirmants may be allowed, but shall not be required, to sign such affirmations electronically.

vi. Any deed executed and delivered prior to July first, nineteen hundred ninety-four may nevertheless be recorded in the office of the county clerk providing there is submitted therewith, and in place of such form, a separate statement signed by the transferor or transferors and the transferee or transferees or any person having sufficient knowledge to sign such form which contains the same information required by the commissioner of taxation and finance as set forth in subparagraphs one through four of paragraph ii of this subdivision.

1-f. Each conveyance of real property affecting land in Suffolk county presented to the recording officer of such county for recording shall, in addition to complying with the requirements of subdivision one-e of this section, contain in the body thereof or have endorsed thereon the map designation or designations of the property maps of the real property tax service agency of such county. The recording officer of such county shall not record or accept for record, any conveyance of real property affecting land in such county unless said instrument of conveyance is accompanied by a three dollar certification fee for each

parcel of real property conveyed, to defray the cost of verifying the tax map designation prior to recording. This certification fee shall be payable to the Suffolk county clerk and shall be in addition to any other applicable recording fees or charges. The provisions of this subdivision shall not operate to invalidate any conveyance of such real property on which the appropriate map designation or designations shall not have been stated or which may have been erroneously stated nor affect the record contrary to the provisions of this subdivision, nor impair any title founded on such conveyance or record.

2. A recording officer shall not record or accept for record any conveyance of real property, unless said conveyance in its entirety and the certificate of acknowledgment or proof and the authentication thereof, other than proper names therein which may be in another language provided they are written in English letters or characters, shall be in the English language, or unless such conveyance, certificate of acknowledgment or proof, and the authentication thereof be accompanied by and have attached thereto a translation in the English language duly executed and acknowledged by the person or persons making such conveyance and proved and authenticated, if need be, in the manner required of conveyances for recording in this state, or, unless such conveyance, certificate of acknowledgment or proof, and the authentication thereof be accompanied by and have attached thereto a translation in the English language made by a person duly designated for such purpose by the county judge of the county where it is desired to record such conveyance or a justice of the supreme court and be duly signed, acknowledged and certified under oath or upon affirmation by such person before such judge, to be a true and accurate translation and contain a certification of the designation of such person by such judge.

3. (i) When a recording officer is presented with a conveyance for recording that is accompanied by a receipt issued by the commissioner of taxation and finance pursuant to subdivision (c) of section fourteen hundred twenty-three of the tax law, such recording officer shall be relieved of the responsibility to collect the fee described by this subdivision. He or she shall nonetheless be entitled to the portion of such fee that he or she would otherwise have deducted pursuant to this

subdivision, as provided by subdivision (b) of section fourteen hundred twenty-three of the tax law.

(ii) When a recording officer is presented with a conveyance for recording that is not accompanied by such a receipt, he or she shall impose a fee of two hundred fifty dollars, or in the case of a transfer involving qualifying residential or farm property as defined by paragraph iv of subdivision one-e of this section, a fee of one hundred twenty-five dollars, for every real property transfer reporting form submitted for recording as required under subparagraph two of paragraph i of subdivision one-e of this section. In the city of New York, the recording officer shall impose a fee of one hundred dollars for each real property transfer tax form filed in accordance with chapter twenty-one of title eleven of the administrative code of the city of New York, except where a real property transfer reporting form is also submitted for recording for the transfer as required under subparagraph two of paragraph i of subdivision one-e of this section. The recording officer shall deduct nine dollars from such fee and remit the remainder of the revenue collected to the commissioner of taxation and finance every month for deposit into the general fund. The amount duly deducted by the recording officer shall be retained by the county or by the city of New York.

**§ 333-a. Same; maps to be filed.** No conveyance of real property or other document relating to real property, executed on or after July first, nineteen hundred thirty-one, which contains a recital of or a reference to a map made on or after that date or which has thereunto attached such a map, shall be received for record or recorded by such recording officer unless and until a duplicate of such map, prepared in the same manner as prescribed for the preparation of maps in section three hundred and thirty-four of this chapter, shall be filed in the office of such recording officer and no map, attached to any conveyance or other document relating to real property, shall exceed the standard legal cap size, except that in the county of Putnam the size shall be not less than twenty by twenty inches and not more than thirty-six by forty-eight inches in size and that in the counties of Westchester and Dutchess the size shall not be more than thirty-six by forty-eight

inches. This section shall not apply to the counties of New York, Kings, Queens, Nassau, Suffolk, Bronx, Onondaga, Erie, Monroe or Richmond.

Notwithstanding any of the provisions of this section a conveyance of real property or other document relating to real property shall not be invalid or void for failure to file therewith any map referred to in such conveyance or document.

**§ 333-b. Recording of maps or plot plans.** 1. Notwithstanding any other provisions of this article, a map or plot plan showing property boundaries and data not relating to subdivisions and the filing thereof may be recorded in the same manner as a deed, if the map or plot plan is attached to the conveying instrument. A map or plot plan recorded pursuant to this section shall clearly delineate and locate by dimensions the parcel or interest conveyed in such manner that such parcel or interest can be located on the premises affected. Such map or plot plan may appear on one or more pages as needed, shall be drawn on legal size paper and shall have lettering thereon no smaller than elite type, and all lines shall be legible and of sufficient size for easy reading after photocopying or microfilming. The recording officer may reject or refuse to record any map or plot plan that is unclear, crowded and not suitable for photocopying.

2. If the property is situated in a county maintaining a tax map department, it shall be the duty of the person, corporation or agent who offers such map or plot plan for recording to deliver to and leave with the recording officer a duplicate copy of the map or plot plan. Such duplicate copy shall be transmitted to the tax map department on or before the fifteenth day of each month by the recording officer or by such other officer or agency as may be designated by the county legislative body.

**§ 333-c. Lands in agricultural districts; disclosure.** 1. When any purchase and sales contract is presented for the sale, purchase, or exchange of real property located partially or wholly within an

agricultural district established pursuant to the provisions of article twenty-five-AA of the agriculture and markets law, the prospective grantor shall present to the prospective grantee a disclosure notice which states the following:

"It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and Markets Law."

2. Such disclosure notice shall be signed by the prospective grantor and grantee prior to the sale, purchase or exchange of such real property.

3. Failure of the seller to provide such information to the buyer shall not prevent the recording officer from filing such deed.

**§ 334. Maps to be filed; penalty for nonfiling.** 1. It shall be the duty of every person or corporation who, as owner or agent, subdivides real property into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public, to cause a map thereof, together with a certificate of the licensed land surveyor filing said map attached showing the date of the completion of the survey by said land surveyor and of the making of the map by said land surveyor and the name of the subdivision as stated by the owner, to be filed in the office of the

county clerk or, in any county having a register of deeds, in the office of the register of deeds, of the county where the property is situated prior to the offering of any such lots, plots, blocks or sites for sale; and a duplicate copy of such map shall also be filed in the office of the city, town or village clerk, where the property is situated, and, if situated in a county maintaining a tax map department, a copy shall also be filed with such department, before any such sale.

2. All such maps must be printed upon linen or canvas-backed paper or drawn with a pen and India ink upon tracing cloth or printed on mylar, and must be a minimum of eight and one-half inches by eleven inches, and a maximum of thirty-four inches by forty-four inches in size, except that in the counties of Westchester, Putnam and Rockland all maps presented for filing must be printed or drawn with pen and ink upon tracing cloth or printed on mylar; except that in the counties of Saratoga, Otsego, Dutchess and Monroe, all maps presented for filing in the office of the county clerk must be printed or drawn with pen and India ink upon transparent tracing cloth or printed on mylar or polyester film or be photographic copies on transparent tracing cloth or printed on mylar or polyester film and further, that such maps to be filed in the counties of Saratoga and Otsego shall be not less than eight and one-half inches by fourteen inches nor more than thirty inches by forty-two inches in size; except that in the county of Clinton all maps presented for filing in the office of the county clerk must be printed or drawn with pen and ink upon tracing cloth or canvas-backed paper or printed on mylar and must be either eighteen inches by twenty-four inches or twenty-four inches by thirty-six inches in size, and in the county of Putnam must be not less than twenty inches by twenty inches and not more than thirty-six inches by forty-eight inches in size, and in the counties of Warren, Sullivan and Greene all maps presented for filing must be printed or drawn with pen and India ink upon transparent tracing cloth or polyester film or printed on mylar or be photographic copies on transparent tracing cloth or polyester film or printed on mylar and further, that such maps to be filed in Warren county, must be not less than eight and one-half inches by eleven inches nor more than twenty-two inches by thirty-four inches, in the county of Sullivan must be not less than eight and one-half inches by eleven



inches nor more than twenty-four inches by thirty-six inches and in the county of Greene must be not less than twelve inches by eighteen inches nor more than twenty-four inches by thirty-six inches and in the counties of Westchester and Dutchess must be thirty-six inches by forty-eight inches or less in size, and that such maps to be filed in the county of Monroe shall be in any one of the following sizes only: seventeen inches by twenty-two inches, twenty-two inches by thirty-four inches or thirty-four inches by forty-four inches. Every such subdivision map of property in the towns of Tonawanda, Evans, West Seneca, Cheektowaga, Amherst, Lancaster, Grand Island, Aurora, Concord, Collins, Alden, Newstead, Clarence, Elma, Orchard Park and Hamburg, Erie county, located wholly or partly outside an incorporated village, shall before the filing thereof as herein provided, have attached thereto in writing, the approval of the town board of such town, and every such map of property located wholly or partly in an incorporated village in such town, shall, if located wholly within the village have attached the approval of the board of trustees of the village, and if located partly within a village and partly within one of such towns, have attached the approval of both the town board of the town and the board of trustees of the village.

2-a. Notwithstanding any other provisions in this article, a county clerk may adopt a system to receive and retain maps utilizing an electro-mechanical, electronic or any other method they deem suitable for receiving and retaining maps.

3. Every such map of subdivided land, whether intended as an original subdivision or as an alteration of a prior subdivision, shall have endorsed thereon or annexed thereto at the time such map is offered to be filed a certificate of the county treasurer or of an abstract and title company and a certificate of the tax collecting officer of any county, city, town or village wherein such property or any part thereof is situate, stating that all taxes levied and unpaid and in addition, all taxes which are a lien prior to the time such original or subsequent map is offered to be filed, whether assessed against the entire tract of land or against any lot or other part of such land, have been paid, and a certificate of the county director of real property tax services that

the fee authorized by section five hundred three of the real property tax law, if any, has been paid and the county clerk shall not file any such map without such endorsements or certificates. All of such maps shall be placed and kept, by some suitable method, in consecutive order and shall be consecutively numbered in the order of their filing and shall be indexed under the initial letters of all substantives in the title of the subdivision.

4. A failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision, or of the unsold lots therein, to a penalty to the people of the state of not less than twenty-five dollars and not more than three hundred dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map.

Such penalty shall be recovered in an action brought by the city, town or village in which the subdivision or part thereof is located.

5. In case the lands sought to be shown upon the subdivision map are contiguous to the navigable waters of the state and have frontage on such waters, such map shall show the extension of the littoral property line or lines of such lots, plots, blocks, sites or units from the intersection of said line or lines with the high water mark into said navigable waters of the state. Such map shall show sufficient data to define the location of the riparian/littoral area associated with such lots, plots, blocks, sites or units.

6. All moneys recovered as penalties for the violation of this section by town justices shall be paid to the state comptroller in accordance with the provisions of section twenty-seven of the town law, and moneys so recovered by village justices shall be paid to the state comptroller in accordance with the provisions of section 4-410 of the village law. The state comptroller shall retain one-third of such penalty and transmit one-third to the town or village in which the remitting town or village justice is located to be credited to the general fund of such town or village. The state comptroller shall also send to the county in which the property is located one-third of such penalty to be credited

to the general fund of the county.

7. Except in a city with a population of one million or more, all moneys recovered as penalties for the violation of this section by a city court shall be paid to the chief fiscal officer of the city within thirty days of receipt by the city court. Such chief fiscal officer shall send one-third of such penalty recovered to the state comptroller and one-third of such funds to the general fund of the county. The balance shall be credited to the general fund of the city.

**§ 334-a. Filing of subdivision maps in Nassau county; penalty for non-filing.** 1. It shall be the duty of every person or corporation, excepting church cemetery corporations attached to a religious parish within the county of Nassau, who, as owner or agent of real property situated in the county of Nassau, subdivides the same into lots, plots, blocks, sites, or units with or without streets, for the purpose of offering such lots, plots, blocks, sites, or units for sale to the public, regardless of whether they are offered or conveyed by lot, plot or block designations, units (including shares in a cooperative corporation), or by metes and bounds, prior to the offering of such lots, plots, blocks, sites or units for sale, to file or cause to be filed in the office of the clerk of Nassau county a map or maps of such real property, subject to the following exceptions:

(a) where real property is subdivided into not more than four lots, plots, blocks, sites or units that conform to the applicable planning and zoning regulations or ordinances of the city, town or village, as the case may be, and such subdivision does not involve the laying out of a street or the extension of a previously laid out street, the owner or agent may make written application to the planning commission or planning authorities having jurisdiction for a waiver of the filing requirements hereunder upon forms supplied by the appropriate planning commission. Such a waiver may be granted by such planning commission or planning authorities after determining that such subdivision plat is in compliance with this section and with the zoning and planning regulations of the city, town or village, as the case may be, in which the property is located. The request for a waiver shall be acted upon

without a public hearing within fifteen days after the filing of the application unless such period shall have been extended by consent of the applicant. Where real property is capable of being subdivided into more than four lots, plots, blocks, sites or units that conform to the applicable planning and zoning regulations or ordinances of the city, town or village, as the case may be, and such subdivision does not involve the laying out of a street or the extension of a previously laid out street, the planning commission or planning authorities having jurisdiction may, in the sole discretion of such planning commission or planning authorities deny such waiver application and require the filing in the office of the clerk of Nassau county a map or maps of such real property, subject to appropriate conditions as in the judgment of such planning commission or planning authorities as are requisite in the interest of the public health, safety and general welfare; or

(b) where a subdivision map has been filed prior to January twelfth, nineteen hundred forty-five, and alterations made thereon do not involve any change, or extensions of previously laid out streets and where the only alterations are changes in lot boundaries which are made solely for the purpose of adhering to applicable zoning regulations, it shall not be necessary to file such altered map or obtain a waiver therefor; or

(c) where there is a conversion of an existing structure into units, which structure: (1) was in existence and legally occupied prior to August fifth, nineteen hundred eighty-seven; and (2) where title to said units is to be held in a condominium, cooperative or mixed form of ownership; and (3) the use thereof is in compliance with the zoning and planning regulations of the city, town or village, as the case may be, in which the structure is located.

As used in this section, the term "units" shall include space used or to be used for either residential, commercial, mixed or other use whether title is held in fee simple, a condominium, cooperative, or mixed form of ownership. It shall be unlawful, after a map or maps of such property has been filed, to subdivide said property in a manner other than as shown on said map unless said map has been amended and approved in accordance with the provisions of subdivision six of this section.

2. Such map or maps must be thirty-six inches by forty-eight inches or less in size, drawn with pen and ink upon tracing cloth or printed on mylar upon a scale of not more than one hundred feet to the inch and oriented with the north point at the top of the map. At no time shall the north point vary more than twenty degrees east or west of the perpendicular border.

3. In case the lands sought to be shown upon the map are too extensive to be shown upon a map thirty-six inches by forty-eight inches in size, then a key map thirty-six inches by forty-eight inches in size, drawn upon a reduced scale, but without detail, showing the entire quantity of land, subdivided into units embracing the entire map, shall be made and filed, and each subdivision or unit shall be shown upon a separate map.

4. Said map shall set forth the courses, measurements and adjoining property owners with sufficient definiteness to determine the location of said property, and upon each map shall appear the name of the record owner and the name of the subdivision as stated by the owner and said name shall be approved by the county clerk as a name not so similar to the name appearing upon any filed subdivision map as to deceive or mislead the public as to the identity of such subdivision.

5. Upon each and every of said maps shall appear the name or names of the town or towns, city or cities, incorporated village or incorporated villages in which said lands are located wholly or in part, and endorsed thereon shall be a certificate of the licensed land surveyor who made or caused the said map to be made, certifying that the map or maps were made from an actual survey of the property that was performed by or under the direction of said licensed land surveyor and the date of the completion of the survey. Said certificate shall state that stone or concrete monuments have been set at not less than two corners of every street intersection as indicated on such map or maps and that the lands shown thereon have been monumented in a manner to indicate the distance from the nearest established street, avenue, road or highway, provided, however, that where the planning board or other governmental agency having jurisdiction over the approval of said maps has required the subdivider to deposit with the town or local governing body a

performance bond or bonds to secure the installation and completion of all site improvements, including setting stone or concrete monuments in the streets as aforesaid, and simultaneously with the filing of said map the subdivider files with the county clerk a written certification from the town or local governing body that such bond or bonds have been duly deposited and accepted by the town or local governing body and that said bond or bonds expressly include the setting of stone or concrete monuments as aforesaid, the said surveyor's certificate may state that stone or concrete monuments will be set at not less than two corners of every street intersection as indicated on such map upon completion of the installation of said streets and that the surveyor shall execute and deliver a further written certification of the completion of such monumentation to both the county clerk and the town or local governing body prior to and as a condition for the release of said performance bond or bonds.

6. Before such filing each and every of said maps shall be approved by the planning commission or planning commissions having jurisdiction in the area embraced within said maps in accordance with the regulations of such planning commission or planning commissions and the approval of such planning commission or planning commissions shall be endorsed thereon.

6-a. Before such filing each and every of said maps shall have endorsed thereon the consent to such filing of the mortgagees of such real property.

7. The planning commission or planning authorities having jurisdiction shall not approve any such map until the commissioner of public works of Nassau county has endorsed thereon a statement that he has approved plans for grades of the streets, avenues, roads or highways shown on such map, and the drainage thereof. The commissioner of public works may require that separate and distinct plans for the grading and drainage be prepared. Such plans shall show sufficient data to enable the commissioner of public works to determine the adequacy thereof. He may require any changes in grades or plans which he deems necessary to make such grades or plans conform with any general or comprehensive plan

adopted for the county, or to serve the best interests of the county as a whole. Upon his approval of plans for the grades and drainage for the streets, avenues, roads or highways shown on said map he shall endorse such approval on the plans submitted to him, or as they shall have been revised, and shall file same in his office, and shall file a print thereof in the office of each planning authority having jurisdiction. He shall further endorse on the map submitted to the planning authority for approval a statement that he has approved grades and drainage for the streets, avenues, roads or highways shown thereon, in accordance with detailed plans on file in his office.

8. At the time of filing such map with the county clerk an abstract of title and tax search of all of the property shown on said map together with a certificate of title, certifying to the county of Nassau the name or names of the owner or owners of said property together with all liens thereon, shall be delivered to the county clerk and filed in his office. Such abstract and search shall cover a period of not less than the twenty years immediately preceding the date of the certificate and such certificate shall be made by a title company duly incorporated and authorized to transact business in the state of New York or a person duly authorized to certify titles under the laws of the state of New York. In the event the title to said property has been duly registered pursuant to the provisions of the real property law for the registration of titles to real property, that fact shall be set forth upon the original map together with the number of the certificate of the title so registered and an index of such abstracts and registrations made to clearly indicate the maps to which they refer and the abstract of title and certificate of title above referred to shall not be required. In the case of a tax title, the fee title for a period of at least twenty years prior to the date of the tax sale under which tax title is claimed must be submitted as a part of the abstract.

9. Every such map, whether intended as an original subdivision or as an alteration of a prior subdivision in such county, shall have endorsed thereon at the time such map is offered to be filed the certificates of the county treasurer and the receiver of taxes of each town and city and the tax collecting officer of each incorporated village within which any

part of the tract of land shown on said map or maps is located, or of a title company authorized to transact business in the state of New York stating that all taxes and assessments which are liens prior to the time such original or subsequent map is offered to be filed, whether assessed against the entire tract of land or against any lot or other part of said land, shown on the tax search required to be filed with the county clerk, have been paid.

10. At the time of the filing of such map there shall also be furnished to the county clerk a copy of such map, prepared upon tracing cloth by such process as he shall prescribe, which shall be duly certified by him to be a true copy of the original and which shall be forwarded by him to the board of assessors of the county.

11. The clerk of the county of Nassau upon receiving such maps shall file them by some suitable method in consecutive order and they shall be consecutively numbered in the order of filing and indexed under the initial letters of all substantives in the titles.

12. The fee of the county clerk for receiving and filing each of said separate maps or sheets and indexing the same shall be five dollars, and an additional fee for every block created, which fee shall be the same as the additional fee provided for block indexing by the Nassau county administrative code.

13. Failure to file said map or maps as required by the provisions of this section, shall subject the owner of such lands shown upon such maps, or of unsold lots, plots or units thereon, to a penalty to the people of the state of New York of five hundred dollars for each and every lot, plot or unit thereon subdivided, sold or conveyed by or for such owner prior to the due filing of such map or maps.

14. Whenever at least two years have elapsed since the filing of a map of the subdivision of any tract of land into lots, plots, blocks or sites, with or without opened or proposed roads, the owner of such tract, or of any part thereof having an area equivalent to that of any two or more contiguous lots or an area of not less than one-half acre,



may abandon and cancel the subdivision of the property so owned by recording in the office of the county clerk a written certificate of abandonment, duly executed and acknowledged, which shall contain a description of the property to be abandoned, the complete title or name of the map, the filing date and file number thereof, except that no opened or proposed streets, other than those entirely within the bounds of the property to be abandoned, or the area within such bounds of streets which as laid out on said map come to a dead-end within such bounds, shall be abandoned unless each owner of a lot or interest in the subdivision consents to the abandonment thereof by instrument in writing duly executed, acknowledged and recorded with the certificate of abandonment; provided, however, that whenever at least twenty years have elapsed since the filing of said map, the owner of the property to be abandoned may, without such consent, abandon any streets or portions thereof shown on said map and which are within the bounds of the property to be abandoned if such streets or portions thereof are neither opened, nor public highways, nor used by the public, nor necessary for the use of owners, occupants or any other persons having an interest in any part of the subdivision; but nothing herein shall prevent an owner using or a seller of land from conveying part of a lot, plot or site separately or together with an adjoining lot, plot or site, subject to the provisions of local zoning ordinances. Whenever there is on file more than one map of the property to be abandoned, such property must be abandoned in the manner herein provided as to each of such maps. A copy of each certificate of abandonment must be filed with the assessor and/or board of assessors of each town and village wherein any portion of the property to be abandoned is situated, and the endorsement of approval by each such assessor and/or board of assessors must be endorsed on the original of each certificate presented to the county clerk for recording. An abstract of title to the property to be abandoned covering a period of at least twenty years last past, and a certificate of the county treasurer of Nassau county to the effect that there are no unpaid tax liens against such property, must be submitted to the county clerk and be approved by him at the time the certificate of abandonment and cancellation is offered for recording. Said certificates and abstracts shall be filed in the county clerk's office, a suitable index shall be kept of the same, and notice thereof shall be

endorsed by the recording officer upon the map therein referred to at the time of recording the certificate of abandonment. Where the endorsement of approval of the town or village assessor above referred to includes a recitation to the effect that the municipality has duly adopted an urban renewal plan pursuant to article fifteen of the general municipal law which plan provides for adequate street access to all properties within and adjacent to the planning area, and further that the property to be abandoned is subject to said plan, and its abandonment is required thereunder, the clerk shall accept and record the certificate of abandonment tendered therefor regardless of the area thereof, and notwithstanding that the property to be abandoned is a portion of an opened or proposed street for which the consent to the abandonment thereof required in this subdivision has not been obtained. Upon the abandonment of subdivided property as herein provided such property shall, for all purposes, be regarded as a single tract of land. No abandonment of lot divisions shall be made under this section for the purpose of reviving or making effective any other subdivision of the same tract of land and no map may be reinstated as it was prior to the filing of any abandonment certificate. The fee of the county clerk for such filing and indexing each certificate and abstract therewith shall be ten dollars and shall be paid by the party presenting them for filing. Provided, however, that the Nassau county board of supervisors shall have full authority to abandon any subdivision of property or any portion thereof which the county of Nassau now owns or may hereafter acquire through the sale of tax liens, by causing to be filed with the county clerk of Nassau county, a certificate of abandonment, duly executed by the said county board, without regard to any of the other foregoing requirements of this section. Nothing contained in this section shall be construed to prevent the filing of a new map and certificate of a subdivision of real property in the manner prescribed herein, after, and in the area of, a subdivision or portion thereof abandoned in accordance with the provisions of this section.

**§ 335. Filing of maps and abandonment of subdivisions in Suffolk county; penalty for nonfiling.** 1. It shall be the duty of every person or corporation, excepting church cemetery organizations, attached to a

religious parish within the county of Suffolk, who as owner or agent subdivides real property in Suffolk county into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public, regardless of how they are conveyed, to file or cause to be filed in the office of the county clerk of Suffolk county a map thereof together with a certificate of the surveyor endorsed on the face of such map certifying same to have been made from an actual survey of the property that was performed by or under the direction of said surveyor and the date of the completion of the survey. Said certificate shall state that stone or concrete monuments have been set at not less than two corners of every street intersection as indicated on such map, provided, however, that where the planning board or other governmental agency having jurisdiction over the approval of said maps has required the subdivider to deposit with the town or local governing body a performance bond or bonds to secure the installation and completion of all site improvements, including setting stone or concrete monuments in the streets as aforesaid, and simultaneously with the filing of said map the subdivider files with the county clerk a written certification from the town or local governing body that such bond or bonds have been duly deposited and accepted by the town or local governing body and that said bond or bonds expressly include the setting of stone or concrete monuments as aforesaid, the said surveyor's certificate may state that stone or concrete monuments will be set at not less than two corners of every street intersection as indicated on such map upon completion of the installation of said streets and that the surveyor shall execute and deliver a further written certification of the completion of such monumentation to both the county clerk and the town or local governing body prior to and as a condition for the release of said performance bond or bonds. All lots and blocks on such map shall be numbered consecutively. Said map shall set forth the courses, measurements and adjoining property owners with sufficient definiteness to determine the location of said property and the name of the subdivision as stated by the owner. Said name must differ from any name already filed with the county clerk and must be approved by the county clerk before the acceptance of the map. At the time of the filing of such map there shall also be furnished to the county clerk two copies of such map for each town and village in which

any portion of the mapped property is located. Such copies shall be duly certified by him to be true copies of the original and one certified copy shall be forwarded by said county clerk to the assessor or board of assessors, as the case may be, of each town or village in which any portion of said property is located. At the time of filing such map with the county clerk an abstract of title of all of the property shown on said map which shall cover a period of not less than the twenty years last past the date it is submitted, certified by an attorney and counselor at law of the state of New York, a title company duly incorporated and authorized to transact business in the state of New York or a competent searcher of titles, shall be presented to said county clerk, and be filed in his office, unless the title to said property has been duly registered pursuant to the provisions of the real property law for the registration of titles to real property, in which case this fact shall be set forth upon the original map together with the number of the certificate of the title so registered. An index of such abstracts and registrations shall be maintained to clearly indicate the maps to which they refer. In the case of a tax title, the fee title for a period of at least twenty years prior to the date of the tax sale under which title is claimed must be submitted as a part of the abstract. A key map, made to the scale of six hundred feet to one inch, must appear on all maps submitted and must show one or more monuments in the tract definitely tied to a given point or a monument set at the point of the intersection of the side lines (as prolonged, if there is a curve) of two established highways; said point or monument shall be that which is nearest the proposed subdivision and shall not require a measurement to be made across any portion of an established highway. No re-mapping of subdivided property will be accepted for filing until there has been filed with the county clerk a certificate of abandonment and cancellation of the original map or the portion thereof to be abandoned and cancelled in accordance with the provisions of this act. Before a map will be eligible for filing, a certificate of the county treasurer of Suffolk county or the report of a tax search by a licensed title company must be submitted by the party presenting the map for filing as a part of the abstract of title showing the payment in full of all taxes due and payable at the date of filing. Such maps and abstracts of title shall be filed as aforesaid and a copy of said map filed in the

office of the clerk of each town or village where any portion of said property is located prior to the offering for sale of any lot, plot, block or site thereon. All such maps must be printed or drawn upon tracing cloth or linen or printed on mylar and must be of a standard size of eighteen inches by twenty inches or thirty-six inches by twenty inches and the original of such maps filed in said county clerk's office shall be placed and kept by some suitable method in consecutive order, be consecutively numbered in the order of filing and shall be indexed under the initial letters of all of the substantives in the title of the subdivision. However, he may maintain a record of such maps in a microfilm format provided he supplies facilities for displaying said maps through projection with microfilm to the aforesaid standard sizes. The fee of the county clerk for such filing, certifying and indexing each map and copy thereof, and abstract of title therewith and forwarding copies of said map to the assessors, boards of assessors and clerks of the towns and villages where the property therein described is located, shall be ten dollars and be paid by the party presenting them for filing. Failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision or of the unsold lots therein, to a penalty to the people of the state of New York of two hundred fifty dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map and abstract of title as aforesaid. The requirements as provided for in this section may be applied to the filing of each and every kind of map submitted for filing which is not a subdivision map of real property, at the discretion of the county clerk, and the filing fee of ten dollars shall be paid for the filing of any non-subdivision map so submitted.

2. Every such subdivision map of property in any of the towns of Suffolk county located wholly or partly outside an incorporated village in such towns, shall, before the filing thereof, as hereinbefore provided, have indorsed on the face thereof in writing the approval of the planning board of such towns, or in the towns not having planning boards, the approval of the town board. Likewise, every such subdivision map of property located wholly or partly within an incorporated village, shall before the filing thereof, as hereinbefore provided, have endorsed on the face thereof in writing the approval of the planning board of

such village, or in a village not having a planning board, the approval of the board of trustees. In addition, every such subdivision map of property in any of the towns of the county of Suffolk, whether located wholly or partly, inside or outside, an incorporated village in such towns, shall before the filing thereof, as hereinbefore provided, have endorsed on the face thereof in writing the approval of the county department of health.

3. Whenever at least two years have elapsed since the filing of a map of the subdivision of any tract of land into lots, plots, blocks or sites, with or without opened or proposed roads, the owner of such tract, or of any part thereof, may abandon and cancel the subdivision of the property so owned by recording in the office of the county clerk a written certificate of abandonment, duly executed and acknowledged, which shall contain a description of the property to be abandoned, the complete title or name of the map, the filing date and file number thereof, except that no opened or proposed streets, other than those entirely within the bounds of the property to be abandoned, or the area within such bounds of streets which as laid out on said map come to a dead-end within such bounds, shall be abandoned unless each owner of a lot or interest in the subdivision consents to the abandonment thereof by instrument in writing duly executed, acknowledged and recorded with the certificate of abandonment; provided, however, that whenever at least twenty years have elapsed since the filing of said map, the owner of the property to be abandoned may, without such consent, abandon any streets or portions thereof shown on said map and which are within the bounds of the property to be abandoned if such streets or portions thereof are neither opened, nor public highways, nor used by the public, nor necessary for the use of owners, occupants or any other persons having an interest in any part of the subdivision; but nothing herein shall prevent an owner using or a seller of land from conveying part of a lot, plot or site separately or together with an adjoining lot, plot or site, subject to the provisions of local zoning ordinances. Whenever there is on file more than one map of the property to be abandoned, such property must be abandoned in the manner herein provided as to each of such maps. A copy of each certificate of abandonment must be filed with the assessor and/or board of assessors of each town and village wherein

any portion of the property to be abandoned is situated, and the endorsement of approval by each such assessor and/or board of assessors must be endorsed on the original of each certificate presented to the county clerk for recording. An abstract of title to the property to be abandoned covering a period of at least twenty years last past, and a certificate of the county treasurer of Suffolk county to the effect that there are no unpaid tax liens against such property, must be submitted to the county clerk and be approved by him at the time the certificate of abandonment and cancellation is offered for recording. Said certificates and abstracts shall be filed in the county clerk's office, a suitable index shall be kept of the same, and notice thereof shall be endorsed by the recording officer upon the map therein referred to at the time of recording the certificate of abandonment. Where the endorsement of approval of the town or village assessor above referred to includes a recitation to the effect that the municipality has duly adopted an urban renewal plan pursuant to article fifteen of the general municipal law which plan provides for adequate street access to all properties within and adjacent to the planning area, and further that the property to be abandoned is subject to said plan, and its abandonment is required thereunder, the clerk shall accept and record the certificate of abandonment tendered therefor regardless of the area thereof, and notwithstanding that the property to be abandoned is a portion of an opened or proposed street for which the consent to the abandonment thereof required in this subdivision has not been obtained. Upon the abandonment of subdivided property as herein provided such property shall, for all purposes, be regarded as a single tract of land. No abandonment of lot divisions shall be made under this section for the purpose of reviving or making effective any other subdivision of the same tract of land and no map may be reinstated as it was prior to the filing of any abandonment certificate. The fee of the county clerk for such filing and indexing each certificate and abstract therewith shall be ten dollars and shall be paid by the party presenting them for filing. Provided, however, that the Suffolk county board of supervisors shall have full authority to abandon any subdivision of property or any portion thereof which the county of Suffolk now owns or may hereafter acquire through the sale of tax liens, by causing to be filed with the county clerk of Suffolk county, a certificate of abandonment, duly

executed by the said county board, without regard to any of the other foregoing requirements of this section. Nothing contained in this section shall be construed to prevent the filing of a new map and certificate of a subdivision of real property in the manner prescribed herein, after, and in the area of, a subdivision or portion thereof abandoned in accordance with the provisions of this section.

**§ 335-a. Easements of necessity.** The owner of any lot, plot, block, site or other parcel of real estate being a subdivision or part of a subdivision of any larger parcel or parcels of real property shown upon a map of said parcel or parcels of real property and of its subdivision or subdivisions, filed in the office of the county clerk or of the register of deeds of the county where the property is situated, prior to the sale or conveyance of such lot, plot, block, site or other parcel, or subdivision thereof by the seller thereof, upon which map any road or street is indicated or shown as giving access to or egress from any public road or street to such lot, plot, block, site or other parcel of real estate thereon indicated or to any part thereof, sold or granted after such filing, and the owner of any lot, plot, block, site or other parcel of real estate, the conveyance whereof shall specifically give the right of access to or egress from the same by any private road or street over lands belonging to the maker of such conveyance and which road or street is described in such conveyance, may, when necessary to the enjoyment of the lot, plot, block or site or other parcel of real estate so sold or conveyed and when the same is not bounded by a public road, lay, beneath the roads or streets indicated and shown upon such map or described in such conveyance as giving access to or egress from any public road to such property so sold or conveyed as aforesaid, wires, conduits, and water lines for the purpose of supplying the said property with electric light, telephone, and water service. Such wires, conduits, or lines shall be laid only on condition that the private roads or streets on which the owner has the right of access to or egress from such property shall be restored as nearly as possible to their original condition and that the person or persons entitled to the fee of such private roads or streets or having an easement over the same shall be compensated for actual damage occasioned by the laying of such wires,



conduits, or lines.

Nothing in this section shall be deemed to affect in any manner lands acquired by the city of New York for the purpose of construction or development of its water supply system.

**§ 335-b. Recording of solar energy easements.** 1. Any easement obtained for the purpose of exposure of a solar energy device shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

2. Any instrument creating a solar energy easement shall include, but the contents shall not be limited to:

(a) The vertical and horizontal angles, expressed in degrees, at which the solar energy easement extends over the real property subject to the solar energy easement.

(b) Any terms or conditions or both under which the solar energy easement is granted or will be terminated.

(c) Any provisions for compensation of the owner of the property benefiting from the solar energy easement in the event of interference with the enjoyment of the solar energy easement or compensation of the owner of the property subject to the solar energy easement for maintaining the solar energy easement.

**§ 336. Effect of recording demands or requirements of noncitizen property custodian.** The recording in any county clerk's or register's office of a demand or requirement against real property described therein, made by or on behalf of the noncitizen property custodian under and pursuant to the trading with the enemy act adopted by the United States congress and approved October sixth, nineteen hundred and seventeen, or any act amendatory thereof or supplemental thereto, or any executive order or proclamation issued in pursuance thereof, when duly indexed against the name of the person or corporation whose property has thereby been demanded or required, shall have the same force and effect as the making of, delivery and recording of a deed of such real property

or interest therein by such person or corporation to said noncitizen property custodian. All recitals contained in any such demand or requirement, and in any deed made by such custodian heretofore or hereafter recorded of all facts required or permitted by said acts, proclamations or executive orders to be found or determined by said noncitizen property custodian, and all recitals of conclusions or determinations by said acts, proclamations or executive orders authorized to be made by such individual, and all recitals of acts or things done by said custodian or agents thereof in respect to the seizure of said property shall be evidence of the facts, conclusions, determinations, acts and things so recited in any court of this state in any action or proceeding affecting the title to or ownership of such real property. Three months after this section takes effect and the recording of the instrument containing such recitals, the same shall become conclusive evidence of all such facts, conclusions, determinations, acts and things as are so recited therein in any action in any court affecting the title to or ownership of said land, unless said action shall have been commenced before the expiration of such three months.

ARTICLE 9-A  
**SUBDIVIDED LANDS**

Section 337. Definitions.

337-a. Provisions governing sale or lease of subdivided lands.

337-b. Offering statement; contents; prohibitions.

337-c. Right to cancel.

338. Inspection power of department of state; unlawful practices; penalties.

339. Filing fees.

339-a. Rules and regulations.

339-b. Powers of department.

339-c. Action by department of state.

**§ 337. Definitions.** As used in this article: 1. The words "subdivided lands" and "subdivision" mean vacant land or lands sold or leased on the

installment plan or offered for sale or lease on such plan and also vacant land or lands situated outside the state of New York and sold or leased or offered for sale or lease on the installment plan or upon any and all other plans, terms and conditions of sale or lease.

2. The word "subdivider" shall include every person, partnership, corporation, company or association who or which engages directly or through an agent in the business of selling, leasing or offering for sale or lease subdivided lands and subdivisions to the public in this state.

3. The words "installment plan" mean any plan, arrangement or agreement pursuant to the terms, covenants and conditions whereof the proposed purchaser of vacant land or lands to be acquired amortizes the purchase price by periodic payments and whereby the conveyance of title to the purchaser of such vacant land or lands is deferred until such time as all said periodic payments have been made and shall also include the provision in a plan, arrangement or agreement or lease requiring a consideration from the lessee in addition to the periodic payments as a condition precedent to the conveyance of title to the lessee.

4. The words "a lease of land or lands on the installment plan" mean and include a plan, arrangement or agreement whereunder the periodic payments made are designated as rent and upon the completion of such payments the lessee is entitled to a conveyance of title to the vacant land or lands leased.

5. The words "fraudulent practice" or "fraudulent practices" mean any device, scheme or artifice employed by a subdivider to defraud or obtain money or property by means of any false pretense, representation or promise, or that a subdivider makes or attempts to make fictitious or pretended purchases, sales or leases of vacant land or lands to the public in this state, or engages in or is about to engage in any practice or transaction or course of business relating to the purchase, sale or lease of vacant land or lands which is fraudulent or in violation of law and which has operated or which would operate as a fraud upon the purchaser, or that any owner or subdivider as

hereinbefore defined has sold or offered for sale or is attempting to sell or is offering for sale any vacant land or lands in violation of the provisions of this article.

**§ 337-a. Provisions governing sale or lease of subdivided lands.** No subdivider shall sell, lease, or offer for sale or lease to the public within this state, as principal, broker or agent or otherwise, subdivided vacant lands or any part thereof, unless and until such subdivider shall have caused to be filed in the department of state (a) an offering statement containing the information and data required by section three hundred thirty-seven-b of this article, (b) such data and information as the department may require as provided in section three hundred thirty-nine-b of this article and (c) a statement subscribed by the subdivider and affirmed by him as true under the penalties of perjury, containing:

1. The name of such owner and subdivider,
2. The address of the principal office of such owner and subdivider, wherever situated, and the address or addresses of the principal office and all branch offices of the owner and subdivider within this state, if any,
3. The name of the person, partnership, company, corporation or association who or which acquired a legal or equitable title to the land or lands for sale or lease and who or which will subdivide vacant land or lands offered for sale or lease for the purpose of offering such subdivided vacant lands or any part thereof to the general public,
4. If such owner and subdivider be an individual or individuals, a statement of their respective connections during the preceding five years with any person, partnership, corporation, company or association engaged in the business of selling or leasing subdivided vacant lands, and the description of the last project or projects in subdivided vacant lands, the whole or any part of which have been sold or offered for sale or lease by such owner and subdivider,

5. If such owner and subdivider be a partnership, the names, residence and business addresses of the partners, including special or limited partners, and of all other individuals participating as principals in the profits of such business, specifying as to each the nature of his relation to such business and giving with respect to each all of the information required by subdivision four of this section to be given by an owner and subdivider who is an individual,

6. If such owner and subdivider be other than an individual or partnership, the name of the state or country where incorporated or organized, and the names, residence and business addresses of its principal officers, wherever located, and of its officers and branch managers in this state, specifying as to each the nature of his relation to such business, and giving with respect to each all of the information required by subdivision four of this section to be given by an owner and subdivider who is an individual,

7. A statement as to whether such owner and subdivider, or, if such owner and subdivider be other than an individual, whether any partner, principal, officer, director or branch manager thereof, has been convicted by a court of competent jurisdiction in any state or country of any criminal offense in connection with any transaction involving the sale or offer for sale of subdivided lands, or has been enjoined or restrained by order of any court of competent jurisdiction from selling or offering for sale subdivided vacant lands in any state or country, or continuing any practices in connection therewith,

8. The complete description of the land offered for subdivision or any part thereof by lots, plots, blocks or sites, with or without streets, together with maps certified to by a duly licensed land surveyor accompanied by a certificate attached thereto showing the date of the completion of the survey and of the making of the map and the name of the subdivision for the purpose of identification of the subdivided lands or any part thereof. Where subdivisions were surveyed and mapped prior to March first, nineteen hundred thirty-six, a certified copy of the map covering the property, on file in the office of the clerk of the

county wherein the property is located, shall be deemed compliance with the provisions herein.

9. A search of the title to the land, accompanied by a certificate either of an attorney and counselor at law duly licensed to practice in the state of New York, or a certificate from a duly incorporated title search company or the certificate of an attorney and counselor at law duly licensed to practice in the state wherein the lands are situated reciting in detail all of the liens, encumbrances and clouds upon the title to such land, and which defects of title, if any, render the title to such land unmarketable,

10. The provisions, covenants, terms and conditions upon which it is the intention of the owner and subdivider to sell or lease such subdivided land accompanied by proposed forms of contracts contemplated for execution and delivery upon the consummation of sales or leases,

11. Such other and further data and information as the department of state may, in its discretion, demand to be executed upon forms prescribed by it for filing pursuant to the provisions of this article.

**§ 337-b. Offering statement; contents; prohibitions.** 1. Contents. The offering statement shall contain (a) the names, addresses, business background of the subdivider, and if such subdivider is a partnership or corporation, the names, addresses and business background of each of the partners, officers and principal stockholders, the nature of their fiduciary relationship and their financial relationship, past, present and future, to the subdivider; (b) a duly certified financial statement of the assets and liabilities of the subdivider, as of a date not more than three months prior to the date of the filing, in such detail as the department may require; (c) a description of the subdivision and each unit or lot into which it has or will be divided, in such detail as the department may require; (d) the material terms of any encumbrances, liens and restrictions upon the subdivision and each such unit or lot; (e) data and information concerning improvements, including streets, water supply and sewerage disposal facilities, in existence on the

subdivision, and the estimated cost, date of completion and responsibility for construction of improvements to be made which are referred to in connection with the sale or lease or offering for sale or lease of the subdivision or any unit or lot thereon; (f) each of the terms and conditions under which each such unit or lot is offered for sale; and (g) such additional data and information as the department may require as being necessary or appropriate in the public interest or for the protection of purchasers or lessees.

2. There may be omitted from any offering statement any of the information required under subdivision one of this section which the department may by rules and regulations designate as not being necessary or appropriate in the public interest or for the protection of purchasers.

3. Limitations. No offer to sell or lease subdivided lands by means of advertisements in periodicals or newspapers, or on television or radio, or by motion picture or otherwise shall be made unless each such advertisement contains reference to the fact that an offering statement has been filed with the department and that a copy of such statement is available, upon request, from the subdivider.

4. Except as provided in subdivision three of this section, no offer of sale or lease of subdivided lands shall be made unless such offer is accompanied by a copy of the current offering statement filed pursuant to this article.

5. The first page of the offering statement and the face of all advertising and literature employed in the sale or lease or offer for sale or lease of subdivided lands shall contain a statement in easily readable print, that the filing of the verified statement and offering statement with the department of state does not constitute approval of the sale or lease or offer for sale or lease by the department of state or any officer thereof, or that the department of state has in any way passed upon the merits of such offering.

6. No sale or lease of subdivided lands shall be made unless

accompanied or preceded by the delivery to the prospective purchaser of an offering statement complying with the provisions of this section.

7. No change or amendment of an offering statement shall be made unless a copy of such change or amendment has first been filed with the department.

8. The subdivider, within thirty days after the anniversary date of the filing of an offering statement, shall file with the department of state a new current and up-to-date offering statement setting forth therein all changes which have taken place during the preceding year with respect to any and all data and information required to be set forth in such offering statement. Only a current offering statement shall be used to sell or lease or offer to sell or lease any of the subdivided lands.

9. The offering statement shall include the following statement in easily readable capital letters of not less than nine-point type: "THE OFFEROR HAS FILED ADDITIONAL INFORMATION ON THIS LAND OFFERING WITH THE DEPARTMENT OF STATE PURSUANT TO SECTION 337-A OF THE REAL PROPERTY LAW. THIS INFORMATION INCLUDES A DESCRIPTION AND MAPS OF THE PROPERTIES BEING OFFERED; A CERTIFICATE STATING IN DETAIL ALL LIENS, ENCUMBRANCES OR CLOUDS UPON THE TITLE TO THE LAND; AND STATEMENTS OF ANY PRIOR CRIMINAL CONVICTIONS OF THE PRINCIPALS MAKING THIS OFFERING WHICH INVOLVED THE SALE OR OFFERING FOR SALE OF SUBDIVIDED LANDS. INFORMATION FILED PURSUANT TO SECTION 337-A OF THE REAL PROPERTY LAW IS AVAILABLE PURSUANT TO THE FREEDOM OF INFORMATION LAW FROM THE DEPARTMENT OF STATE AT THE FOLLOWING ADDRESS: THE DEPARTMENT OF STATE, SUBDIVIDED LANDS SECTION, ALBANY, NEW YORK 12231-0001."

**§ 337-c. Right to cancel.** Every contract or agreement for the sale or lease of subdivided lands shall expressly grant to the purchaser or lessee the absolute right to cancel the contract or agreement within seven days following the signing of the contract or agreement, by giving the subdivider notice of cancellation at the address listed in the offering statement filed by the subdivider, by registered or certified



mail return receipt requested. Within ten days of receipt of such a notice of cancellation the subdivider shall return to the purchaser or lessee all consideration paid or delivered on account of such contract or agreement.

**§ 338. Inspection power of department of state; unlawful practices; penalties.** 1. The department of state may cause an investigation and an inspection to be made of any subdivision of vacant land proposed to be offered for sale or lease in this state pursuant to this article and may make a report of its findings thereon.

2. Where an inspection is to be made of subdivided lands, situated outside of the state of New York and being offered for sale in this state, the statement required by section three hundred thirty-seven-a shall be accompanied by the filing fee and in addition there shall be remitted to the department of state an amount equivalent to the cost of travel from New York to the location of the project and return, as estimated by the department of state, and a further amount estimated to be necessary to cover the additional expenses of such inspection, not to exceed fifteen dollars a day, for each day consumed in the examination of the project.

3. It shall be unlawful for the subdivider or his or its agent, to change the financial structure of such offering after the submission thereof to the department of state without first notifying the department in writing of such intention.

4. Where the vacant lands to be subdivided shall be subject to a lien or encumbrance securing or evidencing the payment of money other than taxes or assessments levied by public authority, or where the interest of the owner and subdivider or his or its agent be held under option or contract of purchase or in trust, it shall be unlawful to sell any vacant land in such subdivision unless provision in such lien, encumbrance, option, contract or trust agreement, or in an agreement supplementary thereto, enables the vendor to convey valid title to each parcel so sold or leased free of such lien, encumbrance, option,

contract or trust agreement, upon completion of all payments and performance of all the terms and conditions required to be made and performed by the vendee under the agreement of sale. Where the consideration price for the lot or lots sold has been amortized to an extent that the balance due and owing thereunder equals in an amount required to release such lot or lots from any existing lien, encumbrance, tax, assessment, option contract or first agreement, and the initial cost for said vacant land has not been paid for by the owner or subdivider, that in such event all moneys thereafter received by the owner or subdivider from the purchaser of said lot or lots shall be segregated and kept in a separate account and be impressed with a trust which shall be applied towards the clearance of title to the vacant land thereafter intended to be conveyed to the purchaser. After default shall have occurred in the payment of any tax or assessment levied and assessed against the premises or after default shall have occurred under and pursuant to the terms of any contract, mortgage lien, charge or encumbrance, all moneys received by the owner or subdivider from the purchaser of said lot or lots shall be segregated and kept in a separate account and be impressed with a trust which shall be applied towards the clearance of title to the vacant land thereafter intended to be conveyed to the purchaser. Certified or verified copies of documents containing such provisions shall be filed with the department of state prior to the sale or lease or offer of sale or lease of any part of the subdivision.

5. (a) Every person, officer, director, agent or employee of a company, partnership, association or corporation who or which knowingly offers to sell or to lease, or sells or leases subdivided lands prior to the filing of the offering statement and the verified statement required by this article shall be guilty of a felony.

(b) Except as provided in subdivision (a) hereof, every person, officer, director, agent or employee of a company, partnership, corporation, or association who or which knowingly authorizes, directs or aids in the publication, advertisement, distribution or circulation of any device, scheme or artifice for obtaining money or property by means of any false pretense, representation or promise concerning any vacant land or lands or subdivision thereof, offered for sale or lease, and every person, officer, director, agent or employee of a company,

partnership, corporation or association who or which shall have made or attempts to make in the state fictitious or pretended purchases or sales of vacant lands, or who, in any other respect, wilfully violated or fails to comply with any of the provisions of this article, or knowingly omits or neglects to obey, observe or comply with any order, permit, decision, demand or requirement of the department of state under the provisions of this article, is guilty of a misdemeanor and, if a licensee under article twelve (a) of this chapter, the department of state also may revoke or suspend his license in the manner provided in such article. The commission of a single act prohibited by this article shall constitute a violation thereof. All courts of special sessions, within their respective territorial jurisdiction, are hereby empowered to hear, try, and determine such violations without indictment, and to impose the punishments prescribed by law therefor.

6. It shall be the duty of the attorney-general to prosecute all violations of the provisions of this article; such prosecutions may be instituted upon the written request or demand of the department of state. In all criminal proceedings, the attorney-general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the attorney-general may in his discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted shall forthwith proceed to prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. In any such proceeding, wherein the attorney-general has appeared either in person or by deputy, the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney-general or the deputy attorney-general so appearing. The attorney-general shall, upon a conviction for a violation of any provision of this article, and within ten days thereafter, make and file with the department of state a detailed report showing the date of such conviction, the name of the person convicted and the exact nature of the

charge.

7. Any false statement contained in any statement or supplemental statement filed with the department of state pursuant to the requirements of this article, or in any affidavit attached thereto, shall constitute a violation of this article.

8. Any person, partnership, corporation, company or association representing in any manner that the state, the department of state, or any officer thereof has recommended or acquiesced in the recommendation of the purchase of any subdivided lands offered for sale or lease, in advertising or offering such subdivided lands for sale or lease, shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars, or imprisonment for not more than one year or by both such fine and imprisonment.

**§ 339. Filing fees.** Each filing made pursuant to section three hundred thirty-seven-a of subdivided lands situated outside the state of New York shall be accompanied by a filing fee of seven hundred fifty dollars plus an additional fee of ten dollars for each lot to be offered in excess of seventy-five lots.

**§ 339-a. Rules and regulations.** The department of state shall have the power to adopt from time to time or amend such rules and regulations as it may deem necessary to carry out the provisions of this article.

**§ 339-b. Powers of department.** The department of state may also require such other data and information as it may deem relevant and may make such special and independent investigations as it may deem necessary in connection with the administration of this article. The department of state by its examiner or other officer designated by it is empowered to subpoena witnesses, compel their attendance, examine them under oath before him or a magistrate, a court of record or a judge or justice thereof and require the production of any books or papers which

he deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the department of state under this article. The provisions for payment of witness fee and/or mileage do not apply to any officer, director or person in the employ of any person, partnership, corporation, company, trust or association whose conduct or practices are being investigated. A subpoena issued under this section shall be regulated by the civil practice law and rules and, in addition, if a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse 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 conducting such inquiry, or if a person, partnership, corporation, company, trust or association fails to perform any act required hereunder to be performed, he shall be guilty of a misdemeanor. It shall be the duty of all public officers, their deputies, assistants, subordinates, clerks or employees and all other persons to render and furnish to the department of state, its examiner or other designated officer when requested all information and assistance in their possession or within their power. Any officer participating in such inquiry who shall disclose to any person other than the secretary of state the name of any witness examined or any other information obtained upon such inquiry except as directed by the secretary of state shall be guilty of a misdemeanor.

**§ 339-c. Action by department of state.** 1. Whenever the department of state shall believe from evidence satisfactory to it that a subdivider has engaged in, is engaged or is about to engage in any of the practices or transactions heretofore referred to as fraudulent practices, it may have an action brought in the manner hereinafter provided in the name and on behalf of the people of the state of New York against such subdivider and any other person or persons theretofore concerned in or in any way participating in or about to participate in such fraudulent practices, to enjoin such subdivider and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or, if the department of state

should believe from such evidence that such subdivider has or is engaged in any such fraudulent practice, it may have included in such action an application to enjoin permanently such subdivider and such other person or persons as may have been or may be concerned with or in any way participating in such fraudulent practice, from selling or offering for sale to the public within this state, as principal, owner, subdivider, broker or agent or otherwise, any vacant land or lands. In said action an order or a judgment may be entered awarding the relief applied for or so much thereof as the court may deem proper. Upon a showing by the department of state in the application brought in its behalf for a preliminary injunction hereunder that the defendant named in the action or an officer thereof has refused to be sworn or to be examined or to answer a material question or to produce a book or paper relevant to the inquiry when duly ordered so to do by the officer or judge duly conducting an inquiry into the subject matter forming the basis of the application for such preliminary injunction, such refusal shall be prima facie proof that such defendant is or has been engaged in fraudulent practices as set forth in such application and a preliminary injunction may issue from the supreme court without any further showing by the department of state.

2. If the vacant land or lands of a foreign corporation, company, association or non-resident individual are offered or advertised for sale within the state of New York and such corporation, company, association or non-resident individual has not filed pursuant to laws heretofore or hereafter existing the designation of a person upon whom process against him or it may be served or the designation of the secretary of state as such person pursuant to section two hundred ten of the general corporation law or other laws heretofore or hereafter existing or in lieu thereof, an instrument in writing duly acknowledged and filed in the office of the secretary of state designating the secretary of state as the person upon whom may be served any subpoena, subpoena duces tecum or other process directed to such foreign corporation, company, association or non-resident individual and issued in any investigation, examination or proceeding pending or about to be instituted under and pursuant to the provisions of this article, a notice may be served upon such foreign corporation, company or

association, or upon any non-resident officer thereof, or upon a non-resident individual, by mailing the same in a securely sealed postpaid wrapper addressed to such foreign corporation, company or association, or officer thereof, or non-resident individual, at its or his last known place of business or residence, and may in such notice require that such foreign corporation, company or association, or such officer thereof, or non-resident individual, furnish a written statement, verified as required in said notice, giving the information therein specified relating to the vacant land or lands offered or to be offered in the state of New York by such foreign corporation, company, association or non-resident individual or, in the alternative, that such foreign corporation, company or association, by its proper officer or officers, or such non-resident individual, shall appear within a reasonable time from the date of mailing such notice at a designated place within this state for examination and shall produce at the time and place of such examination such books and papers of such foreign corporation, company, association or non-resident individual, as may be designated in such notice.

If such foreign corporation, company, association, or such officer thereof, or non-resident individual, shall fail to furnish the statement called for by such notice, or shall fail to appear pursuant thereto or to produce the books and papers required thereby to be produced, or refuse to submit to examination or to answer any proper question, the proof of such failure or refusal shall constitute prima facie evidence that the sale or offering for sale or advertisement of vacant land or lands of such foreign corporation, company, association or non-resident individual constitutes a fraudulent practice within the meaning of this act and may in the discretion of the court be treated as a sufficient basis for a permanent injunction against the continuance of such fraudulent practice.

3. In any action brought in behalf of the department of state as provided in this article, the court at any stage of the proceedings may appoint a receiver of any and all property derived by the defendant or defendants or any of them by means of any such fraudulent practices, including also all property with which such property has been mingled if

such property can not be identified in kind because of such commingling, together with any or all books of account and papers relating to the same. The judgment entered in such action may provide that such receiver shall take title to any or all such property and books of account and papers relating to the same and liquidate such property or any part thereof for the benefit of all persons intervening in the said action and establishing an interest in such property. The judgment may also provide that all such property, the title to or interest in which has not been established in such action by intervenors or otherwise by due process to be in a person or persons other than defendant or defendants, shall be returned to the defendant or defendants as their interest may appear. Such receiver shall be subject to all the duties of receivers appointed in civil actions as far as practicable except that such provisions relating to commissions or compensation of receivers shall not be applicable to receivers appointed pursuant to this section, but such commissions or compensation shall be fixed by the court in any amount which it may determine to be just and equitable. In any action brought in behalf of the department of state as provided in this article the court may grant such other and further relief as may be proper.

4. Whenever the department of state has determined to commence an action under this article, it may have the attorney-general present to any justice of the supreme court, before beginning such action, an application in writing for an order directing the person or persons mentioned in the application to appear before the justice of the supreme court or referee designated in such order and answer such questions as may be put to them or to any of them, or to produce such papers, documents and books concerning the alleged fraudulent practices to which the action which the department of state has determined to bring relates, and it shall be the duty of the justice of the supreme court to whom such application for the order is made to grant such application. The application for such order may simply show upon information and belief that the testimony of such person or persons is material and necessary. The provisions of the civil practice law and rules, relating to an application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination shall not apply except as herein prescribed. The order shall



be granted by the justice of the supreme court to whom the application has been made with such preliminary injunction or stay as may appear to such justice to be proper and expedient and shall specify the time when and place where the witnesses are required to appear. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him and all must be filed in the office of the clerk of the county in which such order for examination is filed.

5. The order for such examination must be signed by the justice making it and service of a copy thereof with an endorsement by the department of state or the attorney-general, to the effect that the person named therein is required to appear and be examined at the time and place and before the justice and referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses, such endorsement may contain a clause requiring such person to produce at such examination all books, papers and documents in his possession or under his control relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid by showing him the original order and delivering to and leaving with him at the same time a copy thereof, endorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in any court of record in this state.

6. The referee appointed as provided in this article possesses all the powers and is subject to all the duties of a referee appointed in a civil action, so far as practicable, and may punish for contempt a witness duly served with the papers as prescribed in this article for non-attendance or refusal to be sworn or to testify or to produce books, papers and documents according to the direction of the endorsement aforesaid, in the same manner and to the same extent as a referee to hear, try and determine an issue of fact or of law.

7. The provisions of the civil practice law and rules shall apply to all actions brought under this article except as herein otherwise provided.

8. If any person shall ask to be excused from testifying or producing any book, paper or other document before the department of state or the attorney-general or his deputy, or other officer designated by it or him or before any court, or magistrate, or referee, upon any trial, investigation or proceeding initiated by the department of state, the attorney-general, district attorney, grand jury or court pursuant to the provisions of this article upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or convict him of crime or to subject him to a penalty or forfeiture, and shall notwithstanding be directed by the court, referee, magistrate or officer conducting the inquiry to testify or to produce such book, paper or document, he must none the less comply with such direction but in such event he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he was ordered to testify or produce evidence, documentary or otherwise, pursuant thereto and no testimony so given or produced shall be received against him upon any criminal action, suit or proceeding, investigation, inquisition or inquiry.

Provided, however, no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony given as herein provided for, nor shall immunity apply to corporations or to the officers as such.

## ARTICLE 9-B

### **Condominium Act**

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- 339-gg. Severability.
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- 339-ii. Construction.
- 339-jj. Borrowing by board of managers.
- 339-kk. Rents.
- 339-ll. Electric vehicle charging station installation.
- 339-mm. Establishment of reserve fund and dedicated capital fund for buildings converting to condominium ownership under section three hundred fifty-two-eeeeee of the general business law.

**§ 339-d. Short title.** This article shall be known and may be cited as the "condominium act."

**§ 339-e. Definitions.** As used in this article, unless the context otherwise requires:

1. "Building" means a multi-unit building or buildings, or a group of buildings whether or not attached to each other, comprising a part of the property.

\* 1-a. "Capital replacement" means a building-wide replacement of a major component of any of the following systems:

- (a) elevator;
- (b) heating, ventilation and air conditioning;
- (c) environmental and sustainability upgrades;
- (d) plumbing;
- (e) wiring;
- (f) window; or

(g) a major structural replacement to the building; provided, however, that major structural replacements made to cure code violations of record shall not be included.

\* NB Repealed November 5, 2031

2. "Common charges" means each unit's proportionate share of the common expenses in accordance with its common interest.

3. "Common elements," unless otherwise provided in the declaration, means and includes:

- (a) The land on which the building is located;
- (b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;
- (c) The basements, cellars, yards, gardens, recreational or community facilities, parking areas and storage spaces;
- (d) The premises for the lodging or use of janitors and other persons

employed for the operation of the property;

(e) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such facilities as may be designated as common elements in the declaration; and

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

4. "Common expenses" means and includes:

(a) Expenses of operation of the property, and

(b) All sums designated common expenses by or pursuant to the provisions of this article, the declaration or the by-laws.

5. "Common interest" means the (i) proportionate, undivided interest in fee simple absolute, or (ii) proportionate undivided leasehold interest in the common elements appertaining to each unit, as expressed in the declaration.

6. "Common profits" means the excess of all receipts of the rents, profits and revenues from the common elements remaining after the deduction of the common expenses.

\* 6-a. "Consummation of the preservation plan" means, in the context of a preservation plan for the conversion of residential rental property to condominium ownership that has been accepted for filing by the department of law pursuant to section three hundred fifty-two-eeeeee of the general business law and subsequently amended to disclose that said preservation plan has been declared effective, (i) the recording of the declaration for the condominium and (ii) the closing of title to a dwelling unit with a purchaser under the preservation plan.

\* NB Repealed November 5, 2031

7. "Declaration" means the instrument by which the property is submitted to the provisions of this article, as hereinafter provided,

and such instrument as from time to time amended, consistent with the provisions of this article and of the by-laws.

\* 7-a. "Income-restricted rental unit", as used in section three hundred thirty-nine-mm of this article, means a unit that also meets the definition of "income-restricted rental unit" set forth in section three hundred fifty-two-eeeeee of the general business law.

\* NB Repealed November 5, 2031

8. "Majority" of unit owners means either (i) more than fifty per cent in common interest in the aggregate, or (ii) more than fifty per cent in number of units in the aggregate, or (iii) more than fifty per cent in the aggregate in both common interest and in number of units, as may be specified herein or in the declaration or the by-laws with respect to any matter or matters. Any specified percentage of unit owners means (i) such percentage in common interest in the aggregate, or (ii) such percentage in number of units in the aggregate, or (iii) such percentage in common interest and such percentage in number of units, as may be specified herein or in the declaration or the by-laws with respect to any matter or matters, provided, however, that different percentages in interest and in number of units may be so specified.

\* 8-a. "Offeror", as used in section three hundred thirty-nine-mm of this article, means the offeror of a preservation plan to convert residential rental property to condominium ownership pursuant to section three hundred fifty-two-eeeeee of the general business law, together with their or its nominees, assignees and successors in interest.

\* NB Repealed November 5, 2031

9. "Operation of the property" means and includes the administration and operation of the property and the maintenance, repair and replacement of, and the making of any additions and improvements to, the common elements.

10. "Person" means a natural person, corporation, partnership, association, trustee or other legal entity.

\* 10-a. "Preservation plan", as used in section three hundred thirty-nine-mm of this article, means an offering statement or prospectus submitted to the department of law pursuant to section three

hundred fifty-two-eeeeee of the general business law for the conversion of a building or group of buildings or development from rental status to condominium ownership, wherein the offeror documents that it has entered into a regulatory agreement with a relevant housing finance agency in which it agreed to an extended affordability term for the income-restricted rental units.

\* NB Repealed November 5, 2031

11. "Property" means and includes the land, the building and all other improvements thereon, (i) owned in fee simple absolute, or (ii) in the case of a condominium devoted exclusively to non-residential purposes, held under a lease or sublease, or separate unit leases or subleases, the unexpired term or terms of which on the date of recording of the declaration shall not be less than thirty years, or (iii) in the case of a qualified leasehold condominium, held under a lease or sublease, or separate unit leases or subleases, the unexpired term or terms of which on the date of recording of the declaration shall not be less than fifty years, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this article.

\* 11-a. "Purchaser under the preservation plan", when used in section three hundred thirty-nine-mm of this article, means a bona fide purchaser under the preservation plan shall refer to a person who purchases a dwelling unit from the offeror pursuant to the terms of a preservation plan that has been accepted for filing by the attorney general. A person or entity that acquires dwelling units and assumes certain obligations of the offeror shall not be considered a purchaser under the preservation plan.

\* NB Repealed November 5, 2031

12. "Qualified leasehold condominium" means any leasehold interest in real property intended to be used for either residential purposes, commercial purposes, industrial purposes or any combination of such purposes, together with any fee simple absolute or leasehold interest in the buildings and all other improvements which have been or at any time hereafter may be erected upon such real property, which has been or is

intended to be submitted to the provisions of this article, provided that, on the date of the recording of the declaration: (i) the battery park city authority or the Roosevelt Island operating corporation is the holder of the tenant's interest in such leasehold interest or (ii) the Queens West development corporation is the holder of the landlord's interest in such leasehold interest or (iii) the Brooklyn bridge park development corporation is the holder of the landlord's interest in such leasehold interest, or (iv) the New York city educational construction fund is the holder of the landlord's interest in such leasehold interest for property located in the borough of Manhattan, in the city of New York, bounded on the east by Second Ave, on the west by Third Avenue, to the north by East Fifty-seventh Street, and to the south by East Fifty-sixth Street.

\* 12-a. "Qualified owner", as used in section three hundred thirty-nine-mm of this article, shall refer to a unit owner that also meets the definition of "qualified owner" as set forth in section three hundred fifty-two-eeeeee of the general business law.

\* NB Repealed November 5, 2031

\* 12-b. "Relevant housing finance agency", as used in section three hundred thirty-nine-mm of this article, shall have the same meaning as set forth in section three hundred fifty-two-eeeeee of the general business law.

\* NB Repealed November 5, 2031

13. "Recording officer" and "recording" or "recorded" shall have the meanings stated in section two hundred ninety of this chapter.

\* 13-a. "Total price", when used in section three hundred thirty-nine-mm of this article, means the sum of the cost of all units in the offering, but excluding any income-restricted rental units owned or to be transferred to a qualified owner, at the last price which was offered to tenants in occupancy prior to the effective date of the preservation plan regardless of the number of sales made.

\* NB Repealed November 5, 2031

14. "Unit" means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may



include such appurtenances as garage and other parking space, storage room, balcony, terrace and patio, but in no event may utility facilities such as those for water or sewerage treatment or power generation appear as single units.

15. "Unit designation" means the number, letter or combination thereof or other official designations conforming to the tax lot number, if any, designating the unit in the declaration and on the floor plans.

16. "Unit owner" means the person or persons owning a unit in fee simple absolute or, in the case either (i) of a condominium devoted exclusively to non-residential purposes, or (ii) a qualified leasehold condominium, owning a unit held under a lease or sublease.

**§ 339-f. Application of article.** 1. This article shall be applicable only to property the sole owner or all the owners of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided.

2. Such property shall be submitted and subject to the authority of and review by the county planning agency as set forth in section two hundred thirty-nine-n of article twelve-B of the general municipal law, irrespective of and notwithstanding the distance requirement of the second unnumbered paragraph of such section, and as though the property were a subdivision plat subject to such section. This subdivision shall not be applicable to:

(i) property which has received local planning board approval prior to December twenty-first, nineteen hundred seventy-eight; or

(ii) property submitted to the provisions of this article on which any building or buildings or any portion thereof has been rented to any tenant or tenants.

**§ 339-g. Status of units.** Each unit, together with its common interest, shall for all purposes constitute real property.

**§ 339-h. Ownership of units.** Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

**§ 339-i. Common elements.** 1. Each unit shall have appurtenant thereto a common interest as expressed in the declaration. Such interest shall be (i) in the approximate proportion that the fair value of the unit at the date of the declaration bears to the then aggregate fair value of all the units or (ii) in the approximate proportion that the floor area of the unit at the date of the declaration bears to the then aggregate floor area of all the units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all units in a part or parts of the common elements or (iii) the interest of each of the units shall be in equal percentages, one for each unit as of the date of filing the declaration, or in equal percentages within separate classifications of units as of the date of filing the declaration, or (iv) upon floor space, subject to the location of such space and the additional factors of relative value to other space in the condominium, the uniqueness of the unit, the availability of common elements for exclusive or shared use, and the overall dimensions of the particular unit.

2. The common interest appurtenant to each unit as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all unit owners affected, expressed in an amended declaration. However, the declaration may contain provisions relating to the appropriation, taking or condemnation by eminent domain by a federal, state or local government, or instrumentality thereof, including, but not limited to, reapportionment or other change of the common interest appurtenant to each unit, or portion thereof, remaining after a partial appropriation, taking or condemnation. The common interest shall not be separated from the unit to which it appertains. Nothing contained in this article shall prohibit the division of any unit and common interest appurtenant thereto in a non-residential unit in the manner permitted by the declaration and bylaws, including changes in the number of rooms; in no case may such division result in a greater

percentage of common interest for the total of the new units than existed for the original unit before division. Where authorized by the declaration and bylaws, an appropriate amendment to the declaration may be filed by the new unit owners under the same file number and under procedure set forth in section three hundred thirty-nine-p hereof, and the local tax authorities shall provide and certify upon the proposed amendment a conforming tax lot number upon completion of the new units.

3. The common elements shall remain undivided and no right shall exist to partition or divide any thereof, except as otherwise provided in this article. Any provision to the contrary shall be null and void. Nothing in this subdivision shall be deemed to prevent ownership of a unit by the entireties, jointly or in common.

4. Each unit owner may use the common elements in accordance with the purpose for which they are intended, without hindering the exercise of or encroaching upon the rights of the other unit owners, but this subsection shall not be deemed to prevent some unit or units from enjoying substantially exclusive advantages in a part or parts of the common elements as expressed in the declaration or by-laws.

5. The unit owners shall have the irrevocable right, to be exercised by the board of managers, to have access to each unit from time to time during reasonable hours to the extent necessary for the operation of the property, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units, and the by-laws may contain reasonable rules and regulations for the administration of this provision as the privacy of the units and the protection of them and their contents from burglary, theft or larceny requires.

**§ 339-j. Compliance with by-laws and rules and regulations.** Each unit owner shall comply strictly with the by-laws and with rules, regulations, resolutions and decisions adopted pursuant thereto. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both maintainable

by the board of managers on behalf of the unit owners or, in a proper case, by an aggrieved unit owner. In any case of flagrant or repeated violation by a unit owner, he may be required by the board of managers to give sufficient surety or sureties for his future compliance with the by-laws, rules, regulations, resolutions and decisions. Notwithstanding the foregoing provisions of this section, no action or proceeding for any relief may be maintained due to the display of a flag of the United States measuring not more than four feet by six feet.

**§ 339-k. Certain work prohibited.** No unit owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament, nor may any unit owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of all the unit owners affected being first obtained.

**§ 339-l. Liens against common elements; liens against units; liens for labor performed or materials furnished.** 1. Subsequent to recording the declaration and while the property remains subject to this article, no lien of any nature shall thereafter arise or be created against the common elements except with the unanimous consent of the unit owners. During such period, liens may arise or be created only against the several units and their respective common interests.

2. Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to article two of the lien law against the unit of any unit owner not expressly consenting to or requesting the same, except in the case of emergency repairs. No labor performed on or materials furnished to the common elements shall be the basis for a lien thereon, but all common charges received and to be received by the board of managers, and the right to receive such funds, shall constitute trust funds for the purpose of paying the cost of such labor or materials performed or furnished at the express request or with the consent of the manager, managing agent or board of managers, and the same shall be expended first for such purpose before expending any part

of the same for any other purpose.

**§ 339-m. Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to their respective common interests, provided however, that expenses of insurance may be charged as provided in section three hundred thirty-nine-bb. Notwithstanding any provision of this article, profits and expenses may be specially allocated and apportioned by the board of managers in a manner different from common profits and expenses, to one or more non-residential units where so authorized by the declaration and bylaws. In the case of units in any building, residential or non-residential, or a combination thereof, profits and expenses may be specially allocated and apportioned based on special or exclusive use or availability or exclusive control of particular units or common areas by particular unit owners, if so authorized by the declaration and bylaws, in a manner different from common profits and expenses. Notwithstanding any provision of this article, common expenses may be charged to the owners of units that are subject to a regulatory agreement with a governmental entity or instrumentality limiting the household income of the residents of such units upon initial occupancy that are less than the common expenses charged to owners of other units where such lesser charges are necessary to ensure that the combined common expenses, mortgage and other housing costs paid by owners of units subject to such regulatory agreements do not exceed thirty percent of the household income limit specified in such regulatory agreements. Where so authorized by the declaration and bylaws, common expenses may be charged to owners of units subject to such regulatory agreements in a manner that (i) is not proportional to the respective common interests of such owners, (ii) limits the amount charged to such owners, or (iii) limits the rate at which the amount charged to such owners may increase. The existence of such special allocation of common expenses and its financial impact upon all units shall be disclosed as a special risk in any offering plan.

**§ 339-n. Contents of declaration.** The declaration shall contain the

following particulars:

1. A statement of intention to submit the property to the provisions of this article.

2. Description of the land on which the building and improvements are or are to be located.

3. Description of the building, including the location of the building by reference to fixed monuments or tax map parcel data, stating the number of stories, basements and cellars, the number of units and the principal materials of which it is or is to be constructed.

4. The unit designation of each unit, and a statement of its location, approximate area, number of rooms in residential areas, and common element to which it has immediate access, and any other data necessary for its proper identification.

5. Description of the common elements and a statement of the common interest of each unit owner.

6. Statement of the uses for which the building and each of the units are intended.

7. \* A designation of the secretary of state as agent of the corporation or board of managers upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her. The designation may include an email address to which the secretary of state shall email a notice of the fact that process against it has been electronically served upon him or her. Service of process on the secretary of state as agent of such corporation or board of managers shall be made in the manner provided by paragraph (a) or (b) of this subdivision. Either option of service authorized pursuant to this subdivision shall be available at no extra cost to the consumer.

\* NB Effective until February 24, 2027

\* A designation of the secretary of state as agent of the corporation or board of managers upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon the secretary of state. The designation may include an email address to which the secretary of state shall email a notice of the fact that process against it has been electronically served upon the secretary of state. Service of process on the secretary of state as agent of such corporation or board of managers shall be made in the manner provided by paragraph (a), (b) or (c) of this subdivision. Each option of service authorized pursuant to this subdivision shall be available at no extra cost to the consumer.

\* NB Effective February 24, 2027

(a) Personally delivering to and leaving with him or her or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which shall be a taxable disbursement. Service of process on such corporation or board of managers shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such corporation or board of managers, at the post office address, on file in the department of state, specified for such purpose. (b) Electronically submitting a copy of the process to the department of state together with the statutory fee, which fee shall be a taxable disbursement, through an electronic system operated by the department of state, provided the corporation or board of managers has an email address on file in the department of state to which the secretary of state shall email a notice of the fact that process against the corporation or board of managers has been served electronically on the secretary of state. Service of process on such corporation or board of managers shall be complete when the secretary of state has reviewed and accepted service of such process. The secretary of state shall promptly send notice of the fact that process has been served electronically on the secretary of state to such corporation or board of managers at the email address on file in the department of state, specified for the purpose and shall make a copy of the process available to such

corporation or board of managers. Nothing in this subdivision shall affect the right to serve process in any other manner permitted by law. The corporation or board of managers shall also file with the secretary of state the name and post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon the secretary of state and shall update the filing as necessary.

\* (c) Provided process is served by or on behalf of the state or a city, town, village or other political subdivision of the state, by electronically submitting a copy of the process to the department of state, through an electronic system operated by and with capabilities determined by the department of state, together with the statutory fee, if required, which fee shall be a taxable disbursement. Service of process on such corporation or board of managers shall be complete when the secretary of state has reviewed and accepted service of such process. The secretary of state shall promptly either: (i) send a copy of such process by certified mail, return receipt requested, to such corporation or board of managers, at the post office address, on file in the department of state, specified for the purpose; or (ii) email a notice of the fact that process against the corporation or board of managers has been served electronically on the secretary of state to the email address on file in the department of state, specified for the purpose and shall make a copy of the process available to such corporation or board of managers.

\* NB Effective February 24, 2027

8. Any further details in connection with the property which the person or persons executing the declaration may deem desirable to set forth.

9. The method by which the declaration may be amended, consistent with the provisions of this article.

**§ 339-o. Contents of deeds and leases of units.** Deeds and leases of units shall include the following particulars:



1. Description of the land as provided in subsection two of section three hundred thirty-nine-n and the liber, page and date of recording of the declaration or solely by naming the city, village or town and the county in which the unit is located and referring to the liber, page and date of recording of the declaration.

2. The unit designation of the unit in the declaration and any other data necessary for its proper identification.

3. Statement of the use for which the unit is intended.

4. The common interest appertaining to the unit.

5. Any further details which the grantor and grantee may deem desirable to set forth.

**§ 339-p. Copy of floor plans to be filed.** Simultaneously with the recording of the declaration there shall be filed in the office of the recording officer a set of the floor plans of the building showing the layout, locations, and approximate dimensions of the units, stating the declarants' names, and bearing the verified statement of a registered architect or licensed professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. If such floor plans do not contain unit designations certified by the appropriate local tax authorities as conforming to the official tax lot number, there shall be filed in the office of the recording officer prior to the first conveyance of a unit a floor plan containing a unit designation certified by the appropriate local tax authority as conforming to the official tax lot number. It shall be the duty of the appropriate local tax authority to provide such number for each unit upon completion of such unit. If such plans do not include a verified statement by such architect or engineer that such plans fully and fairly depict the layout, location, unit designations and approximate dimensions of any particular unit or units as built, there

shall be recorded prior to each first conveyance of such particular unit or units an amendment to the declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and fairly depict the layout, location, unit designations and approximate dimensions of the particular unit or units as built. Such plans shall be designated "condominium", assigned a file number and kept on file by the recording officer. Such plans shall be indexed under the names of the declarants and in the block index if any. The record of the declaration shall contain a reference to the file number of the floor plans of the building affected thereby.

**§ 339-q. Filing with board.** True copies of the floor plans, the declaration, the by-laws and any rules and regulations shall be kept on file in the office of the board of managers and shall be available for inspection at convenient hours of weekdays by persons having an interest.

**§ 339-r. Blanket mortgages and other blanket liens affecting a unit at time of first conveyance.** At the time of the first conveyance of each unit, every mortgage and other lien affecting such unit and any other unit shall be paid and satisfied of record, or the unit being conveyed and its common interest shall be released therefrom by partial release duly recorded.

**§ 339-s. Recording.** 1. The declaration, any amendment or amendments thereof, and every instrument affecting the property or any unit included within the meaning of "conveyance" as used in article nine of this chapter, shall be entitled to be indexed and recorded pursuant to and with the same effect as provided in said article nine. The recording officer shall not accept such an instrument constituting a condominium map unless it has endorsed thereon or attached thereto a certificate of the county director of real property tax services that the fee

authorized by section five hundred three of the real property tax law, if any, has been paid. Neither the declaration nor any amendment thereof shall be valid unless duly recorded.

2. Each such declaration, and any amendment or amendments thereof shall be filed with the department of state.

**§ 339-t. Withdrawal from provisions of this article.** If withdrawal of the property from this article is authorized by at least eighty per cent in number and in common interest of the units, or by at least such larger percentage either in number or in common interest, or in both number and common interest, as may be specified in the by-laws, then the property shall be subject to an action for partition by any unit owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all the unit owners in proportion to their respective common interests, provided, however, that no payment shall be made to a unit owner until there has first been paid off out of his share of such net proceeds all liens on his unit. Such withdrawal of the property from this article shall not bar its subsequent submission to the provisions of this article in accordance with the terms of this article.

**§ 339-u. By-laws.** The operation of the property shall be governed by by-laws, a true copy of which shall be annexed to the declaration. No modification of or amendment to the by-laws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

**§ 339-v. Contents of by-laws.** 1. The by-laws shall provide for at least the following:

(a) The nomination and election of a board of managers, the number of persons constituting the same, and that the terms of at least one-third of the members of such board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the

board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent or both, and specifying which of the powers and duties granted to the board by this article or otherwise may be delegated by the board to either or both of them. Nothing contained herein shall bar the incorporation of the board of managers under applicable statutes of this state; such incorporation must be consistent with the other provisions of this article and the nature of the condominium purpose.

(b) Methods of calling meetings of the unit owners; what percentage of the unit owners, if other than a majority, shall constitute a quorum; and what percentage shall, consistent with the provisions of this section, be necessary to adopt decisions binding on all unit owners. Meetings of unit owners may be held at such physical place as may be fixed by or under the by-laws, or if not so fixed, as determined by the board of managers. Provided, however, that the board of managers may, in its sole discretion, determine that the meeting be held solely or partially by means of electronic communication, the platform/service of which shall be the place of the meeting for purposes of this article. Nothing contained in this paragraph shall prohibit a board of managers from holding a meeting at a physical place and allowing unit owners the option of attending such meeting either at such physical place or by means of electronic communication.

(c) Election of a president from among the board of managers who shall preside over the meetings of such board and of the unit owners.

(d) Election of a secretary who shall keep a record wherein actions of such board and of meetings of the unit owners shall be recorded.

(e) Election of a treasurer who shall keep the financial records and books of account.

(f) Operation of the property, payment of the common expenses and determination and collection of the common charges.

(g) The manner of designation and removal of persons employed for the operation of the property.

(h) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(i) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set

forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(j) The percentage of the unit owners, but not less than sixty-six and two-thirds per cent in number and common interest except in the case where all units are non-residential, which may at any time modify or amend the by-laws.

2. The by-laws may also provide for the following:

(a) Provisions governing the alienation, conveyance, sale, leasing, purchase, ownership and occupancy of units, provided, however, that the by-laws shall contain no provision restricting the alienation, conveyance, sale, leasing, purchase, ownership and occupancy of units because of race, creed, color or national origin.

(b) Provisions governing the payment, collection and disbursement of funds, including reserves, to provide for major and minor maintenance, repairs, additions, improvements, replacements, working capital, bad debts and unpaid common expenses, depreciation, obsolescence and similar purposes.

(c) The form by which the board of managers, acting on behalf of the unit owners, where authorized by this statute or the declaration, may acquire and hold any unit and lease, mortgage and convey the same.

(d) Any other provisions, not inconsistent with the provisions of this article, relating to the operation of the property.

**§ 339-w. Books of receipts and expenditures; availability for examination.** The manager or board of managers, as the case may be, shall keep detailed, accurate records, in chronological order, of the receipts and expenditures arising from the operation of the property. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of weekdays. A written report summarizing such receipts and expenditures shall be rendered by the board of managers to all unit owners at least once annually.

**§ 339-x. Waiver of use of common elements; abandonment of unit; conveyance to board of managers.** No unit owner may exempt himself from liability for his common charges by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit. Subject to such terms and conditions as may be specified in the by-laws, any unit owner may, by conveying his unit and his common interest to the board of managers on behalf of all other unit owners, exempt himself from common charges thereafter accruing.

**§ 339-y. Separate taxation.** 1. (a) With respect to all property submitted to the provisions of this article other than property which is the subject of a qualified leasehold condominium, each unit and its common interest, not including any personal property, shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit, school district, special district, county or other taxing unit, for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments, except that the foregoing shall not apply to a unit held under lease or sublease unless the declaration requires the unit owner to pay all taxes attributable to his unit. Neither the building, the property nor any of the common elements shall be deemed to be a parcel.

(b) In no event shall the aggregate of the assessment of the units plus their common interests exceed the total valuation of the property were the property assessed as a parcel.

(c) For the purposes of this and the next succeeding section the terms "assessing unit", "assessment", "parcel", "special ad valorem levy", "special assessment", "special district", "taxation" and "taxes" shall have the meanings specified in section one hundred two of the real property tax law.

(d) The provisions of paragraph (b) of this subdivision shall not apply to such real property classified within:

(i) on and after January first, nineteen hundred eighty-six, class one of section one thousand eight hundred two of the real property tax law; or

(ii) on and after January first, nineteen hundred eighty-four, the homestead class of an approved assessing unit which has adopted the

provisions of section one thousand nine hundred three of the real property tax law, or the homestead class of the portion outside an approved assessing unit of an eligible split school district which has adopted the provisions of section nineteen hundred three-a of the real property tax law; provided, however, that, in an approved assessing unit which adopted the provisions of section one thousand nine hundred three of the real property tax law prior to the effective date of this subdivision, paragraph (b) of this subdivision shall apply to all such real property (i) which is classified within the homestead class pursuant to paragraph one of subdivision (e) of section one thousand nine hundred one of the real property tax law and (ii) which, regardless of classification, was on the assessment roll prior to the effective date of this subdivision unless the governing body of such approved assessing unit provides by local law adopted after a public hearing, prior to the taxable status date of such assessing unit next occurring after December thirty-first, nineteen hundred eighty-three, that such paragraph (b) shall not apply to such real property to which this clause applies. Provided further, however, real property subject to the provisions of this subparagraph shall be assessed pursuant to subdivision two of section five hundred eighty-one of the real property tax law.

(e) On the first assessment roll with a taxable status date on or after the effective date of a declaration filed with the recording officer and on every assessment roll thereafter, the assessor shall enter each unit as a parcel, as provided in paragraph (a) of this subdivision, based upon the condition and ownership of each such unit on the appropriate valuation and taxable status dates. Units owned by a developer may be entered as a single parcel with a parcel description corresponding to the entire development, including the land under such development, and excluding those units appearing separately. Upon the first assessment roll where each unit is separately assessed, only an individual unit and its common interest shall constitute a parcel.

(f) The provisions of paragraph (b) of this subdivision shall not apply to a converted condominium unit in a municipal corporation other than a special assessing unit, which has adopted, prior to the taxable status date of the assessment roll upon which its taxes will be levied, a local law or, for a school district, a resolution providing that the

provisions of paragraph (b) of this subdivision shall not apply to a converted condominium unit within that municipal corporation. A converted condominium unit for purposes of this paragraph shall mean a dwelling unit held in condominium form of ownership that has previously been on an assessment roll as a dwelling unit in other than condominium form of ownership, and has not been previously subject to the provisions of paragraph (b) of this subdivision.

(g) The provisions of paragraph (b) of this subdivision shall not apply to real property owned or leased by a cooperative corporation or on a condominium basis in the Town of Greenburgh, in Westchester County, which has adopted, prior to the taxable status date of the assessment roll upon which its taxes will be levied, a local law providing that the provisions of paragraph (b) of this subdivision shall not apply to such real property within such town; provided, however, the provisions of this paragraph shall not apply to real property owned or leased by a cooperative corporation or on a condominium basis that had been previously subject to the provisions of paragraph (b) of this subdivision prior to January first, two thousand twenty-three; provided further, however, the provisions of this paragraph shall not apply to real property owned or leased by a cooperative corporation or on a condominium basis that is participating in an affordable housing tax credit program or has a regulatory agreement with a federal, state, or local agency related to affordable housing requirements.

2. With respect only to qualified leasehold condominiums:

(a) Each unit, its common interest, not including any personal property, and the proportionate undivided part of the real property which is the subject of a qualified leasehold condominium and is allocated to such unit (as expressed in the declaration), shall be deemed to be a parcel, shall be subject to separate assessment to the unit owner and shall be subject to taxation by each assessing unit, school district, special district, county or other taxing unit for all types of taxes authorized by law including, but not limited to, special ad valorem levies and special assessments. Neither the real property which is the subject of a qualified leasehold condominium, the building, the property nor any of the common elements shall be deemed to be a parcel. In no event shall the aggregate of the assessment of the units



plus their common interests plus their proportionate undivided parts (as expressed in the declaration) of said real property exceed the total valuation of the property and said real property assessed as a single parcel owned in fee. No provision of this paragraph shall be deemed to subject to taxation any parcel or part thereof which, pursuant to applicable law, is either exempt from taxation or with respect to which no taxes are payable.

(b) For the purposes of section five hundred two of the real property tax law, both the unit owner and the owner of the real property which is the subject of a qualified leasehold condominium shall be deemed to be the owner of the parcel in which such unit is included; provided, however, that for the purposes of section nine hundred twenty-six of the real property tax law, only the unit owner shall be deemed the owner of the parcel in which such unit is included and only the unit owner shall be personally liable for the payment of any taxes assessed against such parcel. Only the fee owner of the land which is the subject of a qualified leasehold condominium, however, shall be deemed to be the owner of the parcel in which a unit is included for the purposes of determining whether such parcel is subject to or exempt from taxation or whether no taxes are payable with respect thereto.

(c) The taxes assessed against each unit, its common interest and the proportionate undivided part of the real property which is the subject of a qualified leasehold condominium allocated to such unit (as expressed in the declaration), shall constitute a lien solely on that unit, its common interest and the proportionate undivided part of said real property allocated to such unit (as expressed in the declaration), and such taxes shall not constitute a lien on any other unit or the common interest of any other unit or the proportionate undivided part of said real property allocated to any other unit (as expressed in the declaration).

(d) At such time as the real property which is the subject of a qualified leasehold condominium is submitted to the provisions of this article, the assessing unit shall make provision so that the real property which (i) is not the subject of a qualified leasehold condominium and (ii) immediately prior to such submission was included in a parcel in which there also was included all or any part of the real property which is (immediately subsequent to such submission) the

subject of a qualified leasehold condominium, is established as a single parcel on the assessment roll and tax map of such assessing unit, separate and apart from any real property which is the subject of a qualified leasehold condominium.

3. All provisions of a declaration relating to a unit, its common interest and the proportionate undivided part of the real property which is the subject of a qualified leasehold condominium allocated to such unit (as expressed in the declaration), which has been sold for taxes shall survive and shall be enforceable after the issuance of a tax deed for such unit to the same extent that such provisions would be enforceable against a voluntary grantee of such unit immediately prior to the delivery of such tax deed.

4. The board of managers may act as an agent of each unit owner who has given his written authorization to seek administrative and judicial review of an assessment made in accordance with subdivision one of this section, pursuant to title one-A of article five and title one of article seven of the real property tax law. The board of managers may retain legal counsel on behalf of all unit owners for which it is acting as agent and to charge all such unit owners a pro rata share of expenses, disbursements and legal fees for which charges the board of managers shall have a lien pursuant to section three hundred thirty-nine-z.

5. Notwithstanding the provisions of any general, special or local law to the contrary, in a city having a population of one million or more, the board of managers shall be authorized to act as the sole agent on behalf of all unit owners, without authorization of each unit owner, for the limited purpose of determining whether or not to waive prospectively the benefit of real property tax abatement and exemption for the property in order to qualify for a partial abatement of real property taxes pursuant to section four hundred sixty-seven-a of the real property tax law.

**§ 339-z. Lien for common charges; priority; exoneration of grantor and**

**grantee.** The board of managers, on behalf of the unit owners, shall have a lien on each unit for the unpaid common charges thereof, together with interest thereon, prior to all other liens except only (i) liens for taxes on the unit in favor of any assessing unit, school district, special district, county or other taxing unit, (ii) all sums unpaid on a first mortgage of record, and (iii) all sums unpaid on a subordinate mortgage of record held by the New York job development authority, the New York state urban development corporation, the division of housing and community renewal, the housing trust fund corporation, the New York city housing development corporation, or in a city having a population of one million or more, the department of housing, preservation and development. Upon the sale or conveyance of a unit, such unpaid common charges shall be paid out of the sale proceeds or by the grantee. Any grantor or grantee of a unit shall be entitled to a statement from the manager or board of managers, setting forth the amount of the unpaid common charges accrued against the unit, and neither such grantor nor grantee shall be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid common charges against such unit accrued prior to such conveyance in excess of the amount therein set forth. Notwithstanding the above, the declaration of an exclusive non-residential condominium may provide that the lien for common charges will be superior to any mortgage liens of record.

**§ 339-aa. Lien for common charges; duration; foreclosure.** The lien provided for in section three hundred thirty-nine-z of this article shall be effective from and after the filing in the office of the recording officer in which the declaration is filed a verified notice of lien stating the name (if any) and address of the property, the liber and page of record of the declaration, the name of the record owner of the unit, the unit designation, the amount and purpose for which due, and the date when due; and shall continue in effect until all sums secured thereby, with the interest thereon, shall have been fully paid or until expiration six years from the date of filing, whichever occurs sooner. In the event that unpaid common charges are due, any member of the board of managers may file a notice of lien as described herein if no notice of lien has been filed within sixty days after the unpaid

charges are due. Upon such payment the unit owner shall be entitled to an instrument duly executed and acknowledged certifying to the fact of payment. Such lien may be foreclosed by suit authorized by and brought in the name of the board of managers, acting on behalf of the unit owners, in like manner as a mortgage of real property pursuant to article thirteen of the real property actions and proceedings law, without the necessity, however, of naming as a party defendant any person solely by reason of his owning a common interest with respect to the property. The board of managers shall be required to provide notice to the unit owner at least ninety days prior to the commencement of a foreclosure proceeding at the property address and any other address of record. Such notice shall be in fourteen-point type and shall inform the owner that the board intends to file an action for foreclosure to enforce the lien and shall state the address of the property and the specific amount due. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit for any period prior to sale pursuant to judgment of foreclosure and sale, if so provided in the by-laws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The board of managers, acting on behalf of the unit owners, shall have power, unless prohibited by the by-laws, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same, and foreclosure shall be maintainable notwithstanding the pendency of suit to recover a money judgment.

Notwithstanding any other provision of this article, if a municipal corporation acquires title to a unit as a result of tax enforcement proceedings, such municipal corporation shall not be liable for and shall not be subject to suit for recovery of the common charges applicable to such unit during the period while title to such unit is held by the municipal corporation or for the payment of any rental for the unit under the provisions of this section, except to the extent of any rent arising from such unit received by such municipal corporation during such period.

Except as herein specifically provided, nothing contained herein shall affect or impair or release the unit from the lien for such common charges or impair or diminish the rights of the manager or the board of managers on behalf of the unit owners under this section and section three hundred thirty-nine-z.

**§ 339-bb. Insurance.** The board of managers shall, if required by the declaration, the by-laws or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, and shall give written notice of such insurance and of any change therein or termination thereof to each unit owner. In the case of a qualified leasehold condominium, such insurance shall be required in any event, and shall be in an amount equal to full replacement cost of the building. The policy or policies of such insurance shall be updated annually to maintain such insurance in such amount. Nothing herein shall prejudice the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building shall be deemed common expenses, provided, however, that in charging the same to the unit owners consideration may be given to the higher premium rates on some units than on others.

**§ 339-cc. Repair or reconstruction.** 1. Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and reconstructed by the board of managers, using the proceeds of insurance, if any, on the building for that purpose, and any deficiency shall constitute common expenses; provided, however, that if three-fourths or more of the building is destroyed or substantially damaged and seventy-five per cent or more of the unit owners do not duly and promptly resolve to proceed with repair or restoration, then and in that event the property or so much thereof as shall remain, shall be subject to an action for partition at the suit of any unit owner or lienor as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all the unit owners in proportion to their respective common interests, provided, however, that no payment

shall be made to a unit owner until there has first been paid off out of his share of such fund all liens on his unit.

2. Notwithstanding the provisions of subdivision one hereof, in the case of a qualified leasehold condominium, any damage to or destruction of the building shall be promptly repaired and reconstructed by the board of managers, and the proceeds of the insurance policy or policies required for qualified leasehold condominiums pursuant to the provisions of section three hundred thirty-nine-bb of this chapter shall first be applied to such repair and reconstruction.

**§ 339-dd. Actions.** Actions may be brought or proceedings instituted by the board of managers in its discretion, on behalf of two or more of the unit owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one unit. Service of process on the unit owners in any action relating to the common elements or more than one unit may be made on the person designated in the declaration to receive service of process.

**§ 339-ee. Effect of other laws.** 1. All units of a property which shall be submitted to the provisions of this article shall be deemed to be cooperative interests in realty within the meaning of section three hundred fifty-two-e of the general business law. Article nine-A of this chapter shall not apply to the property or any unit. Article eleven of the tax law shall not apply to declarations or any lien for common charges provided for in this article. Any provision of the multiple dwelling law, the multiple residence law, or any state building construction code as to multiple residences pursuant to the provisions of article eighteen of the executive law, requiring registration by the owner or other person having control of a multiple dwelling shall be deemed satisfied in the case of a property submitted to the provisions of this article by registration of the board of managers, such registration to include the name of each unit owner and the designation of his or her unit; each unit owner shall be deemed the person in control of the unit owned by him or her, and the board of managers shall

be deemed the person in control of the common elements, for purposes of enforcement of any such law or code, provided, however, that all other provisions of the multiple dwelling law or multiple residence law, otherwise applicable, shall be in full force and effect, and provided further that in a city with a population of one million or more persons registration required by a housing maintenance code of such city shall be deemed satisfied in the case of a property submitted to the provisions of this article by registration of the board of managers which need not include the name of each unit owner and the designation of his or her unit.

2. In the event the proceeds of a construction mortgage were applied to construction of a unit of a condominium submitted to the provisions of this article, or in the event that a unit submitted to the provisions of this act was subject to a blanket mortgage whose proceeds were applied exclusively to payment of the construction mortgage or to capital expenditures or expenses for the development or operation of the condominium, or to purchase of land or buildings for the condominium provided that such purchase was no more than two years prior to the recording of the declaration of condominium, and a mortgage recording tax was duly paid on such construction or blanket mortgage in accordance with article eleven of the tax law, then, as each unit is first conveyed, there shall be allowed a credit against the mortgage recording taxes (except the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of the tax law) that would otherwise be payable on a purchase money mortgage, said credit to be in the amount resulting from the product of the purchaser's pro rata percentage of interest in the common elements and the mortgage tax already paid on the construction or blanket mortgage. No credit shall be allowed under this subdivision (a) on account of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of the tax law or (b) where the first condominium unit is sold more than two years after the construction or blanket mortgage was recorded.

3. Unless specifically exempted by a provision of this article, all property subject to the provisions of this article shall continue to be

subject to all laws, rules and resolutions adopted by any county, city, town or village for the health, safety and welfare of its inhabitants or for regulation of the use of real property. Every county, city, town and village shall continue to have all enforcement powers created by such laws, rules or resolutions or the enabling acts of such laws, rules and resolutions and may exercise those enforcement powers against any violation involving property subject to the provisions of this article.

4. Any estimate of tax liability required by any rule adopted pursuant to this article shall not be binding upon any municipality or public official and any document containing such an estimate shall contain a notice to that effect.

**§ 339-ff. Mortgage investments on units by state agencies, insurers, banking organizations and fiduciaries; limitation to first mortgages.**

(a) The following persons: (1) public officers, bodies of the state, municipalities, and municipal subdivisions, (2) persons doing an insurance business (as defined by section one thousand one hundred one of the insurance law), (3) banking organizations (as defined by section two of the banking law), and (4) executors, administrators, trustees, guardians and other fiduciaries, are authorized to invest in bonds, notes and evidences of indebtedness which are secured by first mortgages or deeds of trust upon units and the appurtenant common interests, wherever such persons may invest, and subject to all of the rules and limitations applicable to such investment, in bonds, notes and evidences of indebtedness which are secured by first mortgages or deeds of trust upon real estate. Where the applicable limitations are dependent upon the type of use of the real estate, only the type of use of the particular unit or units which constitute the security for such investment shall be taken into consideration for the purpose of such limitations. The existence of any prior lien for taxes, assessments or other similar charges not yet delinquent shall be disregarded in determining whether a mortgage or deed of trust is a first mortgage or deed of trust.

(b) No person enumerated in subdivision (a) of this section may invest in bonds, notes or evidences of indebtedness secured by mortgages or



deeds of trust upon units and the appurtenant common interests, which are other than first mortgages or deeds of trust thereupon, notwithstanding any other provision of law (including section three hundred thirty-nine-g of this chapter).

(c) Notwithstanding subdivisions (a) and (b), banking organizations are authorized, subject to the rules and limitations applicable thereto contained in subdivision four-a of section one hundred three, subdivision six-a of section two hundred thirty-five, subdivision four-a of section three hundred eighty and subdivision eight of section four hundred fifty-six of the banking law, and the New York job development authority is authorized to invest in bonds, notes and evidences of indebtedness which are secured by mortgages other than first mortgages upon units and the appurtenant common interests, provided such mortgages are in compliance with title eight of article eight of the public authorities law.

(d) Notwithstanding subdivisions (a) and (b) of this section, the New York state urban development corporation is authorized to invest in bonds, notes and evidences of indebtedness which are secured by mortgages other than first mortgages upon units and the appurtenant common interests, provided that (i) such units are owned or are to be acquired by a corporation as defined in subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law and are to be used for commercial purposes, and such corporation has executed a loan authorization agreement with the New York state urban development corporation on or before June thirtieth, nineteen hundred eighty-eight or (ii) such units are developed as a part of a project of the New York state urban development corporation that received specific authorization in chapter eight hundred thirty-nine of the laws of nineteen hundred eighty-seven; and further provided that such investments and subordinate mortgages are in compliance with chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight, as subsequently amended.

(e) Notwithstanding subdivisions (a) and (b) of this section, the New York city housing development corporation and a city having a population of one million or more are authorized to invest in bonds, notes, and evidences of indebtedness which are secured by mortgages other than first mortgages upon dwelling units and the appurtenant common interests

provided that such investment is made in connection with a project undertaken pursuant to the private housing finance law or the general municipal law.

(f) Notwithstanding subdivisions (a) and (b) of this section, the division of housing and community renewal and the housing trust fund corporation, their successors and assigns, are authorized to invest in bonds, notes, and evidences of indebtedness which are secured by mortgages other than first mortgages upon dwelling units and the appurtenant common interests provided that such investment is made in connection with a project undertaken pursuant to the private housing finance law.

**§ 339-gg. Severability.** If any provision of this article or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the article and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

**§ 339-hh. Reservation of power.** The legislature reserves the right to alter, amend, suspend or repeal in whole or in part this article. Any such change in this article shall be effective notwithstanding any provisions of any declaration or by-laws.

**§ 339-ii. Construction.** This article shall be liberally construed to effect the purposes thereof.

**§ 339-jj. Borrowing by board of managers.** 1. To the extent authorized by the declaration or the by-laws, the board of managers, on behalf of the unit owners, may incur debt. In addition, subject to any limitations set forth in the declaration or the by-laws, the board of managers, on behalf of the unit owners, may incur debt for any of the purposes enumerated in paragraph (b) of subdivision two of section three hundred

thirty-nine-v of this article, provided that (a) such debt is incurred no earlier than the fifth anniversary of the first conveyance of a unit and (b) the incurrence of such debt shall require the consent of a majority in common interest of the unit owners.

2. In connection with a debt incurred by it, the board of managers, on behalf of the unit owners, may (a) assign the rights in and to receive future income and common charges, (b) create a security interest in, assign, pledge, mortgage or otherwise encumber funds or other real or personal property that it holds, (c) agree that, to the extent of any amounts due under any of the provisions of the agreements under which the debt was incurred and subject to the provisions of subdivision two of section three hundred thirty-nine-l of this article, all common charges received and to be received by it, and the right to receive such funds, shall constitute trust funds for the purpose of paying such debt and the same shall be expended for such purpose before expending any part of the same for any other purpose, and (d) agree that at the lender's direction it will increase common charges to the extent necessary to pay any amount when due under any of the provisions of the agreements under which the debt was incurred. The preceding sentence shall not be construed to authorize the board of managers to create a lien on the common elements. Any such assignment may provide that, in the event of a default, the lender shall have the right of the board of managers to file liens in the lender's name on units for unpaid common charges pursuant to sections three hundred thirty-nine-z and three hundred thirty-nine-aa of this article and the right to foreclose such liens pursuant to section three hundred thirty-nine-aa of this article.

3. Nothing in this section shall impair rights under any loan or other agreement existing prior to the effective date of this section or limit any right or power that a board of managers would otherwise have.

**§ 339-kk. Rents.** (a) For the purposes of this section, "non-occupying owner" shall mean a unit owner in a condominium association who does not occupy the dwelling unit.

(b) If a non-occupying owner rents any dwelling unit to a rental

tenant and then fails to make payments due for common charges, assessments or late fees for such unit within sixty days of the expiration of any grace period after they are due, upon notice in accordance with subdivision (c) of this section, all rental payments from the tenant shall be directly payable to the condominium association.

(c) If the common charges, assessments or late fees due for any unit have not been paid in full, within sixty days after the expiration of any grace period of the earliest due date, the board of managers shall provide written notice to the tenant and the non-occupying owner providing that, commencing immediately and until such time as all payments for common charges, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the condominium association at the address listed on the notice. Where a majority of the board of managers has been elected by and from among the unit owners who are in occupancy, the board may elect not to require that rental payments be made payable to the condominium association. At such time as payments for common charges, assessments and late fees from the non-occupying owner are once again current, notice of such fact shall be given within three business days to the rental tenant and non-occupying owner. Thereafter all rental payments shall be made payable to the non-occupying owner or a designated agent. A non-occupying owner who disputes the association's claim to rental payments pursuant to this section shall be entitled to present facts supporting such owner's position at the next scheduled meeting of the board of managers, which must be held within thirty days of the date that such board receives notice that such owner seeks to dispute such claim.

(d) Nothing in this section shall limit any rights of unit owners or of the board of managers existing under any other law or agreement.

(e) Payment by a rental tenant to the condominium association made in connection with this section shall relieve that rental tenant from the obligation to pay such rent to the non-occupying owner and shall be an absolute defense in any non-payment proceeding commenced by such non-occupying owner against such tenant for such rent.

**§ 339-11. Electric vehicle charging station installation.** 1. As used in this section:

(a) "Reasonable restrictions" means restrictions that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance.

(b) "Electric vehicle charging station" means a station that delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

2. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in the property, and any by-laws, that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station within an owner's unit or in a designated parking space, including, but not limited to, a deeded parking space, a parking space in an owner's exclusive use common element, or a parking space that is specifically designated for use by a particular owner, or is in conflict with the provisions of this section shall be void and unenforceable.

(b) This section shall not apply to by-laws that impose reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(c) An electric vehicle charging station shall meet all applicable health and safety standards and requirements imposed by law, rule or regulation.

(d) If approval is required for the installation or use of an electric vehicle charging station the application for approval shall be processed and approved by the association in a manner prescribed by the association and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. If an application is not denied in writing within sixty days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(e) If the electric vehicle charging station is to be placed in the common elements or in an exclusive use common element, as designated in the common interest declaration, the following provisions shall apply:

(i) The owner first shall obtain approval from the association to install the electric vehicle charging station and the association shall approve the installation if the owner agrees in writing to do all of the following:

(A) comply with the association's architectural standards for the installation of the charging station;

(B) engage a licensed contractor to install the charging station;

(C) within fourteen days of approval, provide a certificate of insurance that names the association as an additional insured under the owner's insurance policy pursuant to subparagraph (iii) of this paragraph; and

(D) pay for both the costs associated with the installation of and the electricity usage associated with the charging station.

(ii) The owner and each successive owner of the charging station shall be responsible for all of the following:

(A) costs for damage to the charging station, common elements, exclusive use common elements, or separate units resulting from the installation, maintenance, repair, removal, or replacement of the charging station;

(B) costs for the maintenance, repair, and replacement of the charging station until it has been removed and for the restoration of the common elements after removal;

(C) the cost of electricity associated with the charging station; and

(D) disclosing to prospective buyers the existence of any charging station of the owner and the related responsibilities of the owner under this section.

(iii) The owner of the charging station, whether located within a separate unit or within the common elements or exclusive use common elements, shall, at all times, maintain a liability coverage policy. The owner that submitted the application to install the charging station shall provide the association with the corresponding certificate of insurance within fourteen days of approval of the application. That owner and each successor owner shall provide the association with the certificate of insurance annually thereafter.

(iv) A homeowner shall not be required to maintain a homeowners liability coverage policy for an existing national electrical manufacturers association standard alternating current power plug.

(f) Except as provided in paragraph (g) of this subdivision, installation of an electric vehicle charging station for the exclusive use of an owner in a common element, that is not an exclusive use common element, shall be authorized by the association only if installation in the owner's designated parking space is impossible or unreasonably expensive. In such cases, the association shall enter into a license agreement with the owner for the use of the space in a common area, and the owner shall comply with all of the requirements in paragraph (e) of this subdivision.

(g) The association or owners may install an electric vehicle charging station in the common elements for the use of all members of the association and, in that case, the association shall develop appropriate terms of use for the charging station.

(h) An association may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.

(i) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars.

(j) In any action by a unit owner requesting to have an electric vehicle charging station installed and seeking to enforce compliance with this section, the unit owner shall be awarded reasonable attorney's fees if he or she prevails.

**\* § 339-mm. Establishment of reserve fund and dedicated capital fund for buildings converting to condominium ownership under section three hundred fifty-two-eeeeee of the general business law.** 1. Within thirty days after the consummation of a preservation plan, the offeror thereof (and/or its designee or designees and/or successor or successors) shall establish and transfer:

(a) to the condominium board of managers a reserve fund to be used exclusively for making capital repairs, replacements and improvements

necessary for the health and safety of the residents (including residents of the income-restricted rental units) of such building or group of buildings or development. Such reserve fund shall be exclusive of any other funds required to be reserved under the preservation plan or applicable law or regulation of the attorney general, except a fund for capital repairs, replacements and improvements substantially similar in purpose to and in an amount not less than the reserve fund mandated by this section. Such reserve fund shall also be exclusive of any working capital fund or dedicated capital fund and shall not be subject to reduction for closing apportionments.

(b) to the qualified owner of the income-restricted rental units, and subject to the oversight of the relevant housing finance agency set forth in a regulatory agreement, a dedicated capital fund to be used exclusively for making unit repairs, replacements and improvements necessary for the health and safety of the residents of an income-restricted rental unit or units of such building or group of buildings or development. Such dedicated capital fund shall be exclusive and supplemental of any other funds required to be reserved under the preservation plan or applicable law or regulation. Such dedicated capital fund shall also be exclusive and supplemental of any reserve fund or working capital fund and shall not be subject to reduction for closing apportionments. The dedicated capital fund shall not be used towards any building-wide capital replacement, and instead shall be used solely for unit repairs, replacements and improvements of the income-restricted rental units.

1-a. In the event that the funds are insufficient, unless the relevant housing finance agency provides otherwise, repairs and capital improvements necessary for the health and safety of the residents in all common areas and building infrastructure shall be at the sole expense of the condominium board of managers. The relevant housing finance agency may establish penalties for failure to comply with legal and regulatory requirements.

2. (a) Such reserve fund shall be established in an amount equal to either (i) three percent of the total price or, (ii) (A) three percent of the actual sales price of all condominium units sold by the offeror



at the time the preservation plan is declared effective, provided, however, that if such amount is less than one percent of the total price, then the fund shall be established as a minimum of one percent of the total price; plus (B) supplemental contributions to be made by the offeror at a rate of three percent of the actual sales price of condominium units for each unit held by the offeror and sold to bona fide purchasers subsequent to the effective date of the preservation plan and within five years of the consummation of the preservation plan, notwithstanding that the total amount contributed may exceed three percent of the total price; and provided, further, that if five years from thirty days after the consummation of the preservation plan the total contributions by the offeror to the fund are less than three percent of the total price the offeror shall pay the difference between the amount contributed and three percent of the total price. Supplemental contributions shall be made within thirty days of each sale.

(b) Such dedicated capital fund shall be established in an amount equal to one-half of one percent of the total price, and shall be transferred in full within thirty days of the date of consummation of the preservation plan into an account at a financial institution regulated by the department of financial services of the state of New York that shall have been opened by, and shall at all times be subject to the oversight authority of the relevant housing finance agency of the qualified owner of the income-restricted rental unit or units.

3. Notwithstanding the provisions of subdivisions one and two of this section, the contributions required pursuant to this section may be made earlier or in an amount greater than so provided, including as may be directed by the relevant housing finance agency. An offeror may claim and receive credit against the mandatory initial contribution to the reserve fund for the actual cost of capital replacements which such offeror has begun after the preservation plan is submitted for filing to the department of law and before the preservation plan is declared effective; provided, however, that any such replacements shall be set forth in the preservation plan together with their actual or estimated costs and further provided, that such credit shall not exceed the lesser of the actual cost of the capital replacements or one and a half percent

of the total price.

4. The condominium board of managers shall report to unit owners and the relevant housing finance agency, and shall make available to all tenants in each building, on a semi-annual basis with respect to all deposits into and withdrawals from the reserve fund mandated by paragraph (a) of subdivision two of this section.

5. The offeror, not later than the thirtieth day following the acceptance of a preservation plan for filing by the department of law pursuant to section three hundred fifty-two-eeeeee of the general business law and until the consummation of the preservation plan, shall post and maintain in a prominent place, accessible to all tenants in each building covered by the preservation plan, a listing of all violations of record against such buildings as determined by the department of buildings of the city of New York and the department of housing preservation and development of the city of New York. All newly issued violations shall be posted within forty-eight hours of their issuance and maintained as described in this subdivision. The offeror may satisfy the requirements of this section by designating an agent on the premises with whom such listing shall be made available for inspection by the tenants. Any penalty for failure to comply with a state or local building and housing maintenance law or regulation shall be paid by, and the sole responsibility of, the condominium board of managers.

6. Any provision purporting to waive the provisions of this section in any contract to purchase, any agreement between an offeror and a unit purchaser, any agreement between an offeror and the condominium board of managers created under a preservation plan, any agreement between an offeror and the owner of the income-restricted rental unit or units shall be void as against public policy.

7. (a) Except as otherwise provided in paragraph (b) of this subdivision, any person who knowingly violates or assists in the violation of any provision of this section shall be subject to a civil penalty of one hundred dollars per day per unit for each day that a

building is not in compliance with the provisions of such section; provided, however, that such civil penalty shall not exceed one thousand dollars per unit.

(b) Any person who violates or assists in the violation of subdivision two of this section shall also be subject to a civil penalty of one thousand dollars per day for each day that the reserve fund required by subdivision two of this section is not established; provided, however, that such civil penalty shall not exceed the amount required to be reserved pursuant to subdivision two of this section.

(c) Any other action or proceeding in any court of competent jurisdiction that may be appropriate or necessary for the enforcement of the provisions of this section may be brought in the name of the people of the state of New York by the attorney general, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any provision of this section, mandating compliance with the provisions of this section or for such other relief as may be appropriate. In any such action or proceeding, the attorney general may apply to any court of competent jurisdiction, or to a judge or justice thereof, for a temporary restraining order or preliminary injunction enjoining and restraining all persons from violating any provision of this section, mandating compliance with the provisions of this section, or for such other relief as may be appropriate, until the hearing and determination of such action or proceeding and the entry of final judgment or order therein. The court, or judge or justice thereof, to whom such application is made, is hereby authorized to make any or all of the orders specified in this paragraph, as may be required in such application, with notice, and to make such other or further orders or directions as may be necessary to render the same effectual. No undertaking shall be required as a condition of the granting or issuing of such order, or by reason thereof.

(d) Nothing contained in this section shall impair any rights, remedies or causes of action accrued or accruing to purchasers of condominium units with regard to the funding of the reserve fund and capital fund under this section.

\* NB Repealed November 5, 2031

ARTICLE 9-C  
**SOLAR RIGHTS ACT**

Section 342. Certain covenants, conditions, and restrictions of  
homeowners' associations prohibited.

**§ 342. Certain covenants, conditions, and restrictions of homeowners' associations prohibited.** 1. Definitions. For the purposes of this section:

(a) "restriction on use" means any covenant, restriction, or condition contained in:

- (i) a deed;
- (ii) a contract;
- (iii) the by-laws of a homeowners' association;
- (iv) any rules or regulations adopted by a homeowners' association;
- (v) a security agreement; or
- (vi) any other instrument affecting the transfer or sale of, or any interest in, real property.

(b) "solar power system" means a photovoltaic system, comprising of solar electric generating equipment, installed on a rooftop, with a rated capacity of not more than twenty-five kilowatts.

2. A homeowners' association may not adopt or enforce any rules or regulations that would effectively prohibit, or impose unreasonable limitations on, the installation or use of a solar power system. A restriction on use which effectively prohibits the installation or use of a solar power system is unenforceable and shall be void as contrary to public policy. For the purposes of this subdivision, an unreasonable limitation includes, but is not limited to, any restriction on use that:

(a) inhibits the solar power system from functioning at its intended maximum efficiency; or

(b) increases the solar power system's installation or maintenance costs by an amount which is estimated to be greater than ten percent of the total cost of the initial installation of the solar power system, including the costs of labor and equipment.

3. Notwithstanding subdivision two of this section, a homeowners'

association may adopt or enforce a restriction on use to prohibit the installation of a solar power system that is located on property owned by the homeowners' association or that is located on property owned in common by the members of the homeowners' association.

4. Any denial of a homeowner's installation of a solar power system by a homeowners' association must include a detailed description of the exact basis for rejection in writing with specific examples of the homeowners' association's concerns, if applicable.

5. A solar power system must meet the requirements established by any local, state or federal law, rule or regulation on health and safety standards and those requirements imposed by state and local permitting authorities.

#### ARTICLE 9-D

##### **ELECTRIC VEHICLE RIGHTS ACT**

Section 343. Certain covenants, conditions, and restrictions of homeowners' associations prohibited.

**§ 343. Certain covenants, conditions, and restrictions of homeowners' associations prohibited.** 1. Definitions. For the purposes of this section:

(a) "restriction on use" shall mean any covenant, restriction, or condition contained in:

- (i) a deed;
- (ii) a contract;
- (iii) the by-laws of a homeowners' association;
- (iv) any rules or regulations adopted by a homeowners' association;
- (v) a security agreement; or
- (vi) any other instrument affecting the transfer or sale of, or any interest in, real property.

(b) "electric vehicle charging station" shall have the same meaning as such term is defined in section three hundred thirty-nine-11 of this chapter.

2. A homeowners' association may not adopt or enforce any rules or regulations that would effectively prohibit, or impose unreasonable limitations on, the installation or use of an electric vehicle charging station. A restriction on use which effectively prohibits the installation or use of an electric vehicle charging station is unenforceable and shall be void as contrary to public policy. For the purposes of this subdivision, an unreasonable limitation includes, but is not limited to, any restriction on use that:

(a) inhibits the electric vehicle charging station from functioning at its intended maximum efficiency; or

(b) increases the electric vehicle charging station's installation or maintenance costs by an amount which is estimated to be greater than ten percent of the total cost of the initial installation of the electric vehicle charging station, including the costs of labor and equipment.

3. Notwithstanding subdivision two of this section, a homeowners' association may adopt or enforce a restriction on use to prohibit the installation of an electric vehicle charging station that is located on property owned by the homeowners' association or that is located on property owned in common by the members of the homeowners' association.

4. If approval for the installation or use of an electric vehicle charging station is required by a homeowners' association, the application for approval shall be processed and approved by the association in a manner prescribed by the association and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. Any denial of a homeowner's application shall include a detailed description of the exact basis for the denial and shall include specific examples of the homeowners' association's concerns, if applicable. If an application is not denied in writing within sixty days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

5. An electric vehicle charging station shall meet the requirements established by any local, state or federal law, rule or regulation on

health and safety standards and those requirements imposed by state and local permitting authorities.

6. In any action by a homeowner requesting to have an electric vehicle charging station installed and seeking to enforce compliance with this section, the homeowner shall be awarded reasonable attorney's fees if he or she prevails.

\* ARTICLE 9-E

**CONVEYANCE AND ENCUMBRANCE OF MANUFACTURED HOMES AS REAL PROPERTY**

Section 344-a. Manufactured home; affixed to a permanent foundation.

344-b. Conversion procedure.

344-c. Affidavit of affixation.

344-d. Disposition of liens.

344-e. Notice to commissioner of motor vehicles.

344-f. Time of conversion.

344-g. Conveyance and encumbrance as real property.

344-h. Manufactured homes that remain personal property.

344-i. Documents in trust.

344-j. Home warranty.

344-k. Impairment of rights.

\* NB Effective December 12, 2026

\* **§ 344-a. Manufactured home; affixed to a permanent foundation.** For purposes of this article, the term "manufactured home" means a "manufactured home" as defined in paragraph fifty-three of subsection (a) of section 9-102 of the uniform commercial code. For purposes of this section, article forty-six of the vehicle and traffic law, and the uniform commercial code, a manufactured home is "affixed to a permanent foundation" if it is anchored to real property by attachment to a permanent foundation, and connected to a residential utility, such as water, gas, electricity, sewer or septic service.

\* NB Effective December 12, 2026

**\* § 344-b. Conversion procedure.** (a) A manufactured home shall be deemed to be real property and shall be governed by the laws applicable thereto when the following conditions are satisfied:

(i) The manufactured home shall be affixed to a permanent foundation;

(ii) The ownership interests in the manufactured home and the real property to which the manufactured home is or shall be affixed shall be identical, provided, however, that the owner of the manufactured home, if not the owner of the real property, is in possession of the real property under the terms of a lease in recordable form, and the owner has the written consent of the lessor of the real property; and

(iii) Each person having an ownership interest in such home shall execute and record with the recording officer of the county or counties in which the real property is located an affidavit of affixation as provided in section three hundred forty-four-c of this article, and satisfy the other applicable requirements of this article.

(b) Upon receipt of the recorded original affidavit of affixation pursuant to section three hundred forty-four-e of this article, any person designated therein for filing with the commissioner of motor vehicles shall file the recorded original affidavit of affixation with the commissioner.

(i) In the case where the home is covered by a manufacturer's certificate of origin, the recorded original affidavit of affixation and the original manufacturer's certificate of origin shall be filed with the commissioner pursuant to section twenty-one hundred seventeen-a of the vehicle and traffic law.

(ii) In the case the home is covered by a certificate of title, the recorded original affidavit of affixation and the original certificate of title shall be filed with the commissioner in accordance with section twenty-one hundred seventeen-b of the vehicle and traffic law.

(iii) In the case the home is not covered by a manufacturer's certificate of origin or a certificate of title, or where a manufactured home that is covered by a manufacturer's certificate of origin or certificate of title but which the owner or owners, after diligent search and inquiry, are unable to produce, the recorded original affidavit of affixation shall be filed with the commissioner in accordance with section twenty-one hundred seventeen-c of the vehicle and traffic law.



\* NB Effective December 12, 2026

**\* § 344-c. Affidavit of affixation.** (a) To convey or voluntarily encumber a manufactured home, an affidavit of affixation shall contain or be accompanied by:

(i) so far as the data exists, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the vehicle identification number or numbers of the manufactured home, and whether it is new or used;

(ii)(A) a statement that the party executing the affidavit is the owner of the real property described therein or, (B) if not the owner of the real property, (1) a statement that the party executing the affidavit is in possession of the real property pursuant to the terms of a lease in recordable form, and (2) the consent of the lessor of the real property shall be endorsed upon or attached to the affidavit and be acknowledged or proved in the manner as to entitle a conveyance to be recorded;

(iii) the street address and the legal description of the real property upon which the manufactured home is or will be affixed to a permanent foundation;

(iv) a statement that the manufactured home is or shall be affixed to a permanent foundation to the real property;

(v) the name and address of the person designated for filing the recorded original affidavit of affixation with the commissioner of motor vehicles, to whom the recording officer shall return the affidavit of affixation after it has been duly recorded in the real property records, as provided in this section.

(b) The affidavit of affixation shall be in the form set forth in subdivision (c) of this section, duly sworn and when so sworn, upon payment of the lawful fees therefor, the recording officer shall immediately cause the affidavit of affixation and any attachments thereto, to be duly recorded and indexed in the record of deeds.

(c) An affidavit of affixation shall be in substantially the form set forth below:

\_\_\_\_\_, 20\_\_\_\_

Date

---

Place of Recording

Record & Return by ☐ Mail ☐ Pickup to:

---

Name

---

Address 1

---

Address 2

MANUFACTURED HOME AFFIDAVIT OF AFFIXATION

Homeowner, being duly sworn, on their oath, states as follows:

1. Homeowner owns the manufactured home ("Home") described as follows:

---

| New/Used Year | Manufacturer's Name | Model Name or Model No. |
|---------------|---------------------|-------------------------|
|---------------|---------------------|-------------------------|

---

| Manufacturer's Serial No. | Length / Width |
|---------------------------|----------------|
|---------------------------|----------------|

2. The Home is or will be located at the following "Property Address":

---

| Street or Route | City | County | State | Zip Code |
|-----------------|------|--------|-------|----------|
|-----------------|------|--------|-------|----------|

3. The legal description of the Property Address ("Land") is:

---

4. The Homeowner is the owner of the Land or, if not the owner of the Land, is in possession of the real property pursuant to a lease in recordable form, and the consent of the lessor is attached to this Affidavit.

5. The Home is, or shall be promptly upon delivery, anchored to the Land by attachment to a permanent foundation and connected to appropriate residential utilities (e.g., water, gas, electricity, sewer).

6. Homeowner intends that the Home be an immovable fixture and a permanent improvement to the Land, free of any personal property security interest.

7. The Home shall be assessed and taxed as an improvement to the Land.

IN WITNESS WHEREOF, Homeowner(s) has executed this Affidavit in my presence.

(Seal) \_\_\_\_\_

Homeowner #1 \_\_\_\_\_

Printed Name \_\_\_\_\_

(Seal) \_\_\_\_\_

Homeowner #2 \_\_\_\_\_

Printed Name

STATE OF \_\_\_\_\_ )

) ss.:

COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to (or affirmed) before me on the  
\_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Notary Printed Name

Notary Public; State of

Qualified in the County of

My commission expires:

Official Seal:

Lender's Statement of Intent:

The undersigned ("Lender") intends that the Home be an immovable fixture  
and a permanent improvement to the Land.

\_\_\_\_\_  
Lender

By:

Authorized Signature

STATE OF \_\_\_\_\_ )

) ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the  
undersigned, a Notary Public in and for said State, personally appeared

\_\_\_\_\_,  
personally known to me or proved to me on the basis of satisfactory  
evidence to be the individual(s) whose name(s) is(are) subscribed to the  
within instrument and acknowledged to me that they executed the same in  
their capacity(ies), and that by their signature(s) on the instrument,  
the individual(s), or the person on behalf of which the individual(s)  
acted, executed the instrument.

---

Notary Signature

---

Notary Printed Name

Notary Public; State of

Qualified in the County of

My commission expires:

Official Seal:

(d) The fee for recording an affidavit of affixation shall be two hundred dollars.

(e) No transfer tax shall be due upon the filing of an affidavit of affixation.

**\* § 344-d. Disposition of liens.** Neither the act of affixing a manufactured home to real property, nor the recording of the affidavit of affixation shall impair the rights of any holder of a security interest in a manufactured home perfected as provided in section twenty-one hundred eighteen of the vehicle and traffic law, unless and until the due filing with and acceptance by the commissioner of motor vehicles of an application to surrender the title and a release of any lien as provided in section twenty-one hundred twenty-one of the vehicle and traffic law. Upon the filing of such a release, the security interest created under the vehicle and traffic law terminates. The recording of an affidavit of affixation does not change the character of the lien noted on a certificate of title, and no mortgage recording tax shall be imposed at the time an affidavit of affixation is recorded or upon any lien upon a manufactured home created under the vehicle and traffic law.

\* NB Effective December 12, 2026

**\* § 344-e. Notice to commissioner of motor vehicles.** Upon payment of the fees provided by law and recordation of the affidavit of affixation, the recording officer shall endorse the affidavit as "recorded in land records", setting forth thereon the indexing information for the affidavit of affixation and the recording officer shall forthwith

forward the recorded original affidavit of affixation to the person designated therein for filing with the commissioner of motor vehicles.

\* NB Effective December 12, 2026

**\* § 344-f. Time of conversion.** (a) A manufactured home shall be considered real property as provided in section three hundred forty-four-g of this article when an application to surrender a manufacturer's certificate of origin pursuant to section twenty-one hundred seventeen-a of the vehicle and traffic law, an application to surrender a certificate of title pursuant to section twenty-one hundred seventeen-b of the vehicle and traffic law, or an application for confirmation of conversion pursuant to section twenty-one hundred seventeen-c of the vehicle and traffic law is delivered to and accepted by the commissioner of motor vehicles.

(b) Notwithstanding subdivision (a) of this section, a manufactured home shall be considered real property as provided in section three hundred forty-four-g of this article if an application to surrender a manufacturer's certificate of origin pursuant to section twenty-one hundred seventeen-a of the vehicle and traffic law, an application to surrender a certificate of title pursuant to section twenty-one hundred seventeen-b of the vehicle and traffic law, or an application for confirmation of conversion pursuant to section twenty-one hundred seventeen-c of the vehicle and traffic law is delivered to the commissioner of motor vehicles within thirty days of recording the related affidavit of affixation with the recording officer in the county in which the real property to which the manufactured home is or shall be affixed and the application is thereafter accepted by the commissioner, the requirements of this section shall be deemed satisfied as of the date the affidavit of affixation is recorded.

\* NB Effective December 12, 2026

**\* § 344-g. Conveyance and encumbrance as real property.** Upon satisfaction of the conditions provided in section three hundred forty-four-b of this article, any mortgage, lien or security interest which can attach to land, buildings erected thereon or fixtures affixed

thereto, shall attach, as of the date of recording in the same manner as real property. Title to such manufactured home shall be transferred by deed or other form of conveyance that is effective to transfer an interest in real property, together with the land to which such structure is affixed. The manufactured home shall be deemed to be real property and shall be governed by the laws of this state applicable to real property.

\* NB Effective December 12, 2026

**\* § 344-h. Manufactured homes that remain personal property.** Except as provided in section three hundred forty-four-b, section three hundred forty-four-c, and section three hundred forty-four-e, of this article, an affidavit of affixation is not necessary or effective to convey or encumber a manufactured home or to change the character of the manufactured home to real property.

\* NB Effective December 12, 2026

**\* § 344-i. Documents in trust.** (a) Manufacturer's certificate of origin. The holder of a manufacturer's certificate of origin to a manufactured home may deliver it to any person to facilitate conveying or encumbering the home. Any person receiving any such manufacturer's certificate of origin so delivered holds it in trust for the person delivering it.

(b) Certificate of title. The holder of a certificate of title to a manufactured home may deliver it to any person to facilitate conveying or encumbering the home. Any person receiving any such manufacturer's certificate of title so delivered holds it in trust for the person delivering it.

(c) Lien release. The holder of a security interest in a manufactured home may deliver lien release documents to any person to facilitate conveying or encumbering the home. Any person receiving any such documents so delivered holds the documents in trust for the lienholder.

\* NB Effective December 12, 2026

\* **§ 344-j. Home warranty.** A warranty that applies to a manufactured home when it is sold and rights arising from a breach of the warranty are not affected by a subsequent change in the home's classification as real property pursuant to this article. No additional warranty applies to a manufactured home solely because of a subsequent change in the home's classification as real property.

\* NB Effective December 12, 2026

\* **§ 344-k. Impairment of rights.** Nothing in this section shall impair any rights existing under law prior to the effective date of this section of anyone claiming an interest in a manufactured home.

\* NB Effective December 12, 2026

## ARTICLE 10

### **DISCHARGE OF ANCIENT MORTGAGES**

Section 345. Recording of declaration of intention to preserve certain restrictions on the use of land.

**§ 345. Recording of declaration of intention to preserve certain restrictions on the use of land.** 1. Except as provided in subdivision eight of this section, a condition subsequent or special limitation restricting the use of land and the right of entry or possibility of reverter created thereby shall be extinguished and become unenforceable, either at law or in equity, and if the condition has been broken or the reverter has occurred the right of entry therefor shall become unenforceable and the possessory estate resulting from the occurrence of the reverter shall be extinguished, unless within the time specified in this section a declaration of intention to preserve it is recorded as provided in this section, and notwithstanding the recording of such declaration, unless thereafter, within the times specified in this section, renewal declarations are recorded as provided in this section. Such extinguishment shall occur at the end of the period in which the declaration or renewal declaration may be recorded.

2. A person or persons having a right of entry in the event of breach of a condition subsequent restricting the use of land or a possibility of reverter created by a special limitation restricting the use of land, or having after breach of such condition subsequent or special limitation a right of entry therefor or a possessory estate resulting from occurrence of the reverter, or any one of such persons, may record a declaration of intention to preserve, either in whole or in part, and against one or more owners of interests in the land subject to the restriction, the right of entry and the condition subsequent creating it, or the possibility of reverter and special limitation creating it, or the possessory estate resulting from occurrence of the reverter.

An agent having actual authority, expressed in a writing signed by the principal, may execute and record such a declaration on behalf of his principal. A parent of an infant or a general guardian or guardian of the property of an infant, or if he has no parent, general guardian or guardian of his property, the person with whom he resides, or the committee of the property of an incompetent may execute and record such a declaration on behalf of the infant or incompetent without prior authorization of the court.

3. Such declaration shall be entitled "Declaration of Intention to Preserve Restrictions on the Use of Land," preceded by the word "Renewal" if the declaration is a renewal declaration, and shall set forth

(a) the names of the owners of interests in the land against whom and the successors of whom the restriction is intended to be preserved or, if the names of any such persons are not known, a statement to that effect and in the case of each such person whose name is not known, the name of the last known previous owner from or through whom he derived his interest;

(b) the names and residence addresses of the persons intending to preserve the restriction;

(c) a description of the land against which the restriction is to be preserved, with such information as to its location and specific identification as would be required to be set forth in or endorsed upon a deed transferring the land to be recorded in the county where the



declaration is to be recorded;

(d) the terms of the restriction;

(e) a reference to the instrument creating the condition subsequent or special limitation by which the restriction is imposed and to the place, if any, where such instrument is recorded or filed, or if the condition subsequent or special limitation was created otherwise than by written instrument, a reference to the transaction by which it was created, together with the names of the parties to such instrument or transaction, date of execution and in the case of a will, the date it took effect and the court in which it was probated, or other information sufficient to show the origin of the condition subsequent or special limitation and the location of public records, if any, showing its origin;

(f) references to any conveyances, transactions or events through which the person by or on whose behalf the declaration is executed acquired the right of entry, possibility of reverter or possessory estate resulting from occurrence of the reverter, and the location of public records, if any, of such instruments or relating to such transactions or events to the extent that the existence of such public records and their location are known to the person recording the declaration;

(g) the date on which the condition subsequent or special limitation was created;

(h) that the person by or on whose behalf the declaration is executed claims that the right of entry has arisen or the reverter has occurred, if such claim is made;

(i) if the declaration is executed by one person on behalf of another, the source of his authority or his relation to the person on whose behalf he executed it;

(j) if the declaration is a renewal declaration, the date when the original declaration was recorded and the date on which any previous renewal declaration was recorded.

Every such declaration shall be signed by or on behalf of each person named therein as intending to preserve the restriction. A person executing a declaration on behalf of another shall append to his signature a statement of his address and the name of the person on whose

behalf he acted.

The declaration shall be acknowledged or proved and certified in the manner required to entitle a conveyance of real property to be recorded, and shall have annexed thereto the affidavit or affidavits of the person or persons who executed it attesting that the statements set forth in the declaration are true or that the person making the affidavit is informed and believes that they are true, setting forth the sources of his information and the grounds of his belief, and such affidavit shall be recorded with the declaration.

4. An initial declaration may be recorded in the office in which a conveyance of the land described in the declaration would be recordable or registrable, not less than twenty-seven years nor more than thirty years after the condition subsequent or special limitation described therein was created; provided, however, that if the date when such condition subsequent or special limitation was created was prior to September first, nineteen hundred thirty-one, the declaration may be recorded on or before September first, nineteen hundred sixty-one.

A renewal declaration may be recorded after the expiration of nine years and before the expiration of ten years from the date when the declaration was recorded or the recording of the next previous renewal declaration became effective. The recording of a renewal declaration shall become effective on the anniversary of the recording of the original declaration following the recording of the renewal declaration.

5. A declaration or renewal declaration executed as provided in this section shall, on tender of lawful fees, be recorded and indexed as if it were a conveyance executed by the persons named in such declaration or renewal declaration as persons against whom the restriction is intended to be preserved, except that if title to the land described therein is registered the declaration or renewal declaration shall be recorded as provided in section four hundred eight of this chapter, noted on the original certificate of title of such land and indexed against the names of the persons named in the declaration or renewal declaration as persons against whom the restriction is to be preserved.

For the purposes of any provision of law relating to fees for recording, entering or indexing of conveyances, or relating to searches, furnishing of certified copies, reproduction by photographic method or otherwise, or destruction, or to any other matter pertaining to the powers and duties of recording officers with respect to conveyances, except matters expressly provided for in this section, a declaration or renewal declaration shall be deemed a conveyance.

6. Recording of a declaration or of a renewal declaration shall be effective to preserve the condition subsequent or special limitation and the right of entry, possibility of reverter or possessory estate resulting from occurrence of the reverter from extinguishment as provided in this section, (a) in favor of those persons only by or on whose behalf it was executed and persons succeeding to their interests and (b) against such persons only as are named in the declaration or renewal declaration and persons deriving their interest, either before or after the recording of the declaration or renewal declaration, from or through persons so named. It shall not be effective to prevent extinguishment or modification, under any other statute or rule of law, of the condition subsequent or special limitation or the restriction on the use of land resulting therefrom or the right of entry or possibility of reverter created thereby or the possessory estate resulting from occurrence of the reverter, nor to continue the existence of the restriction beyond such duration, as may have been prescribed for it when it was created, nor to extend the time allowed for commencement of any action.

7. This section shall apply without regard to (a) the infancy, incompetency or other disability of any person entitled to record a declaration of intention to preserve a restriction or a renewal of such a declaration, (b) knowledge of the existence of the restriction by the owner of an interest in the land burdened by it, (c) the pendency, at the time recording of the declaration or a renewal declaration is required by this section, of any action or proceeding to declare or determine rights or interests dependent on the restriction or its breach or to recover possession of the land or to assert in any manner a right

of entry accruing by reason of breach of the restriction, or ownership of a possessory estate resulting from occurrence of the reverter, or (d) a judicial determination of the existence or continued validity of the restriction, other than a judgment for the recovery of possession of the land or of proceeds of a sale thereof or of compensation for a taking thereof, by persons entitled thereto by reason of breach of the condition or by reason of a reverter occurring upon breach of the restriction.

8. This section shall not apply where the condition subsequent or special limitation was created in favor of (a) the United States, the state of New York, or any governmental subdivision or agency of the United States or of the state of New York; or (b) the owner of a reversion following an estate for life; or (c) the owner of a reversion following an estate for years where the number of years for which such estate was created will expire less than seventy years after the time recording of an initial declaration would otherwise be required under this section; or (d) the owner of a reversion on a lease of communication, transportation or transmission lines; or (e) a mortgagee or contractor-vendor of land or the holder of any other security interest in land.

If prior to the time specified in this section for recording of an initial declaration or renewal declaration a person entitled to record such declaration or renewal declaration shall have made valid and effective entry into possession of the land, pursuant to a right of entry or upon a possessory estate resulting from occurrence of a reverter, or shall have obtained a judgment for the recovery of possession of the land or of proceeds of a sale thereof or of compensation for a taking thereof this section shall not apply to bar enforcement of his rights so established.

9. The extinguishment by this section of a condition subsequent or special limitation restricting the use of land and of the right of entry or possibility of reverter created thereby or possessory estate resulting from occurrence of the reverter shall not affect

(a) the power of any person, including the owner of the right of

entry, possibility of reverter or possessory estate, to enforce the same restriction by action for damages or for an injunction to the extent that it is also imposed by covenant, promise or negative easement;

(b) a condition subsequent or special limitation, or the right of entry or possibility of reverter created thereby or possessory estate resulting from occurrence of the reverter, to the extent that the right of entry or possibility of reverter is conditioned upon some event other than breach of a restriction on the use of land.

## ARTICLE 12

### **REGISTERING TITLE TO REAL PROPERTY**

- Section 370. Petition to register title to real property.
371. Petitions and proceedings to be in supreme court; title part of special term.
372. County clerks and registers to be registrars of title.
373. Registrar's bond.
374. Deputy registrars' powers and duties.
375. Compensation of registrars and deputy registrars, official examiners of title, and registration clerks.
376. Disposition of fees received by registrar.
377. Official examiners of title.
378. What owners may apply; what titles may be registered.
379. Contents of petition for registration; other papers to be filed.
380. Official examiner's report of title; other evidences of title.
381. Survey, map or plan to be filed.
382. Notice of petition and of pendency of proceeding.
385. Proceedings upon the petition; notice of hearing.
386. Form of notice to parties.
388. Guardian ad litem.
389. Any person interested may appear and defend.
390. Title in lands vested; clouds thereon removed.
391. Final orders conclusive; to be entered and docketed as a judgment.
392. Fraud; action to set aside or appeal from the final order

- or judgment of registration or to recover the property.
- 393. Registration of title.
  - 394. Certificate of title.
  - 395. Title book.
  - 396. Duplicate certificate of title.
  - 398. Certificate to include dealings pending registration.
  - 399. Certificate of title as evidence.
  - 400. Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.
  - 401. Registered property not affected by prescription or adverse possession.
  - 402. Fraud; notice only by registration.
  - 403. Memorial to be carried forward.
  - 404. Registered property to remain registered.
  - 404-a. Withdrawal from registration in certain instances.
  - 405. Registered property subject to same rights and burdens as unregistered property.
  - 406. Transfers of registered property.
  - 407. Certificate as to part of property remaining after transfer.
  - 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.
  - 409-a. Entries in other indexes.
  - 410. Notice of filed papers.
  - 411. Addresses of interested parties; notice.
  - 412. When a transfer is deemed to be registered.
  - 413. New certificates of title.
  - 414. Loss of duplicate certificate.
  - 415. Mortgages, leases and other liens and charges; may be registered.
  - 416. Proceedings to register mortgage, lease or other lien or charge.
  - 417. Judgments, decrees, attachments and other liens to be noted on certificate.
  - 418. Assignment of mortgage, lease, or other lien or charge.
  - 419. Release, discharge or surrender of charge or incumbrance.
  - 420. Enforcement of mortgages, charges, liens and

incumbrances.

- 421. Powers of attorney to be filed and registered.
- 422. Reference of doubtful matters to the court.
- 423. Death of owner of registered property; transfer of property.
- 423-a. Form for transfer of property upon death of owner of registered property.
- 424. Transfer on death deed.
- 426. Assurance fund.
- 427. Compensation from assurance fund.
- 428. Action against assurance fund.
- 429. Restrictions on claims against assurance fund.
- 430. Penalties for fraudulent acts or false certificates.
- 431. Forgery and fraudulent stamping; penalty.
- 432. Fees to be charged.
- 433. Construction of article.
- 434. Form for official examiner's report of title.
- 435. Form for certificate of title.
- 436. Termination of title registration procedures.

**§ 370. Petition to register title to real property.** Real property, or any estate, interest, or right therein, the title to which is hereby authorized to be registered, may be brought under the operation of this article by the filing of a verified petition praying for registration, with the clerk of the county in which the land, or some portion thereof, is situated. The petition may be so made in person by the owner or owners of such property, estate, interest, or right, or, where special circumstances are shown making it impracticable for the owner to make such petition in person, by an agent acting under a power of attorney acknowledged in the same manner as a deed to be recorded. A corporation may also apply by its duly authorized officer or agent. An infant or other person under disability may apply by his legally appointed guardian, trustee, committee or conservator. The natural person or corporation, in whose behalf the petition is filed may be known, and is treated in this article, as the petitioner. Any other party to the proceeding may be known as a defendant.

**§ 371. Petitions and proceedings to be in supreme court; title part of special term.**

The petition for registration must be made to the supreme court; or to a justice thereof, sitting at a special term in any of the counties within the judicial department where the property is situated, and for that purpose said court shall be always open; and its orders, judgments and decrees in cases coming under this article may be made and entered as well in vacation as in term time. The proceedings upon such petitions shall have the effect of proceedings in rem against the land, and the final orders shall have the effect of final judgments in an action and shall operate directly on the land and vest and establish title thereto. An issue raised in such a case shall be tried at a special term of said court, in the county in which the petition is filed, by the court, except that an issue of fact may be tried by a jury, in the manner prescribed by the civil practice law and rules. When in any county the amount of business under this article makes it necessary or proper that such business should be attended to by one or more justices of said court assigned for that purpose, the appellate division of the judicial department in which such county is situated shall designate as many justices as may be deemed necessary, to constitute the "title part" of the special term in that court; and said appellate division shall provide by rules of practice for the conduct, in said title part, of the business coming under this article in such county. Said appellate division may assign one or more additional justices to said "title part" of the special term, or withdraw one or more justices therefrom, as the business coming under this article may require and the availability of the supreme court justices make proper. One of the justices so assigned to the "title part" of the special term in any county shall be designated by said appellate division to have general supervision and control of the business coming under this article in that county; and so far as is reasonably possible, such designation shall remain unchanged, and such justice shall be retained continuously in such term and part during his term of office unless in the opinion of the appellate division a change is required for the better enforcement or working of



this law. One and the same justice may be assigned so as to have such general supervision and control in two or more counties of the judicial district for which he is elected. Other duties may be assigned by such appellate division to such justice, provided that they do not interfere with his work in supervising and controlling the business coming under this article. The justice assigned, as herein provided, to have general supervision and control of the business coming under the article in any county, shall also have general supervision and control of all the official examiners within such county and it shall be his duty to observe and supervise their work as such official examiners, to advise them when necessary and to make any suggestions or recommendations to the appellate division with respect to discipline, suspension or removal of any of them as to him may seem necessary or proper in the interests of the successful operation of this law.

**§ 372. County clerks and registers to be registrars of title.** County clerks in the several counties of the state, except the counties that may have registers, and in the latter counties the registers of said counties shall be "registrars" of titles in their respective counties. All laws relative to registers, county clerks and their deputies shall extend to registrars and their deputies, so far as the same may be applicable, except as in this article otherwise provided. Registrars of titles shall be county officers, within the meaning of the laws of this state.

**§ 373. Registrar's bond.** Every registrar, before entering upon his duties as registrar, shall give a bond with sufficient security, to be approved by a justice of the supreme court, payable to the people of the state of New York, in a penal sum the same as that for his bond as register or county clerk or in a sum which may be fixed by the county board of supervisors, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do, which bond shall be filed in the office of the secretary of state.

**§ 374. Deputy registrars' powers and duties.** In any county where the business under this article so warrants, the registrar may appoint a chief deputy and as many other deputies as are needed. But no one unless he is also a deputy register or an assistant deputy register appointed under statutory authority, or a deputy county clerk, shall be appointed as such deputy registrar unless he has qualified as an official examiner of title as described and required by section three hundred and seventy-seven of this chapter.

Deputies may perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in case of the death of the registrar, or his removal from office, the chief deputy shall thereupon become the acting registrar until such vacancy shall be filled according to law, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as in the case of the registrar.

**§ 375. Compensation of registrars and deputy registrars, official examiners of title, and registration clerks.** Where county clerks and registers are salaried officials, the local authorities (county officials who provide for county expense, in the city of New York, the mayor) shall fix their additional compensation as registrars, also the compensation of deputy registrars, official examiners of title, the clerks, et cetera, needed to carry on the work under this article. Where a county clerk or a register is compensated directly by the fees paid to himself, his deputies and assistants, the fees paid to him as registrar shall take the usual course and be used to compensate deputies, official examiners of title, clerks, et cetera, at such rates as the registrar may fix, the remainder to belong to him.

**§ 376. Disposition of fees received by registrar.** All fees received by the registrar, for the performance of the duties devolving upon him and

upon the official examiners of title pursuant to this article, shall be disposed of in the same manner as are fees paid to county clerks and registers, except as otherwise provided for in this article. It shall be the duty of the local authorities who provide for county expenses, to provide such accommodations, help, safes, books, papers, and for such other expenses as may properly be required by the registrar in the conduct of his office.

**§ 377. Official examiners of title.** The registrar in any county is authorized to appoint one or more official examiners of title who shall be qualified in accordance with the provisions of law and such rules as may be adopted by the court of appeals. The court of appeals shall prescribe such rules as it deems expedient with respect to ascertaining the fitness and qualifications of individuals for appointment as official examiners of title. Such rules may provide that the length of time during which candidates have practiced law and the experience they have had in the examination of titles to real property shall be taken into consideration in determining their qualifications. Every official examiner of title must be an attorney and counselor-at-law of this state. Subject to rules hereafter adopted by the court of appeals, attorneys and counselors-at-law heretofore duly licensed as official examiners of title shall be eligible for appointment as official examiners of title. In case the registrar shall fail to appoint an official examiner of title in any county, the justice of the supreme court to which petition is made to register any land in such county or to which petition is made to withdraw from registration under the provisions of section four hundred and four-a of this chapter, may appoint a competent attorney to act as such official examiner of title upon that petition. Any official examiner of title shall have the power to administer any oath or affidavit, and to hold hearings and investigations necessary to determine questions of fact arising in the course of his examination of any title, may summon and subpoena witnesses and examine them under oath with regard thereto, and may at any time apply to the supreme court for directions, and receive its assistance, in regard to any investigations conducted by him. The appellate division of the supreme court shall have the jurisdiction to

control and regulate the conduct and work of official examiners of title and may admonish, discipline, suspend or remove from office or position any official examiner of title, because of any dishonesty, incompetency, neglect of duty or any other improper conduct or omission, either on its own motion, or on the suggestion or recommendation of the justice of the supreme court having general supervision and control of the business coming under this law in the county in which such official examiner of title is appointed; and it shall be the duty of said appellate division to co-operate with such justice in endeavoring to retain the highest possible standard of ability, efficiency and honest service for all official examiners of title acting under and pursuant to this law. No person who is the attorney or counsel or otherwise interested in a proceeding to register title to real property shall act as official examiner of title in such proceeding.

**§ 378. What owners may apply; what titles may be registered.** Petition for registration of title may be made by the following persons:

First. The person or persons who claim, singly or collectively, to own in fee simple the legal estate in land, or in some right in or over land, and who hold and possess such land or such right.

Second. The person or persons who claim, singly or collectively, to own a contract for the purchase in fee simple of the legal estate in land, or in some right in or over land, from the owner thereof. Registration in the name of the holder of the contract shall not be made, except on the production of a proper transfer of title under and pursuant to the contract from a transferor in possession, or the consent in writing, duly acknowledged, of the proposed vendor in possession and named in the contract and his wife, if he be married. Such transfer or consent may be made after the commencement of the registration proceeding.

Third. The person or persons who claim singly or collectively, to have the power of appointing or disposing in fee simple of the legal estate in land, or in some right in or over land.

No title to a mortgage, lien, trust, charge or estate less than a fee simple shall be registered, unless the title to the legal estate in fee simple in the same property is first registered.

When the petition is made by the holder of a contract to purchase, it shall refer to the ownership of the proposed vendor, and to the contract of purchase and sale.

It shall not be an objection to bringing real property under this article that the estate or interest of the petitioner is subject to any outstanding lesser estate, mortgage, trust, charge, or other lien or right. But any such lesser estate, mortgage, trust, charge, or other lien or right shall be duly noted on the certificate of title when issued.

**§ 379. Contents of petition for registration; other papers to be filed.** The petition for registration shall be verified in the same manner and form as a pleading in an action and shall set forth, in addition to any other proper allegations:

(a) The name and place of residence with street number, if any, and post-office address of each of the petitioners, and when made by one acting in behalf of another, the name, place of residence and street number, if any, and post-office address and capacity of the person so acting.

(b) That each of the petitioners is of the full age of eighteen years and free from any disability, or, if he is a minor or under disability, his age or the nature of such disability, and the authority of the person by whom his petition is made.

(c) The names and places of residence with street number, if any, and post-office addresses of all persons having or claiming any interest in or lien upon the property, or any part thereof, the title to which is sought to be registered, and whether or not any of them are infants or otherwise incapacitated; the owners in fee simple of the surrounding contiguous properties, and their post-office addresses so far as they are known or can be reasonably ascertained by inquiry on such property;

the people of the state of New York; and a designation of all other possible owners and claimants of the property or any right or interest in or lien upon the property or any part thereof as "all other persons, if any, having any right or interest in or lien upon the property affected by this proceeding, or any part thereof." The petition shall state so far as is known to the petitioner, what claim, if any, the state of New York makes to the property in question or what interest, if any, it has therein other than the general governmental interest or such as exists as to all land in private ownership.

(d) An adequate description of the land and whether vacant or improved, and if improved, the nature of the improvement, and if occupied, the names of the occupants and the nature of their occupancy except as to tenancies under leases for periods not exceeding one year.

(e) A statement of the estate, interest or right claimed by the petitioner in the property the title to which is sought to be registered; the value of the property on the basis of the last assessment for local taxation, and any mortgage or other encumbrance, lien, restriction, easement, claim or interest to which the title is subject so far as known to the petitioner.

(f) A prayer that the title be duly registered, as belonging to and vested in the petitioner, or as the facts may require at the time of such registration.

(g) With said petition shall be filed an abstract of title or search of the real property described in the petition, either issued in the regular course of business by a corporation duly authorized under the laws of this state to make and certify to searches and abstracts of title or to guarantee or insure titles to real property in this state or certified by a member of the bar of this state, which shall contain a full chain of title disclosing the base or underlying title and the tax sale title, if there be one, such chain or chains of title to commence with a full covenant or warranty deed dated at least forty years prior to the commencement of the proceeding, or in the absence thereof, with a source of title generally accepted as good in the locality in which the real property is situated, and which abstract of title or search shall set forth all mortgages, liens, encumbrances, wills, administration of estates, and proceedings of all kinds and nature relating to the real property in question. The abstract of title or search shall be delivered

by the registrar upon the filing thereof to the attorney-general of this state for his use and inspection, and shall be returned to the registrar with the final order herein unless the return of same shall be previously requested by said registrar or by the official examiner of title.

The court may require the petition to be amended and reverified as the circumstances of the case may demand or make proper.

**§ 380. Official examiner's report of title; other evidences of title.**

Immediately upon the filing of the petition the court shall enter an order referring the matter to one of the official examiners of title appointed in the county as provided in section three hundred and seventy-seven of this chapter and directing the registrar to give notice of the hearing upon the petition as provided in section three hundred and eighty-five of this chapter, to the parties named in the petition. The order shall also direct the registrar to give such notice to such additional persons as the preliminary report of the official examiner of title shows should be made parties to the proceeding. In any event, however, the determination of the question as to sufficiency of parties and as to due service of notice shall be for the court as herein provided. As soon as possible after the petition is referred to him the official examiner of title shall file a preliminary report with the registrar as to the sufficiency of the parties named in the petition and as to what additional persons, if any, should be made parties to the proceeding. The official examiner of title shall forthwith proceed to examine the title and investigate the facts stated in the petition or otherwise brought to his notice, and shall make a report in writing to the court of the substance of the proof and his conclusions therefrom. Said official examiner's report shall set forth the exact state and condition of the title sought to be registered which shall contain a full chain of title disclosing the base, or underlying title and the tax sale title, if there be one, and all mortgages, liens, encumbrances, wills, administrations of estates, and proceedings of all kinds and nature relating to the real property in question, and the names, places of residence with street number, if any, and post office addresses as

far as known or reasonably ascertainable, and the rights or interests, or claimed rights or interests, of the petitioner and of all other persons having or claiming any rights or interests in or liens upon said property or any part thereof. It shall contain a statement as to the appearances of parties and a statement as to whether all proper parties in interest have in fact been served with the notice as provided in section three hundred and eighty-five of this chapter and if so in what manner, and the recommendation of the official examiner of title as to whether further notice should be required as to persons residing within or beyond the state from whom registered personal return receipt cards for the notice of hearing have not been received; it shall contain a proper reference to the survey, map or plan provided for in section three hundred and eighty-one of this chapter and a statement of all encroachments, if any, on any surrounding contiguous property and the names, places of residence with street number, if any, and post office addresses of the owners in fee simple of such surrounding contiguous properties, as far as they are known or can be reasonably ascertained by inquiry on said properties or otherwise; and, as to actual or possible owners or claimants, of the property sought to be registered, not known or not found, it shall state fully what search and efforts have been made to find them. All possible owners or claimants of the property sought to be registered, or of any right or interest therein or lien thereon, or in or on any part thereof, who cannot be otherwise described, shall be designated in the report and in the notice of hearing on the petition, by the expression, "all other persons, if any, having any right or interest in, or lien upon the property affected by this proceeding, or any part thereof." By the statements of facts contained in said report of title, or by separate accompanying affidavits, or by any other additional evidences, if necessary, or by any or all of these, sufficient facts must be shown to satisfy the court that all owners and claimants of the property sought to be registered, or of any right, or interest in or lien upon the same or any part thereof, who could be found by diligent inquiry are duly and specifically named and made parties to the proceeding. The question of the sufficiency of the proof that all such owners and claimants who could be found by diligent inquiry are duly and specifically named and made parties to the proceeding and that they have been duly served with



the notice of hearing, shall be for the court; its decision that such proof is sufficient shall be shown by its making an order approving the official examiner's report of title or the final order for the registration of the title, and such decision or order shall be conclusive as a matter of law after thirty days from the time when a certified copy of the final order and judgment of registration in the proceeding is filed in the office of the registrar of the county in which the property is situated. The abstract of title and the searches made or used by the official examiner of title in the process of his work of examining the title and all other proper evidences of the due examination of the title, shall be filed immediately upon the entry of the final order, in the office of the registrar of the county unless otherwise directed by the court and the same shall be open to the inspection of any interested person and shall be subject at all times to the direction of the court. The abstract of title, the searches and other evidences of title so filed and also all official records referred to therein or in the report of the official examiner of title shall be deemed to be part of the record of the proceeding. The official examiner's report of title shall contain a short form of description of the property the title to which is sought to be registered, which form is to be used in the notice provided for by section three hundred and eighty-six of this chapter. Said official examiner's report shall contain, or be accompanied by, any other or further information that the court may prescribe, and shall be in such form as the court may order or as the court of appeals may prescribe in its rules. The official examiner of title may receive in evidence and may base his report upon any official search or abstract or any search or abstract issued in the regular course of business by any corporation duly organized under and by virtue of the laws of this state and by said laws duly authorized to make and to certify to searches and abstracts of title or to guarantee or insure titles to real property in this state. It shall be the duty of any public official forthwith to certify the returns of any search upon the requisition of any official examiner of title and without charge or fees for the same. Where the title to the premises sought to be registered is in whole or in part the same as that of another parcel of land title to which has been registered, reference to the earlier abstract on file in the county in which the petition is filed may be

made by the official examiner of title in place of duplicating the matters therein contained. References to official searches duly filed in the county in which the petition is filed may be made by the official examiner of title in place of duplicating the matters therein contained. The papers so referred to shall have the same effect as evidence and proof in the proceeding as said official examiner's report of title, or said searches, as the case may be. Where the petition seeks registration of a title subject to restrictive covenants or agreements, it shall not be necessary to name or serve those persons who have or claim rights to enforce such covenants and agreements, but unless such persons are named and served the final order and judgment of registration must direct that the title be registered subject to such covenants and agreements.

**§ 381. Survey, map or plan to be filed.** There shall be filed with the registrar a survey, map or plan of the land the title to which is sought to be registered, which shall be made by a competent surveyor and shall be subject to the approval of the court, and which shall clearly show the exact boundaries of the land and its connection with adjacent lands and any adjoining or neighboring streets and avenues, and the distances from such adjoining or neighboring streets or avenues, and all encroachments, if any, and all other facts which are usually shown by accurate surveys. If any adjacent land is already registered, the survey must properly connect and harmonize with the survey of such previously registered land. There shall be attached to such survey, map or plan, and filed with it, an affidavit of the surveyor by whom it was made, that it was made by him personally or under his immediate supervision and direction; that it is a survey, map or plan of the property described in the petition or the official examiner's report of title, and that according to the best of his knowledge and belief said property is included in the boundaries shown on such survey, map or plan, without any encroachments or improper erections, except as follows: (stating and describing any encroachments or improper locations of buildings, fences or other structures). After the original registration of any parcel of land, a new survey, map or plan of the same showing a subdivision thereof into lots may be filed with the registrar after compliance with the provisions of section three hundred thirty-four and

section three hundred thirty-five of the real property law, as amended, and chapter six hundred twenty of the laws of nineteen hundred twenty-six. The filing of such a new survey, map or plan shall outline the registered portion of the property, shall be noted as a memorial on the certificate of title to which it relates, and thereafter the land or any interest therein shall be transferred or encumbered by reference to it; in the event that the old description is used, reference must also be made to the new map.

**§ 382. Notice of petition and of pendency of proceeding.** At the time when the petition for registration of the title of any property is filed, the petitioner shall also cause to be filed a notice thereof in the offices of the county clerk and of the registrar of each county where the property is situated, which notice shall be made and filed in the manner prescribed for a notice of pendency of a civil action, and shall be indexed against the names of the petitioner and all known adverse parties or claimants except the owners of abutting properties, and shall constitute notice of the pendency of the petition and of the proceeding, and shall be governed in all respects by the same rules as a notice of pendency of a civil action, except, that, if the petition be dismissed, or the proceeding discontinued, or in any way terminated other than by the registration of the title, no order for the cancellation of such notice shall be made by the court until it is duly and fully proved to the court that the provisions of section four hundred and ten of this chapter have been fully complied with and performed. The notice of pendency of proceeding filed with the registrar, as provided in this section shall also be noted on the "tickler certificate book" as a petition and said notice shall be treated as, and take the place of the petition in all cases in which this act requires the registrar to deal with the petition, and shall be given a petition number, beginning with number one for the first petition filed and so on in numerical order, and also a serial number. In any place, however, where there is a block or lot system of indexing in use, the said notice shall be indexed according to such system.

**§ 385. Proceedings upon the petition; notice of hearing.** Immediately upon the filing of the petition and of the notice thereof as provided in section three hundred eighty-two of this chapter, and upon receiving the preliminary report of the official examiner of title as to the sufficiency of parties, the registrar shall cause a notice, fixing the time and place at which the petition will be heard, to be published in a newspaper published in the county in which the land is situated. The return day of said notice shall not be less than twenty days nor more than sixty days after the date of publication. The registrar shall also, within seven days of the publication of said notice in a newspaper, cause a copy of said notice to be sent by certified letter, demanding a return personally signed receipt card, to every party to the proceeding whose address is known. The court may also cause other or further notice of the petition to be given. The court shall, so far as it considers it possible, require proof of actual notice to all parties who appear to have any interest in, or claim to, the land included in the petition. Notice to such persons by mail shall be by certified letter, demanding a return personally signed receipt card. The registrar shall also cause the notice of such proceeding and hearing to be posted, at least fourteen days before the return day, in a conspicuous place on each parcel of land affected by the proceeding. The certificate of the registrar that he has served the notice as directed by the court, by publishing and mailing, and that the notice has been duly posted upon the land, shall be filed in the case, with affidavits in support of the same, on or before the return day, and shall be proof of such service. The necessary disbursements of the official examiner of title in the course of his work, the expense of the publication, the mailing, the disbursements for service of the notice, and the posting on the land of the notices shall be paid by the petitioner. Upon the return day the hearing may be adjourned from time to time by the court on its own motion or on the motion of the official examiner of title, or of any party. Service of notice upon the people of the state of New York may be made by mailing a copy of said notice securely inclosed in a postpaid wrapper and directed to the attorney general of the state of New York. Where the people of the state of New York or any municipality in the state is made a party to the proceeding or appears therein the registrar shall serve upon the state or such municipality on its appearance in

such proceeding by the attorney general or corporation counsel or officer discharging similar functions, a copy of the petition, abstract of title and survey filed which abstract of title shall contain a full chain of title disclosing the base or underlying title and the tax sale title if there be one, and all mortgages, liens, encumbrances, wills, administrations of estates, and proceedings of all kinds and nature, relating to the real property in question, as required by this article. Unless the court otherwise directs no report shall be made upon the petition, until the time specified in the notice of the hearing on the petition, and, if any adverse claimant or objector appears, the report shall not be confirmed until opportunity is given to contest the rights of the petitioner in such manner as shall be allowed by the court. The court may refer to the official examiner of title any controverted matter or question for hearing and report. Default shall be noted on the failure to appear of any of those on whom the notice of hearing has been served and upon petition to the court a final order and judgment of registration may be entered at once on the failure to appear and object of all persons so served. The official examiner's report upon being presented to the court shall be prima facie and presumptive evidence of the facts stated therein, and all statements in the report shall be taken and construed as statements of fact, unless they are expressly declared therein to be conclusions or opinions. In no case shall the court be bound by the report of an official examiner of title but may require other or further proof. If any party to the proceeding controverts any statement contained in the official examiner's report, the facts controverting such statement must be specifically pleaded and set forth and must be established affirmatively by the party pleading or setting forth the same. The trial of any issue raised shall be governed by and shall proceed according to the laws of this state and the rules of the court in so far as the same are not expressly abrogated or modified by this article.

**§ 386. Form of notice to parties.** The notice to be served upon the parties to the proceeding required by section three hundred and eighty-five shall be issued by the order of court and subscribed by the registrar, and shall be in form substantially as follows:

REGISTRATION OF LAND TITLE.  
Supreme Court ..... County.

In the matter of the petition of (here insert name, place of residence with street number if any, and post-office address of petitioner) to register the title to certain lands described as follows (here insert description of land).

To (here insert the names of all other parties to the proceeding).

To all whom it may concern:

Pursuant to the order of the Hon. .... made herein, take notice, that at ..... in said county of ..... on the ..... day of ....., nineteen hundred and ....., at ..... o'clock in the forenoon the petition above mentioned will be heard and unless you appear at said time and place and show cause why such petition shall not be granted, your default will be noted and a decree will be entered according to the prayer of the petition and you will be forever barred from contesting said petition or any decree entered thereon.

Witness Hon. ...., Justice of said court, this ..... day of ....., in the year nineteen hundred and ....., Registrar of the county of .....

**§ 388. Guardian ad litem.** In any proceeding to register title, the court may make an order appointing a disinterested attorney, other than the official examiner of title by whom the title was examined and reported and certified, to act as guardian ad litem for all minor persons and for all persons under other disability appearing by the petition or by the official examiner's report of title to have interests adverse to those of the petitioner. The petition for the appointment of said guardian ad litem may be made by the petitioner ex parte at any time during the pendency of the proceeding. The guardian ad litem thus appointed upon the application of the petitioner may be the attorney general of the state of New York, unless it appears to the court that

the state of New York has or claims some interest adverse to that of the person or persons for whom the attorney general would thus be appointed guardian ad litem. The question as to the existence of such adverse claim or interest shall be for the court; and an order appointing the attorney general as such guardian ad litem shall be sufficient proof that no such adverse claim or interest exists. Such an order shall be conclusive as a matter of law after thirty days from the time when a certified copy of the final order or judgment of registration in the proceeding is filed in the office of the registrar of the county in which the property is situated. It shall be the duty of such guardian ad litem actively to ascertain and protect as is reasonably possible, the interest of all minor parties to the proceeding and all other parties under disability. The compensation of such guardian shall be one hundred dollars, unless the court directs otherwise; but the attorney general shall not receive any compensation for acting as such guardian ad litem. No issue requiring a trial shall be raised by the answer of a guardian ad litem of any minor party or party under other disability unless it shall affirmatively appear by the official examiner's report or by answer of the guardian ad litem that such minor party or party under other disability has an interest adverse to the title or interest sought to be registered.

**§ 389. Any person interested may appear and defend.** Any person interested in the property, or whose interests may be affected by the final order or judgment of registration in the proceeding, whether specifically named in the notice or not, may enter his appearance by serving a copy of the same on the registrar of the county in which the property is located and with the clerk of the supreme court in such county, and filing the original thereof together with proof of service with the county clerk on or before the return day or within such further time as may be allowed by the court; and may enter his objections, if any, by likewise serving a copy of the same on the registrar of the county in which the property is located and with the clerk of the supreme court in such county, and filing the original thereof together with proof of service with the county clerk on or before the return day or within such further time as may be allowed by the court; and may

oppose the petition for registration of the property as belonging to the petitioner, or set up a cross-demand to have the title registered in his own behalf. In any case, he shall state particularly what his interest is and shall specifically state all objections to the petition.

**§ 390. Title in lands vested; clouds thereon removed.** In any proceeding under this article, the court may find and decree in whom the title to or any right or interest in the property or any part thereof is vested, whether in the petitioner, or in any other person, and may remove clouds from the title, and may determine whether or not the same is subject to any lien or incumbrance, estate, right, trust or interest, and may declare and fix the same, and may direct the registrar to register such title, right, or interest, and in case the same is subject to any lien, incumbrance, estate, trust or interest, may give directions as to the manner and order in which the same shall appear upon the certificate of title to be issued by the registrar, and generally in such a proceeding, the court may make any and all such orders and directions as shall be according to equity in the premises and in conformity to the principles of this article. But no final order or judgment of registration of a title shall be made or entered until proof is duly made in the proceeding by the report of an official examiner and by the certificate or receipt of the officer entitled to collect the taxes, assessments or water rents, that all taxes, water rents and assessments that may at that time be a lien on the property, right or interest the title to which is so registered, have been fully paid and discharged, unless the court directs the title to be registered subject to any such tax, water rent or assessment, which said tax, water rent or assessment must then be noted on the certificate of title. Where the title to be registered is subject to restrictive covenants or agreements, and it shall appear to the court either that said restrictive covenants or agreements have been violated or that by reason of the proper parties not having been joined the court should not proceed to determine whether said restrictive covenants or agreements have or have not been violated, then in either case title may nevertheless be registered; but the final order or judgment of registration must direct the registration to be "subject to any question



as to whether covenants (specifying them) have been violated, " and the certificate of title shall so note; and then the rights in respect to such covenants of any person interested therein shall not be affected by such final order or judgment or registration. When the land the title to which is to be registered abuts upon any street, avenue, road or way the final order or judgment of registration may provide for the registration of the petitioner's interests or rights in and to such street, avenue, road or way; but if such final order or judgment fail so to provide, then the interests or rights of the petitioner in such street, avenue, road or way shall become and be parcel of or appurtenant to the property registered, and shall be included in any conveyance of or incumbrance or lien upon such registered property, unless it is expressly reserved in or excepted from such conveyance, incumbrance or lien. Such express reservation or exception shall be effected only by a clause directly reserving or excepting such interests or rights in such street, avenue, road or way and shall not be implied from the language used in any description of the registered property subsequent to the initial registration thereof.

**§ 391. Final orders conclusive; to be entered and docketed as a judgment.** No final order or judgment of registration shall be made, unless the court is satisfied that the title to be registered accordingly is free from reasonable doubt. The final order entered upon an application for registration is deemed to be a final judgment and may be entered and docketed and enforced as a final judgment in an action. Before the final order can be docketed, an enrollment must be filed thereupon as the judgment roll in an action, as provided in section three hundred and ninety-three of this chapter. The judgment and any order made and entered in a proceeding under this act shall, except as herein otherwise provided, be forever binding and conclusive upon the state of New York and all persons in the world, whether mentioned and served with the said notice specifically by name, or included in the description, "all other persons, if any, having any right or interest in, or liens upon, the property affected by this proceeding, or any part thereof." It shall not be an exception to such conclusiveness that any such person is an infant, mentally ill or is under any other disability

or is not yet in being.

**§ 392. Fraud; action to set aside or appeal from the final order or judgment of registration or to recover the property.** Any title registration procured by or as the result of fraud may be set aside, in the same manner and by the same proceedings as in the case of a deed obtained by fraud, provided that such proceedings for setting aside the registration shall not injuriously affect the rights of an innocent purchaser or incumbrancer of the property after such registration, for value and without actual notice of the fraud, and provided further that the action or other proceeding to set aside such registration be commenced within ten years from the time when the final order or judgment of registration was filed in the office of the county clerk of the county in which the property is located. No action or proceeding or appeal shall lie or be commenced, except on the ground of fraud as above stated, to set aside or appeal from any final order or judgment of registration or to modify or affect the same or for the recovery of registered property or any estate, right or interest in or lien upon the same or any part thereof, or to make any entry thereon, adversely to the title or interest registered therein, as directed by a final order or judgment of registration of the court, unless such action or proceeding or appeal is commenced or taken within thirty days after a certified copy of such final order or judgment of registration is filed in the office of the registrar of the county in which the property is located.

**§ 393. Registration of title.** Upon entering the final order and judgment of registration, an enrollment thereof as a judgment roll in an action must be prepared, and filed in the office of the clerk, consisting of the petition, the notice with proof of service, the official examiner's report, all orders and all other papers necessarily affecting the final order of registration. The clerk upon payment of a fee of ten dollars shall cause a copy of said judgment of registration to be certified and transferred to the registrar of his county, who shall forthwith file the same in his office.

**§ 394. Certificate of title.** The registrar shall make, in the form prescribed by section four hundred and thirty-five of this chapter, an original certificate of title of every title, right or interest registered by him pursuant to this article. Said certificate shall bear the date of its issue (the day and year), and be under the hand and official seal of the registrar, and be numbered in the order of its issue. If the owner is a minor, it shall state his age; if he is under any other disability, it shall state the nature of such disability. The registrar shall make proper memorials or notations on the certificate, showing in such manner as to set forth and preserve their priorities, the particulars of all the estates, mortgages, trusts, liens and charges, to which such owner's title is subject. No such memorial or notation shall be more than one folio (one hundred words), in length; but it may refer to covenants, restrictions, trusts and forms recorded in the "book of covenants, restrictions, trusts and forms" provided for by this article. The form of the first certificate of title, as set forth in section four hundred and thirty-five of this article, shall be subject to such changes as may be required in any case. All subsequent certificates shall be in like form, except that in place of the words "first certificate," et cetera, shall be the words "transfer from number ....." (the number of the next previous certificate); also the words "first registered ....." (date of first registration). On the back or reverse side of every certificate shall be printed, in plain legible type, the whole of section four hundred of this chapter.

**§ 395. Title book.** The registrar shall keep a book or books to be known respectively as the "title book", wherein he shall enter all first and subsequent "original" certificates of title by binding or recording them therein, with appropriate blanks for the entry of memorials and notations prescribed by this article. Said book shall be of about the size of the conveyance libers, now used in county clerks' and registers' offices. Each certificate shall constitute a separate leaf of such book. About two inches of each leaf on the binding edge shall be kept blank on both sides, to facilitate rebinding. At such times as may be proper, the registrar may rebind the certificates in new volumes or title books,

containing respectively cancelled and uncanceled certificates. All memorials and notations, that may be entered in the title book under the terms of this article, shall be entered upon the leaf constituting the last certificate of title of the property to which they relate. In the county of Suffolk, if a microfilm system for retrieval and display of the title certificates is used, libers may be stored in a location not accessible to the public. Whenever the term "certificate of title" is used in this article it shall be deemed as including all memorials or notations thereupon noted.

**§ 396. Duplicate certificate of title.** The registrar shall, upon the request by the owner in writing, make out an exact duplicate thereof, with the memorials and notations thereon noted, which will be the owner's proof of ownership for the property, and forward the same to the owner. This duplicate shall be known as the owner's duplicate certificate of title, and shall be plainly stamped across its face. Only one owner's duplicate certificate of title shall be issued. Replacement of such document shall be made in the manner prescribed under section four hundred fourteen of this chapter. Said request for owner's duplicate certificate of title shall be in the form annexed hereto. At the time of filing, two copies of the deed shall be submitted, a copy of the deed shall be conformed and returned to the party indicated in the return address box.

#### FORM

The undersigned, one of the Registered owners of the property described in Certificate number ..... does request the issuance and delivery of said Owner's Duplicate Certificate of Title to him/her:

Name:

Address:

Signature:

**§ 398. Certificate to include dealings pending registration.** In every case of initial registration, the certificate of title shall include all dealings with the real property, and all statutory or other liens filed

against the same, subsequent to the filing of the application, except when they are modified or set aside by a judgment, decree or order of the court. On and after the filing with the registrar of the notice of application for the registration of any real property, and until the same is registered, or the application is denied, dismissed, or discontinued, all papers which are required or permitted by this article to be filed against registered property, except the papers in the action, shall be filed with the registrar as if the property were registered.

**§ 399. Certificate of title as evidence.** The certificate of title, and any copy thereof duly certified under the hand and seal of the registrar and the owner's duplicate certificate, until the expiration of the time herein limited to bring an action or proceeding to set aside the final order or judgment of registration shall be received as evidence in all the courts of the state, and in all courts and places shall be prima facie evidence that the provisions of law up to the time of issue of such certificate or duplicate, or of the time of entry of the last memorial thereon, have been complied with, and that such certificate of title has been issued in compliance with a valid final order or judgment, and that the title to the property is as therein stated; and after the expiration of such time limited for bringing said proceedings to set aside said final order or judgment, such certificate or copy, up to the time of its issue, shall be so received as evidence in all courts of the state, and shall be conclusive evidence of the same facts. Every memorial or notation or cancellation thereof made on any certificate or duplicate or copy thereof shall be signed by the registrar or his deputy or his duly authorized deputy or clerk.

**§ 400. Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.** A person who receives a certificate of title pursuant to a judgment of registration, except in case of fraud to which he is a party, and a purchaser of registered real property, who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances, charges, trusts, liens

and transfers, except those noted on the certificate in the registrar's office, and any of the following which may exist:

First. Liens, claims, or rights arising or existing under the laws or constitution of the United States, which the statutes of this state do not require to appear of record;

Second. Any tax, water rate, or assessment which becomes a lien on the property after initial registration and for which a sale has not been made;

Third. Any lease or agreement for a lease, made after or pending registration, for a period not exceeding one year, where there is actual occupation of the land under the lease or agreement;

Fourth. Easements or servitudes which accrue against the property after initial registration in such manner as not to require their registration.

Except as specified in the foregoing statement of exceptions, no incumbrance, charge, trust, lien, or transfer shall take effect upon or over real property the title to which has been registered, unless the instrument creating and setting forth such incumbrance, charge, trust, lien, or transfer has been filed with the registrar and a memorial or notation thereof made upon the certificate of title covering the property.

**§ 401. Registered property not affected by prescription or adverse possession.** No title to registered real property, in derogation of that of the registered owner, shall be acquired by prescription or adverse possession.

**§ 402. Fraud; notice only by registration.** Except in case of fraud and except also as herein otherwise provided, no person taking a transfer of any registered real property or of any estate or interest therein or

lien or charge thereon from the registered owner shall be required to inquire into the circumstances under which, or the consideration for which such owner or any previously registered owner had the title registered, nor shall such transferee be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest whatever; and the knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed or treated as fraud.

**§ 403. Memorial to be carried forward.** (a) Unless written application is made by a mortgagee, who acquires fee title to the premises, not to merge said mortgage with the fee title, the registrar shall delete the mortgage from the memorial on the certificate of title.

(b) Whenever a memorial or notation has been entered as permitted by this article, the registrar shall carry the same forward upon all certificates of title until the same is cancelled in some manner authorized by this article.

**§ 404. Registered property to remain registered.** The bringing of property under this article shall imply an agreement, running with the land and binding upon the applicant and all his successors in interest or title, that the property shall be subject to the terms of this article, and all amendments and alterations thereof, and all dealings with the property so registered, or any estate, right or interest therein, after the same has been brought under this article, and all liens, incumbrances and charges upon the same after the first registration thereof shall be subject to the terms of this article.

**§ 404-a. Withdrawal from registration in certain instances.** Notwithstanding the provisions of section four hundred four of this chapter, a title to real property which has been duly registered as provided by article twelve thereof may be withdrawn from such registration upon application to the supreme court by the owner of the fee title to the property. An application for such withdrawal from

registration may be filed with the registrar of the county in which the title is then registered and shall be entitled "in the matter of the application of (stating the name of the registered owner) for the withdrawal from registration of the title to certain lands." Such application, in such form as may be approved by the registrar, must be made by the registered owner of the fee of the real property. It shall set forth and recite in detail the name and postoffice address of the registered owner, the number of the certificate of title last issued, the date of the last registration of the title, a description of the real property as stated in the certificate of title together with a reference to the proper section, block and lot numbers if any, a complete recital of all memorials entered on the certificate of title, the names and addresses of all persons owning any incumbrance, charge, trust or lien on the premises, a statement of all unpaid taxes, assessments and water rates due and payable, a statement of the circumstances existing which render continued registration of the title impracticable and inexpedient, and a prayer for the withdrawal from registration. The application shall be duly verified and executed in duplicate. The registrar shall file one copy as a document in his office and enter the same as a memorial on the certificate of title to which it relates. The other copy shall be delivered to an official examiner of title who shall forthwith proceed to examine the title since the date of the first or initial registration thereof and investigate the facts set forth in the application. Thereafter he shall make a report in writing to the supreme court of his findings and a recommendation as to the proper disposition of the application. The registrar shall set down a date for hearing on the application in the "title part" of a special term of the supreme court, which date shall be not less than twenty days after the filing of the application; and he shall notify by certified mail demanding a personally signed return receipt card all persons or parties who appear by the report of the official examiner of title to have any interest in or incumbrance, charge, trust, or lien upon the said real property. At the hearing any of the parties in interest may appear and consent or object to the granting of the prayer of the application. Whether granted or denied, the supreme court shall enter an order disposing of the application and after such order is filed with the clerk of the county a transcript or certified copy of the same shall



be filed with the registrar and by him entered as a memorial on the certificate of title. When the order of the supreme court grants a withdrawal from registration of a title to real property as herein provided, the registered owner thereof shall forthwith deliver to the registrar and surrender his owner's duplicate certificate of title, or if the same has been lost or destroyed a new owner's duplicate certificate of title obtained as provided in section four hundred fourteen of this chapter. The registrar shall then cause the owner's duplicate certificate of title to be recorded in the office of the recording officer of the county in which the real property is located, and thereafter permanently filed in his own office. A certified copy of the record shall be delivered to the registered owner as his future evidence of title.

The recording of the owner's duplicate certificate of title shall be notice of the recitals and matters therein contained, and shall also be notice of the fact that the title to the real property therein described is no longer registered nor subject to the provisions of article twelve of this chapter. From the time of such recording and until any future or further registration of the title thereof, said property shall be and become as to all matters subsequent to the time of such recording subject to all provisions of law relating to real property the title to which has not at any time been registered.

The final order and judgment of registration by the court pursuant to which the aforesaid title to real property was originally registered shall continue to be binding and conclusive as a decree or judgment of the supreme court in the same manner and to the same extent and be of the same force and effect as if the said title had not been withdrawn from registration in accordance with the provisions of this section.

The fee of the registrar for all services rendered by him and by the official examiner of title pursuant to this section shall be the sum of one hundred dollars payable at the time of filing of the application for withdrawal from registration, and one-half of the said fee shall be transferred by the registrar to the assurance fund provided for by section four hundred and twenty-six of this chapter. In addition thereto

the applicant shall pay to the registrar and the official examiner of title, their necessary expenses and disbursements incurred in connection with the withdrawal of the title from registration.

**§ 405. Registered property subject to same rights and burdens as unregistered property.** Registered real property and every estate, right and interest therein shall be in all respects subject to the same rights, burdens and incidents as unregistered real property, except as otherwise expressly provided in this article or any amendment thereof.

**§ 406. Transfers of registered property.** A registered owner of real property, in order to transfer his whole estate or interest therein, or any part or parcel thereof, or any undivided interest therein, shall execute to the intended transferee a deed or instrument of conveyance in any form authorized by law. Such deed or instrument of conveyance shall have recited therein a statement or reference setting forth the source of the title of the grantor or the circumstances under which the title was acquired by him. Upon filing such deed or other instrument in the registrar's office and surrendering to the registrar the duplicate certificate of title, he shall then make out and register as herein provided a new certificate and also an owner's duplicate certificate of title certifying the title to the estate or interest in the property conveyed to the transferee and shall enter upon the original and duplicate certificate the date of the transfer, the name of the transferee and the number of the new certificate, and shall stamp across the original and surrendered duplicate certificates the word "cancelled." Title to such property shall not pass by such transfer until the transfer is registered as prescribed by this section.

**§ 407. Certificate as to part of property remaining after transfer.** When only a part of the property described in a certificate is transferred, and the description of the property is other than full or specified parts of lots on a map duly filed in the office of the county clerk, the transfer must be accompanied by a survey from a licensed land

surveyor under seal of the said parcel. Said transfer and survey shall be filed as a document and memorialized against the certificate.

**§ 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.** Every paper filed with the registrar shall be given a serial number in the order of its filing, and then shall be entered by the registrar in an "entry book" under columns showing:

First. The serial number;

Second. Day of filing;

Third. Filing number of petition to which it relates if the registration proceedings are still pending;

Fourth. Certificate number, if registration proceedings are completed and certificate has been issued;

Fifth. Kind of paper filed;

Sixth. Name of the person in whose interest the paper is filed.

Every paper filed with the registrar affecting property for which registration proceedings are pending shall in addition to its own serial number receive the petition number and be kept by the registrar with the petition to which it relates or affects. The registrar shall provide a book to be known as "the tickler certificate book" wherein he shall note all filed papers affecting property for which registration proceedings are pending. Each page shall constitute a separate tickler certificate, and on said certificate he shall enter the character of the paper, the date of filing and the filing or serial number. The tickler certificate, subject to such change as the case may require, shall be substantially as follows:

Petition number .....

This certifies that the following papers have been filed in the office of the registrar of ..... county affecting, or in connection with an action or proceeding to register the title to the following described real property, to wit:

(The description to appear here)

| Character of paper. | When filed. | Filing number. |
|---------------------|-------------|----------------|
|                     |             |                |
|                     |             |                |
|                     |             |                |
|                     |             |                |
|                     |             |                |
|                     |             |                |

A memorial of every paper filed with the registrar affecting title to registered property shall be entered at once upon the last original certificate to which it relates. Every paper filed with the registrar affecting title to property shall be indexed from its contents as follows: In an index showing in alphabetical order in one column or in a set of columns the names, places of residence with street numbers, if any, and post office addresses of all persons in whose interests petitions for registration of title are filed; the names, places of residence with street numbers, if any, and post office addresses of all persons to whom any interest, right or power in real property is granted or released; and the names, places of residence with street numbers, if any, and post office addresses of all persons claiming an interest in real property; also, in separate columns the kinds of papers filed, the numbers of the filed papers, the dates of filing, the filing numbers of petition to which they relate (if petition is pending) and the numbers of the last original certificate to which they relate (if the title to the property is registered). Whenever a judgment or an order of court directs that the title to real property be registered, it shall also direct the registrar to transfer all proper liens and incumbrances filed against the property pending registration to the certificate of title so to be issued. In those counties which have block indexes, an index shall

be kept by blocks of all registered property described by lot, diagram or other appropriate designation, and the owners thereof with a reference to the certificate numbers in which the properties are registered; if any system of indexing by lot numbers is in use the index lot numbers shall be shown. There shall also be kept in those counties a block index of conveyances and a block index of mortgages for registered lands in substantially the same form with necessary changes as provided in the respective block index laws of those counties. In counties which have no block indexes the registrar shall also keep an index of all properties registered under this article, in which such registered properties shall be indexed according to a brief description thereof.

**§ 409-a. Entries in other indexes.** Upon the filing of a notice of petition and pendency of proceeding in the office of the registrar, the recording officer of the county or counties in which the land title to which is sought to be registered is located shall make an entry of the petition to register such title in the alphabetical index of conveyances, and in counties having a block index system, in the block index of conveyances, showing the date of such filing and in the grantor column the name of the petitioner, and the name of the owner where the petitioner is the holder of a contract to purchase the premises, together with a reference to the serial or document number given to such notice by the registrar and the number of the proceeding to which it relates.

Recording officers are authorized and directed to index in like manner in the alphabetical index of conveyances, and in counties having a block index system, in the block index of conveyances, all applications or petitions to register titles to land heretofore filed in the office of the registrar of the county.

**§ 410. Notice of filed papers.** All papers filed by the registrar, and indexed and entered by him pursuant to this article, shall be of equal effect as to notice, in the order of their filing as shown by their filing numbers, as are similar papers when recorded by county clerk or

registers under the recording acts. Should an action for registration be discontinued or otherwise terminated without registration, an order of court to that effect shall be filed with the registrar, who shall at once cause all the papers relating to the title to the property affected, filed with him, except the notice of application and said order, to be recorded or filed, and indexed, by the county clerk or register (as the case requires) in the order of their filing, on payment of the statutory fees.

**§ 411. Addresses of interested parties; notice.** On every paper or instrument filed with the registrar there shall be indorsed the name, place of residence with street number, if any, and post-office address of the person in whose behalf it is filed. The address may be changed from time to time, by such person filing with the registrar a written notice of such change.

**§ 412. When a transfer is deemed to be registered.** Every transfer of registered property shall be deemed to be registered under this article when such document has been filed of record, in the office of the registrar of the county where the property is located and a serial number and certificate number assigned to the instrument; all other dealings shall be considered as registered when the document has been filed of record in the office of the registrar of the county where the property is located and a serial number and certificate number has been assigned the instrument.

**§ 413. New certificates of title.** Upon the application of any owner of registered property held under one or more certificates of title and delivering up of such certificate or certificates, the registrar shall issue to such owner, at his option, separate certificates, each for a portion of such property in accordance with such application; and upon issuing any such certificate of title, said registrar shall indorse on the last previous certificate of such property so delivered up a memorial setting forth the occasion of the cancellation thereof and

referring to the number or numbers of the new certificates of title so issued.

**§ 414. Loss of duplicate certificate.** If any duplicate certificate of title is lost or destroyed, the owner of the property or the current grantee with proper certified deeds may file with the registrar a verified petition. Such petition shall conform to the form annexed hereto, which may be made available by the registrar. Upon filing of such petition, the registrar shall issue a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place and stead of the lost or destroyed certificate, and which shall be entitled to like faith and credit as the original duplicate certificate. Any previously issued owner's duplicate certificate of title becomes void and invalid.

#### FORM

Article 12 Section 414 R.P.L.

Petition may only be submitted by the owner, or the current grantee with proper certified deeds submitted simultaneously.

ANY FALSE STATEMENT MADE HEREUNDER IS A VIOLATION OF STATE LAW AND MAY SUBJECT THE PERSON TO CIVIL AND CRIMINAL PENALTIES.

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#### PETITION TO REPLACE LOST OR DESTROYED OWNER'S DUPLICATE CERTIFICATE OF TITLE

STATE OF NEW YORK}

COUNTY OF           } ss.:

\_\_\_\_\_ owner's name(s) \_\_\_\_\_ being  
duly sworn, deposes and says that he-she-they is/are the  
Petitioner(s) and reside at

\_\_\_\_\_ and is/are  
of legal age; that he-she-they is/are the owner(s) of the following  
described property

((property description))

under Certificate of Title Number \_\_\_\_\_ under the Land  
Title Registration Law.

A thorough and complete search has been made for the Owner's Duplicate  
Certificate of Title number \_\_\_\_\_. Said Owner's Duplicate

Certificate of Title can not be located. This petition is being made to direct the Registrar of \_\_\_\_\_ County, to issue in place and stead, a new Owner's Duplicate Certificate of Title number \_\_\_\_\_ in the name(s) of \_\_\_\_\_ with all memorials placed thereon.

Upon the filing of this affidavit, I/we realize any previously issued Owner's Duplicate Certificate of Title becomes void and invalid.

\_\_\_\_\_ LS

Petitioner

#### VERIFICATION

STATE OF NEW YORK}

COUNTY OF \_\_\_\_\_ } ss.:

I/we \_\_\_\_\_ name(s) \_\_\_\_\_ being sworn, say(s): I/we am/are the Petitioner(s) in the within action: I/we have read the foregoing Petition and know the contents thereof: the same is true to my own knowledge, except as to the matters herein stated to be alleged on information and belief, and as to those matters I/we believe to be true, and have furnished the following proof of identification:

\_\_\_\_\_.

\_\_\_\_\_ LS

petitioner)

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_ 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public

**§ 415. Mortgages, leases and other liens and charges; may be registered.** Any mortgage, lease for a term of over one year, contract to sell or other instrument intended to create a lien, incumbrance, trust or charge on registered property or any right or interest therein, may be registered as herein provided.

**§ 416. Proceedings to register mortgage, lease or other lien or charge.** On the filing of the instrument creating such mortgage, lease or other lien or charge in the registrar's office and the production of



the duplicate certificate of title, he shall enter upon the certificate of title and upon the duplicate certificate a memorial thereof and the date of filing the instrument with a reference to its file number, which memorial shall be signed by the registrar who shall deliver to the person filing such instrument a certified copy of such instrument, if it is a mortgage, certified to be the "registration copy of mortgage." The registrar shall also note upon the instrument filed the number of the certificate on which the memorial is entered. Any mortgage registered pursuant to this section shall be subject to the provisions of article eleven of the tax law (being chapter sixty-two of the laws of nineteen hundred nine), and amendments thereof in the same manner as if said mortgage were recorded, as provided by section two hundred fifty-three of said tax law.

**§ 417. Judgments, decrees, attachments and other liens to be noted on certificate.** No judgment, decree, attachment, execution, mechanic's lien, or other lien or charge, which may affect or be a lien or charge upon real property in this state, shall be or become a lien or charge on real property, or any right or interest therein, the title to which has been registered, unless a transcript, or certified copy, or other duly made or certified document, which is by law proper evidence in a court of record, of such judgment, decree, attachment, mechanic's lien, or other lien or charge, shall be duly filed with the registrar, and a proper memorial thereof made by him upon the certificate of title in the title book. Such transcript, or certified copy, or other duly made or certified document so filed shall have plainly written or stamped thereon the number of the certificate of registration of the title to the property to be affected and bound thereby by virtue of such memorial on such certificate, and it shall be the duty of the registrar to make such memorial immediately on receipt of the same. A discharge, cancellation, or modification of any judgment, decree, attachment, mechanic's lien, or other lien or charge, so noted on the certificate, shall not affect or be binding upon the registered property, right, or interest, unless on like evidence a memorial thereof shall be made by the registrar on such certificate.

**§ 418. Assignment of mortgage, lease, or other lien or charge.** The holder of any mortgage, lease, or other lien or charge on registered property, in order to transfer the same or any part thereof, shall execute an assignment of the whole or any part thereof; and upon such assignment being filed in the office of the registrar, the registrar shall enter in the title book a memorial of such transfer with a reference to the assignment by its file number; he shall also note upon the instrument on file in his office intended to be transferred, and upon the registration copy thereof produced, the number of the certificate on which the memorial is entered, with the date of the entry.

**§ 419. Release, discharge or surrender of charge or incumbrance.** A release, discharge or surrender of a charge or incumbrance, or any part thereof, or of any part of the property charged or incumbered, may be effected by the production of a release, discharge or satisfaction, duly executed and acknowledged, made in any form authorized by law, except as herein provided. Any tax, water rent or assessment, subject to which the title has been registered and which has been noted on the certificate of title as provided in section three hundred ninety of this chapter, may be released and discharged in the same way upon a receipt therefor being issued and duly certified by the receiver of taxes or collector of assessments and arrears or other duly authorized officer, as the case may require, and delivered to the registrar and filed in his office. The receiver of taxes or collector of assessments and arrears or such other duly authorized officer, as the case may require, upon demand of any owner of registered property, shall execute, certify and deliver to such owner such receipt when any such tax, water rent or assessment has been paid upon such registered property.

**§ 420. Enforcement of mortgages, charges, liens and incumbrances.** All charges, liens and incumbrances on registered property, or on any estate, right or interest in the same, and all rights therein may be enforced as now allowed by law; and all laws with reference to the

foreclosure, release or satisfaction of mortgages shall apply to mortgages on registered property or on any estate, right or interest therein, except as herein otherwise provided, and except that until notice of the pendency of any suit to enforce such mortgage, charge, lien or incumbrance is filed in the registrar's office and a memorial thereof entered on the certificate in the title book, the pendency of such suit shall not be notice to the registrar or to any person dealing with the property or any right or interest therein. Upon the sale under foreclosure or other action or proceeding directing the sale of real property, the title to which is then a registered title, it shall be the duty of the officer making the sale to report such sale to the justice assigned to the "title part" of the special term, who shall thereupon designate an official examiner of title to examine into the action or proceeding or any other fact or circumstance affecting the title since the last registration thereof. The examiner of title shall prepare his report immediately and shall file one copy with the court designating him and one copy with the officer making the sale. The officer making the sale shall not deliver a deed of the property sold until the examiner's report is filed with him showing the regularity of the acts and proceedings subsequent to the last registration of title. The justice of the "title part" shall upon the production of the deed from the officer making the sale and upon the report of the examiner approve said deed and make an order directing the registrar to register the title accordingly. The fees for the services of the official examiner under this section shall not exceed the sum of five dollars unless an additional allowance is directed by the justice of the "title part."

**§ 421. Powers of attorney to be filed and registered.** Before any person can convey, charge, incumber or otherwise deal with any registered property, or any estate, right or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar and a memorial thereof shall be entered upon the certificate in the title book, in like manner as in the case of a charge or incumbrance. A revocation of such power of attorney may be registered in like manner as such power of attorney was registered.

**§ 422. Reference of doubtful matters to the court.** When the registrar is in doubt, and the parties in interest fail to agree as to the proper memorial to be made in the title book of any deed, mortgage or other voluntary instrument presented for registration, the questions shall be referred to the court for decision, either on the certificate of the registrar stating the question, or upon the suggestion in writing of any party or parties in interest; and the court, after due notice to all parties in interest, and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly. In any judicial proceeding affecting property, the title to which is then a registered title, the court upon the application in writing of any party or parties in interest after due notice to all other parties in interest and a hearing, if necessary or proper, shall enter an order prescribing the form of any memorial that should be made by the registrar in the title book because or as the result of such proceeding; and the registrar, upon the production of a certified copy of such order, shall make the proper memorial in accordance with such order. After making such memorial in the title book the registrar shall also make all other memorials on existing certificates or make and deliver any new certificates according to the circumstances and in the manner required herein.

**§ 423. Death of owner of registered property; transfer of property.** Upon the death of an owner of registered real property, it shall be incumbent upon the surviving spouse or the joint tenant with right of survivorship to present to the registrar a petition on the annexed form, for the transfer of the title into the name of the survivor. The registrar shall upon payment of the required fees, memorialize said petition showing the change of ownership, delete the name of the deceased, and recertify title to the new owner on the existing certificate of title. Upon the death of an owner of registered real property, it shall be incumbent upon the executor or administrator of the estate of the deceased, to present to the registrar a petition on

the annexed form, for the transfer of title into the name of the executor or administrator, or upon filing of a deed executed by the said executor or administrator, in the name of the grantee therein. The registrar shall upon payment of the required fees, memorialize said petition showing the change of ownership, and issue a new certificate of title to the executor or administrator. Upon the death of an owner of registered real property, having died intestate, it shall be incumbent upon the heirs-at-law to obtain a verified petition and order, consented to by the registrar, the state attorney general and signed by a justice of the supreme court. Sufficient and conclusive evidence as to the heirs-at-law must be made part of the proceeding. Upon filing of said completed proceeding with the registrar, together with filing fees, the registrar shall issue a certificate of title as directed by the order.

Upon the coming to age, or freedom from disability of a person whose guardian, committee or conservator is a registered owner as above described, or upon a transfer of the powers and duties of an executor, trustee or other person acting in a representative capacity, or upon any other transfer of registered ownership or nominal change of ownership by death or process of law or otherwise in a case not otherwise provided for by this article, a petition may be made to the court for an order directing the registrar as to the persons in whose name or names and in what manner the title shall be registered and a new certificate issued; and the court, on such petition and on due notice to the persons who in the opinion of the court shall be parties in interest and after a hearing, if deemed necessary or proper, shall enter an order prescribing the name or names and the manner in which the title shall be registered.

Any petition permitted under this section shall, in addition to any other proper allegations, set forth the names and known places of residence of the petitioner and the persons having or claiming any interest in the registered premises under a certificate of title, or a registered instrument, or by operation of law; and the people of the state of New York, with reference to which latter party a further allegation shall be made in substantial conformity with the statement pertaining to the state of New York provided for under subdivision (d) of section three hundred seventy-nine of this article. Such petition

shall be filed with the clerk of the county in which the original registration was had, and a copy thereof shall be filed with the registrar of such county, who shall memorialize said copy of petition upon the last original certificate to which it relates, which memorial shall also have the same effect as a notice of pendency of an action under the civil practice act. Immediately upon the filing of such petition and a copy thereof as aforesaid, the court shall provide for due notice to be given to the parties in interest by entering an order, either directing the registrar to give notice of the hearing upon the petition to the parties named therein, and to any additional parties named in the order who in the opinion of the court shall be parties in interest, by publishing and mailing such notice at the expense of the petitioner, in the manner prescribed in section three hundred eighty-five of this article for the publication and mailing of the notice of hearing in an original registration proceeding; or in the alternative, directing that service of the notice be made personally in the manner provided for the personal service of a summons under article twenty-five of the civil practice act, respecting which latter procedure involving personal service the court, in its proper discretion, may provide that the notice be made returnable at any time not less than eight days after completion of service thereof and may fix the time when service thereof will be deemed complete. The form of the notice of hearing contemplated herein shall be substantially the same as that provided for under section three hundred eighty-six of this article, except that it may be entitled "Transfer of Registration of Land Title," and that the object of the proceeding may be stated therein to be to obtain registration of title in, and the issuance of a new certificate of title to, the petitioner or any persons entitled thereto, any appropriate language being sufficient. The notice may be subscribed by either the registrar, or the attorney for the petitioner, as the case may require. The certificate of the registrar that he has served the notice as directed by the court, by publishing and mailing, shall be filed in the case, with any necessary affidavits in support of the same, on or before the return day, and shall be proof of such service. The court in a proper case may dispense with the mailing of the notice of hearing, in substantial conformity with the practice prescribed in rule fifty of the rules of civil practice, and may also cause other or

further notice of the petition to be given.

**§ 423-a. Form for transfer of property upon death of owner of registered property.** The registrar may make available the form for the transfer of property upon the death of the owner of the registered property, which form in any event shall be as follows:

FORM

Article 12, Section 423 (a) R.P.L.

ANY FALSE STATEMENT MADE HEREUNDER IS A VIOLATION OF THE STATE LAW AND MAY SUBJECT THE PERSON TO CIVIL AND CRIMINAL PENALTIES.

-- \* \* \* \* \*

PETITION FOR REISSUANCE OF CERTIFICATE OF TITLE FOR SURVIVING SPOUSE OR  
JOINT TENANT WITH RIGHT OF SURVIVORSHIP

STATE OF NEW YORK}

COUNTY OF            } ss.:

\_\_\_\_\_ deponent \_\_\_\_\_ being duly sworn, deposes and says that he/she is the Petitioner herein residing at \_\_\_\_\_ address \_\_\_\_\_ and of legal age, and that he/she is the surviving spouse of \_\_\_\_\_ name \_\_\_\_\_ deceased. At the time of death, deponent was married to the deceased, that the marriage had not been annulled or dissolved and that no legal separation had been obtained. OR that he/she is the surviving joint tenant with right of survivorship.

That \_\_\_\_\_ deponent \_\_\_\_\_ and \_\_\_\_\_ spouse/deceased joint tenant \_\_\_\_\_ were the registered owners as tenants by the entirety/joint tenant with right of survivorship of the property under Certificate of Title number \_\_\_\_\_.

The deceased \_\_\_\_\_ name \_\_\_\_\_ died \_\_\_\_\_ date \_\_\_\_\_ as evidenced by a death certificate attached hereto.

This petition is being made pursuant to Section 423 R.P.L., to direct the Registrar of \_\_\_\_\_ County to reissue Certificate of Title number \_\_\_\_\_ to \_\_\_\_\_ deponent \_\_\_\_\_ residing at \_\_\_\_\_ address \_\_\_\_\_ for the following described property:

((property description))

(For JOINT TENANT petition only) Property is subject to Estate Taxes against the estate of \_\_\_\_\_ Joint Tenant \_\_\_\_\_, deceased,

if any.

The original Owner's Duplicate Certificate of Title is surrendered herewith ((or)) The production of the original Owner's Duplicate Certificate of Title is hereby dispensed with, by reason of \_\_\_\_\_ lost/stolen \_\_\_\_\_.

\_\_\_\_\_  
LS

Petitioner(s)

VERIFICATION

STATE OF NEW YORK}

COUNTY OF \_\_\_\_\_ } ss.:

I/we \_\_\_\_\_ being sworn, say(s):

I/we am/are the Petitioner(s) in the within action; I/we have read the foregoing Petition and know the contents thereof; the same is true to my own knowledge, except as to the matters herein stated to be alleged on information and belief, and as to those matters I/we believe to be true, and have furnished the following proof of identification.

\_\_\_\_\_  
LS

Petitioner(s)

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

FORM

Article 12, Section 423 (b) R.P.L.

ANY FALSE STATEMENT MADE HEREUNDER IS A VIOLATION OF THE STATE LAW AND MAY SUBJECT THE PERSON TO CIVIL AND CRIMINAL PENALTIES.

-- \* \* \* \* \*

PETITION FOR ISSUANCE OF CERTIFICATE OF TITLE  
FOR ADMINISTRATOR OR EXECUTOR

STATE OF NEW YORK}

COUNTY OF \_\_\_\_\_ } ss.:

\_\_\_\_\_ deponent \_\_\_\_\_ being duly sworn,  
deposes and says that he/she is the Petitioner herein and resides at  
\_\_\_\_\_ address \_\_\_\_\_ and of legal age;  
That he/she is the Administrator/Executor of the estate of  
\_\_\_\_\_, deceased.

That \_\_\_\_\_ name \_\_\_\_\_ was the registered



owner of the property under Certificate of Title number

\_\_\_\_\_.

The deceased, \_\_\_\_\_ name \_\_\_\_\_ died \_\_\_\_\_  
date \_\_\_\_\_ as evidenced by a death certificate attached hereto.

\_\_\_\_\_ name \_\_\_\_\_, has been appointed  
Administrator/Executor of the estate of \_\_\_\_\_ deceased  
\_\_\_\_\_ as evidenced by the original Letters of  
Administration/Testamentary and certified copy of the will attached  
hereto.

1. That a Release of Estate Tax is attached hereto
2. That the Gross Estate does not exceed \$600,000
3. Subject to the Estate Taxes against the estate of \_\_\_\_\_,  
deceased, if any.

This petition is being made to direct the Registrar of \_\_\_\_\_  
County, to issue a new Certificate of Title to \_\_\_\_\_ name  
\_\_\_\_\_, as Administrator/Executor of the Estate of  
\_\_\_\_\_, deceased, residing at \_\_\_\_\_ address  
\_\_\_\_\_ for the following described property.

OR

This petition is being made to direct the Registrar of  
\_\_\_\_\_ County to issue a new Certificate of Title upon the  
filing of an Administrator/Executor's deed to \_\_\_\_\_ grantee in  
the deed \_\_\_\_\_, residing at \_\_\_\_\_ address  
\_\_\_\_\_ for the following described property:

((property description))

The original Owner's Duplicate Certificate of Title is surrendered  
herewith ((or)) The production of the original Owner's Duplicate  
Certificate of Title is hereby dispensed with, by reason of  
\_\_\_\_\_ lost/stolen \_\_\_\_\_.

\_\_\_\_\_ LS

PETITIONER

VERIFICATION

State of New York}

County of \_\_\_\_\_ } ss.:

I \_\_\_\_\_ being sworn, say: I am the Petitioner in  
the within action; I have read the foregoing Petition and know the  
contents thereof: the same is true to my own knowledge, except as to the

matters herein stated to be alleged on information and belief, and as to those matters I believe to be true, and have furnished the following proof of identification: \_\_\_\_\_.

\_\_\_\_\_  
LS

PETITIONER

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

**§ 424. Transfer on death deed.** 1. Definitions. For the purposes of this section the following terms shall have the following meanings:

(a) "Beneficiary" means a person who receives property in a transfer on death deed.

(b) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

(c) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant, owner of community property with a right of survivorship and tenant by the entirety. The term does not include a tenant in common or owner of community property without a right of survivorship.

(d) "Person" includes a natural person, an association, board, any corporation, whether municipal, stock or non-stock, court, governmental agency, authority or subdivision, partnership or other firm and the state.

(e) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(f) "Transfer on death deed" means a deed authorized under this section.

(g) "Transferor" means an individual who makes a transfer on death deed.

2. Nonexclusivity. This section does not affect any method of transferring property otherwise permitted under the law of this state.

3. Transfer on death deed authorized. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

4. Transfer on death deed revocable. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

5. Transfer on death deed nontestamentary. A transfer on death deed is nontestamentary.

6. Capacity of transferor. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

7. Requirements. A transfer on death deed:

(a) except as otherwise provided in this subdivision, shall contain the essential elements and formalities of a properly recordable inter vivos deed;

(b) shall state that the transfer to the designated beneficiary is to occur at the transferor's death;

(c) shall be signed by two witnesses who were present at the same time and who witnessed the signing of the transfer on death deed;

(d) shall be acknowledged before a notary public; and

(e) shall be recorded before the transferor's death in the public records in the county clerk's office of the county where the property is located in the same manner as any other type of deed.

8. Notice, delivery, acceptance, consideration not required. A transfer on death deed shall be effective without:

(a) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(b) consideration.

9. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to paragraph (b) of this subdivision, an instrument shall

be effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) is one of the following:

(A) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) an instrument of revocation that expressly revokes the deed or part of the deed; or

(C) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(2) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the county clerk's office of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor:

(1) revocation by a transferor shall not affect the deed as to the interest of another transferor; and

(2) a deed of joint owners shall only be revoked if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded, it shall not be revoked by a revocatory act on the deed.

(d) This section shall not limit the effect of an inter vivos transfer of the property.

10. Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed shall not:

(a) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(b) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(c) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(d) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(e) create a legal or equitable interest in favor of the designated beneficiary; or

(f) subject the property to claims or process of a creditor of the

designated beneficiary.

11. Effect of transfer on death deed at transferor's death. (a) Except as otherwise provided in the transfer on death deed, in this section or in any other section of law which effects nonprobate transfers, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to subparagraph two of this paragraph, the interest in the property shall be transferred to the designated beneficiary in accordance with the deed.

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(3) Subject to subparagraph four of this paragraph, concurrent interests shall be transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason shall be transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) Subject to this chapter, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this paragraph and this chapter, the recording of the transfer on death deed shall be deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner and is survived by one or more other joint owners, the property that is the subject of a transfer on death deed shall belong to the surviving joint owner or owners with right of survivorship.

(d) If a transferor is a joint owner and is the last surviving joint owner, the transfer on death deed shall be effective.

(e) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

12. Applicability of invalidating and revocatory principles. (a) Nothing in this section shall limit the application of principles of fraud, undue influence, duress, mistake, or other invalidating cause to a transfer of property.

(b) Divorce, annulment or declaration of nullity, or dissolution of marriage, shall have the same effect on a transfer on death deed as outlined in section 5-1.4 of the estates, powers and trusts law.

13. Renunciation. A beneficiary may renounce all or part of the beneficiary's interest in the same manner as if the interest was transferred in a will.

14. Liability for creditor claims and statutory allowances. (a) To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed.

(b) If more than one property is transferred by one or more transfer on death deeds, the liability under paragraph (a) of this subdivision is apportioned among the properties in proportion to their net values at the transferor's death.

(c) A proceeding to enforce the liability under this section must be commenced no later than eighteen months after the transferor's death.

15. Form of transfer on death deed. The following form may be used to create a transfer on death deed. The other subdivisions of this section shall govern the effect of this, or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You may want to consult a lawyer before using this form. This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

---

|              |                 |
|--------------|-----------------|
| Printed name | Mailing address |
|--------------|-----------------|

---

|              |                 |
|--------------|-----------------|
| Printed name | Mailing address |
|--------------|-----------------|

Legal description of the property:

---

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

---

|              |                               |
|--------------|-------------------------------|
| Printed name | Mailing address, if available |
|--------------|-------------------------------|

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

---

|              |                               |
|--------------|-------------------------------|
| Printed name | Mailing address, if available |
|--------------|-------------------------------|

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above. Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

---

|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

---

|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

SIGNATURE OF WITNESSES

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|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

---

|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

---

NOTARY ACKNOWLEDGMENT

(insert notary acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do?

When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your

death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed?

Complete this form. Have it acknowledged before a notary public. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary?

Yes.

How do I find the "legal description" of the property?

This information may be on the deed you received when you became an owner of the property. This information may also be available in the county clerk's office of the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed?

Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed?

Take the completed and acknowledged form to the county clerk's office of the county where the property is located. Follow the instructions given by the county clerk to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind?

Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded?

There are three ways to revoke a recorded TOD deed:

(1) Complete and acknowledge a revocation form and record it in each county where the property is located.

(2) Complete and acknowledge a new TOD deed that disposes of the same property and record it in each county where the property is located.

(3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.



I am being pressured to complete this form. What should I do?

Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed?

No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do?

This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

16. Form of revocation. The following form may be used to create an instrument of revocation under this section. The other subdivisions of this section shall govern the effect of this, or any other instrument used to revoke a transfer on death deed.

(front of form)

#### REVOCATION OF TRANSFER ON DEATH DEED

##### NOTICE TO OWNER

This revocation must be recorded before you die, or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

##### IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

---

|              |                 |
|--------------|-----------------|
| Printed name | Mailing address |
|--------------|-----------------|

---

|              |                 |
|--------------|-----------------|
| Printed name | Mailing address |
|--------------|-----------------|

Legal description of the property:

---

##### REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

##### SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

---

|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

---

|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

##### SIGNATURE OF WITNESSES

---

Signature

Date

---

Signature

Date

NOTARY ACKNOWLEDGMENT

(insert notary acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed?

Complete this form. Have it acknowledged before a notary public. Record the form in the public records in the county clerk's office of the county where the property is located. The form must be acknowledged and recorded before your death, or it has no effect.

How do I find the "legal description" of the property?

This information may be on the TOD deed. It may also be available in the county clerk's office of the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form?

Take the completed and acknowledged form to the county clerk's office of the county where the property is located. Follow the instructions given by the county clerk to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do?

Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do?

This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

**§ 426. Assurance fund.** 1. Upon the original registration of real property, there shall be paid to the registrar one-tenth of one per centum of the value thereof on the basis of the last assessment for local taxation, as an assurance fund for land registered in his county. Subsequent to the original registration, there shall also be paid to the registrar, and by him transferred to the said fund, the parts or

portions of the fees so designated by section four hundred four-a and section four hundred thirty-two of this article. All moneys so received by the registrar under the provisions of this section shall be paid to the treasurer of the county (in New York city to the commissioner of finance), and shall be invested by him in the same manner as are other trust funds. All such moneys as have been so transferred by the registrar to the treasurer of the county (in New York city to the city chamberlain) prior to the first day of July, nineteen hundred twenty-nine, and have been disposed of as provided by the law prior to said date, shall be returned to such treasurer of the county (in New York city to the commissioner of finance) and shall become a part of such trust fund. The proper local county or city authorities are hereby authorized and directed to make such appropriations of funds as may be necessary for this purpose. Said treasurer (or commissioner of finance) shall keep a separate account of such trust funds and report annually thereon as required by law in reference to other trust funds in his hands.

2. All assurance funds held by the treasurer of the county or in New York city by the commissioner of finance, pursuant to this section for more than six years shall be deemed surplus. All monies in said fund, which have been deemed surplus, or so much thereof as may be necessary, shall be made available on January first, nineteen hundred ninety-seven, and shall be used to cover the costs incurred while performing the transfers required by section four hundred thirty-six of this article. Provided there are no claims filed against said fund that would affect release, such remaining surplus funds may be released by such treasurer or commissioner of finance and paid into the general fund of the county or city. If a claim is filed against such fund subsequent to such release, the general fund of such county shall repay the assurance fund such released funds with interest thereon at the prevailing rate up to the amount of released funds sufficient to cover payments made pursuant to such claim.

3. All such assurance funds created by any county or city shall be terminated on January first, two thousand six, and all remaining monies are to be transferred to the general fund of the county or city.

**§ 427. Compensation from assurance fund.** Any person who, without negligence on his part, sustains loss or damage or is deprived of real property, or of any estate, right or interest therein because of the registration of another person as owner of such property, or of any estate, right, or interest therein, through fraud, or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry of or memorial in the title book, shall have a cause of action against the county treasurer (in New York city the commissioner of finance) to recover compensation for such loss or damage.

**§ 428. Action against assurance fund.** Any allowed claim for indemnity shall be paid in the same manner as other claims against the county. In the city of New York a claim shall be passed upon and approved by the city register and by the corporation counsel of the city before payment is allowed. The rejection of a claim by the proper county officials (or in the city of New York by the city register and corporation counsel) shall not preclude the claimant from bringing an action to recover such claim. No claim or judgment on a claim for indemnity shall be binding on the county or on the county treasurer (in New York city the commissioner of finance) for an amount exceeding the amount credited to the assurance fund. If the amount credited to the assurance fund is insufficient to pay the claim or judgment in full, the unpaid balance shall bear interest at the legal rate and shall be paid out of the first moneys coming into said assurance fund or the county or city general fund after the assurance fund has been terminated pursuant to section four hundred twenty-six of this article. If any right of action against any person for damages for negligence or other cause, or under any covenant or contract of warranty or guaranty or otherwise, exists in favor of the person to whom indemnity is paid, the county treasurer (in New York city the commissioner of finance) shall be deemed to be subrogated to such right and may bring an action to recover thereunder. Any amounts recovered by the county treasurer (in New York city the commissioner of finance) under such an action shall be credited

to the account of the assurance fund. Until the assurance fund provided as aforesaid shall have been exhausted, payment for any such losses or damages shall be made out of such fund.

**§ 429. Restrictions on claims against assurance fund.** No person shall recover from the assurance fund, or the county or city general fund after the assurance fund has been terminated pursuant to section four hundred twenty-six of this article, any greater sum than the fair market value of the property at the time the right to bring such action first accrued. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to begin the same accrued, and not afterward, and such time shall not be extended because of any disability.

**§ 430. Penalties for fraudulent acts or false certificates.** Whoever fraudulently procures or assists in fraudulently procuring, or is intentionally privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the registration or other book kept in the registrar's office, or of any erasure or alteration in any entry in said book, or in any instrument authorized by this act, or knowingly defrauds, or is intentionally privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit, affecting registered land, shall be guilty of a felony.

**§ 431. Forgery and fraudulent stamping; penalty.** Whoever forges, or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, handwriting of any officer of the registrar's office; or fraudulently stamps or procures to be stamped, or assists in stamping, any document with any forged seal of said registrar, or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person, or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been

forged, or any document the signature to which has been forged, knowing the same to have been forged, or swears falsely concerning any matter or proceeding made or done in pursuance of this article, shall be guilty of a felony.

**§ 432. Fees to be charged.** The following fees shall be charged by registrars for the various services performed pursuant to this article:

(a) Filing the notice of petition, including entering it in the entry book, indexing it in all indexes, and entering it in the tickler certificate book, twenty-five dollars.

(b) Filing the survey, map or plan of the land to be registered, twenty dollars.

(c) Filing any survey, map or plan of registered land showing any subdivision or partition thereof, ten dollars.

(d) Filing, entering and indexing in all indexes any deed, lease or muniment of title, ten dollars.

(e) Filing, entering and indexing in all indexes any deed for the transfer of registered land, or of any interest therein, including the issuance of the transfer certificate of title, eighteen dollars.

(f) Filing, entering and indexing in all indexes any mortgage of registered land or of any part thereof, certifying and delivering a registration copy thereof, eighteen dollars.

(g) In addition to the fee provided for in subdivision (f) of this section, there shall be charged the fees now fixed by law for preparing and certifying certified copies of documents or records.

(h) Filing, entering and indexing in all indexes any assignment, modification, subordination, extension or satisfaction of a mortgage of registered land, twelve dollars.

(i) Filing, entering and indexing in all indexes any other lien, incumbrance or charge pending registration or subsequent thereto, twelve dollars.

(j) Filing, entering and indexing in all indexes any instrument cancelling any lien, incumbrance or charge on a certificate of title, twelve dollars.

(k) In addition to the charges provided for under subdivisions (i) and (j) of this section, there shall be charged a fee of fifty dollars for

each additional certificate of title upon which any instrument creating or discharging any lien, encumbrance or charge is required to be entered.

(l) Filing, entering and indexing in all indexes the certified copy of the final order and judgment of registration and issuing the certificate of title in accordance therewith, twenty dollars.

(m) In addition to the fee provided for in subdivisions (e) and (l) of this section, there shall be charged a fee of five dollars for each additional parcel where two or more separate parcels are combined into one certificate.

(n) Filing and entering an application for a new owner's duplicate certificate of title where the same has been lost or destroyed, and issuance of such new certificate, fifteen dollars.

(o) Preparing and issuing any new certificate of title where two or more adjoining parcels of registered land are combined into one parcel by the same owner; or where one parcel of registered land is subdivided into two or more parcels by the owner, for each new certificate, eighteen dollars.

(p) Services of the official examiner of title, one-tenth of one per centum of the value of the property on the basis of the last assessment for local taxation, and twenty dollars in addition thereto.

(q) Furnishing printed forms or for any services for which fees are not herein specified such reasonable charges as may be fixed by the registrar subject to the revision of the court.

One-half of the fees received by the registrar under subdivisions (e), (f), (h), (i), (j) and (o) of this section shall be paid to the treasurer of the county (in New York city to the commissioner of finance), to be credited to the assurance fund provided by section four hundred twenty-six of this article.

**§ 433. Construction of article.** This article shall be construed liberally, so far as may be necessary for the purpose of effecting its general intent.





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**§ 436. Termination of title registration procedures.** 1. As used in this section:

a. "Adverse instrument" means any document, instrument or paper that adversely affects, but does not convey, the fee title to registered land, and the validity of which is not dependent upon consent by an owner of the registered land or some person claiming by, through or under that owner. Adverse instruments include, but are not limited to, mechanics' lien claims, judgments, and lis pendens notices. Adverse instruments do not include sheriff's deeds, marshall's deeds, or tax deeds.

b. "Voluntary instrument" means any document, instrument or paper that either conveys the fee title to registered land or affects title to registered land and the validity of which is dependant upon consent by an owner of the registered land or by some person claiming by, through, or under that owner. Voluntary instruments include, but are not limited to, deeds, including tax deeds, sheriff's deeds and marshall's deeds, mortgages, assignments of mortgage, leases and grants of easement or license.

c. "Registered land" means real property and interests in real property, which have been registered under this article.

d. "Registrar's certificate of title" means a document issued pursuant to section three hundred ninety-four of this article.

2. On and after the effective date of this section, no title to land

may be registered under this article. Provided, however, that every certificate of title or instrument affecting title filed prior to the effective date of this section shall be registered pursuant to the provisions of this article.

3. On or after the effective date of this section and before January first, two thousand, the registrar shall accept only adverse instruments which he or she shall register pursuant to this article.

4. On and after the effective date of this section the registrar shall refuse to accept for registration any instrument that is a voluntary instrument. Instead of accepting such instruments for registration, the registrar shall upon payment of the statutory recording fee, deliver to the county clerk, or in the counties of Bronx, Kings, Queens and New York, the register for recording each current certificate of title to all lands affected by that voluntary or adverse instrument. Before delivering the certificate, the registrar shall memorialize or note on the certificate any instruments relating to incumbrances, charges, trusts, liens and transfers that have been filed with the registrar that have not been memorialized or noted. A certificate of title shall be delivered in the form required for recording.

5. On or before January first, two thousand the registrar shall deliver to the county clerk, or in the counties of Bronx, Kings, Queens and New York, the register for recording the certificates of title of all remaining land which was previously registered under this article. Before delivering those certificates, the registrar shall memorialize or note on the certificates any instruments relating to incumbrances, charges, trusts, liens and transfers that have been filed with the registrar and that have not yet been memorialized or noted. A certificate of title shall be delivered in the form required for recording.

6. As of the date of recording of certificates delivered pursuant to subdivision four or five of this section, the recorded certificates shall be subject only to incumbrances, charges, trusts, liens and transfers as may be memorialized or noted on the certificate, and free

from all others except those set forth in section four hundred of this article.

After the recording of certificates which are delivered under subdivisions four and five of this section, title to lands shall be conveyed or encumbered in the same manner as set forth in article nine of this chapter. All instruments noted or memorialized on the certificates of title so recorded shall have the same force and effect as if they were filed with the county clerk, or in the counties of Bronx, Kings, Queens and New York, the register at the time they were noted or were otherwise memorialized on the certificates of title. No instrument, however, that was filed, docketed or recorded by the county clerk, or in the counties of Bronx, Kings, Queens and New York, the register, but that was not duly registered, shall become a lien, incumbrance, trust or charge against any title which was delivered pursuant to subdivisions four and five of this section, unless such instrument was filed, recorded or docketed after the date such title was recorded, provided, however, that a judgement docketed by the county clerk prior to the time a certificate of title was recorded shall be valid as against such land if the landowner received notice of such judgment.

7. Recording of a certificate of title under subdivision four or five of this section, shall not disturb the effect of any proceedings under the registry system where the question of title to the real property registered under this article has been determined. All proceedings concerning the registration of title before delivery to the appropriate office under subdivision four or five of this section, and all provisions of this article that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the registry system. Those provisions giving rise to a right of action for damages against the county shall also continue in force and effect with respect to the period of time that title remained under the registry system.

8. Nothing contained in this section terminates, diminishes or impairs any existing right in or pertaining to registered land or any existing

right to resort to the assurance fund created under sections four hundred twenty-six through four hundred twenty-nine of this article and that right may be asserted and enforced in the same manner, to the same extent, and subject to the same limitations as provided in those sections.

9. No claim shall be made based upon prescription or adverse possession for land which was recorded under subdivision four or five of this section and which was previously registered under this article until after such time as the property is transferred or conveyed and the elements of such claims may be established against a subsequent owner.

#### ARTICLE 12-A

##### **REAL ESTATE BROKERS AND REAL ESTATE SALESPERSONS**

Section 440. Definitions.

440-a. License required for real estate brokers and salespersons.

440-b. Licenses in Putnam county.

441. Application for license.

441-a. License and pocket card.

441-b. License fees.

441-c. Revocation and suspension of licenses.

441-d. Salesperson's license suspended by revocation or suspension of employer's license.

441-e. Denial of license; complaints; notice of hearing.

441-f. Judicial review.

442. Splitting commissions.

442-a. Compensation of salespersons; restrictions.

442-b. Discontinuance or change of salesperson's association; report.

442-c. Violations by salespersons; broker's responsibility.

442-d. Actions for commissions; license prerequisite.

442-e. Violations.

442-f. Saving clause.

442-g. Nonresident licensees.

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- 442-i. State real estate board.
- 442-j. Effect of invalid provision.
- 442-k. Powers and duties of the state real estate board.
- 442-l. After-the-fact referral fees.
- 443. Disclosure regarding real estate agency relationship;  
form.
- 443-a. Disclosure obligations.

**§ 440. Definitions.** 1. Whenever used in this article "real estate broker" means any person, firm, limited liability company or corporation, who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage, other than a residential mortgage loan, as defined in section five hundred ninety of the banking law, or other incumbrance upon or transfer of real estate, or is engaged in the business of a tenant relocater, or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of condominium property originally sold pursuant to the provisions of the general business law governing real estate syndication offerings. In the sale of lots pursuant to the provisions of article nine-A of this chapter, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. For purposes of this subdivision the term, "interest in real estate" shall include the sale of a business wherein the value of the real estate transferred as part of the business is not merely incidental to the transaction, and shall not include the assignment of a lease, and

further, the transaction itself is not otherwise subject to regulation under state or federal laws governing the sale of securities. In connection with the sale of a business the term "real estate broker" shall not include a person, firm or corporation registered pursuant to the provisions of article twenty-three-A of the general business law or federal securities laws.

2. "Associate real estate broker" means a licensed real estate broker who shall by choice elect to work under the name and supervision of another individual broker or another broker who is licensed under a partnership, trade name, limited liability company or corporation. Such individual shall retain their license as a real estate broker as provided for in this article; provided, however, that the practice of real estate sales and brokerage by such individual as an associate broker shall be governed exclusively by the provisions of this article as they pertain to real estate salespersons. Nothing contained herein shall preclude an individual who elects to be licensed as an associate broker from also retaining a separate real estate broker's license under an individual, partnership, trade name, limited liability company or corporation.

3. "Real estate salesperson" means a person associated with a licensed real estate broker to list for sale, sell or offer for sale, at auction or otherwise, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate, or to negotiate a loan on real estate other than a mortgage loan as defined in section five hundred ninety of the banking law, or to lease or rent or offer to lease, rent or place for rent any real estate, or collects or offers or attempts to collect rent for the use of real estate for or in behalf of such real estate broker, or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of a condominium property originally sold pursuant to the provisions of the general business law governing real estate syndication offerings.

4. "Tenant relocater" means any person, firm, corporation, partnership, limited liability company or any legal entity whatsoever, which, for another and for a fee, commission or other valuable

consideration, supervises, organizes, arranges, coordinates, handles or is otherwise in charge of or responsible for the relocation of commercial or residential tenants from buildings or structures that are to be demolished, rehabilitated, remodeled or otherwise structurally altered.

5. "Association, associated; or associated with" whenever used in this article shall be deemed to make reference to a salesperson's relationship with their broker. Nothing in this article shall be deemed or construed to be indicative or determinative of the legal relationship of a salesperson to a broker nor shall any provision of this article be deemed or construed to alter or otherwise affect the legal responsibility of a real estate broker to third parties for the acts of anyone associated with such broker pursuant to this article.

6. "Office manager" means a licensed associate real estate broker who shall by choice elect to work as an office manager under the name and supervision of another individual broker or another broker who is licensed under a partnership, trade name, limited liability company or corporation. An associate real estate broker shall be required to have been active as a licensed associate broker for at least two of the four years preceding appointment as an office manager. Such individual shall retain their license as a real estate broker as provided for in this article and shall be required to exercise the same duty of supervision over salespersons and associate brokers as a licensed real estate broker; provided, however, that the practice of real estate sales and brokerage by such individual as an associate broker shall be governed exclusively by the provisions of this article as they pertain to real estate salespersons. Nothing contained in this subdivision shall preclude an individual who is licensed as an associate broker who elects to work as an office manager from also retaining a separate real estate broker's license under an individual, partnership, trade name, limited liability company or corporation.

**§ 440-a. License required for real estate brokers and salespersons.** No person, co-partnership, limited liability company or corporation shall

engage in or follow the business or occupation of, or hold themselves or itself out or act temporarily or otherwise as a real estate broker or real estate salesperson in this state without first procuring a license therefor as provided in this article. No person shall be entitled to a license as a real estate broker under this article, either as an individual or as a member of a co-partnership, or as a member or manager of a limited liability company or as an officer of a corporation, unless they are twenty years of age or over. No person shall be entitled to a license as a real estate salesperson under this article unless they are over the age of eighteen years. No person shall be entitled to a license as a real estate broker or real estate salesperson under this article who has been convicted in this state or elsewhere of a crime, unless the secretary makes a finding in conformance with all applicable statutory requirements, including those contained in article twenty-three-A of the correction law, that such convictions do not constitute a bar to licensure. No person shall be entitled to a license as a real estate broker or real estate salesperson under this article who does not meet the requirements of section 3-503 of the general obligations law.

Notwithstanding anything to the contrary in this section, tenant associations and not-for-profit corporations authorized in writing by the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city to manage residential property owned by such city or appointed by a court of competent jurisdiction to manage residential property owned by such city shall be exempt from the licensing provisions of this section with respect to the properties so managed.

**§ 440-b. Licenses in Putnam county.** On and after the first day of July, nineteen hundred thirty-four, no person, copartnership or corporation shall engage in or follow the business or occupation of, or hold themselves or itself out temporarily or otherwise as a real estate broker or real estate salesperson in the county of Putnam, without first procuring a license therefor as provided in this article, except that such license in such county shall be granted and issued, without the written examination provided in this article, to a person, copartnership



or corporation who was engaged in business as a real estate broker or real estate salesperson in such county prior to the first day of January, nineteen hundred thirty-four.

**§ 441. Application for license.** 1. Form. (a) Any person, copartnership, limited liability company or corporation desiring to act as a real estate broker or any person desiring to act as a real estate salesperson on or after the first day of October, nineteen hundred twenty-two, shall file with the department of state at its office in Albany an application for the kind of license desired, in such form and detail as such department shall prescribe and conforming to the requirements of section 3-503 of the general obligations law, setting forth the following, if the application be for a broker's license:

(i) The name and residence address of the applicant, and if an individual the name under which they intend to conduct business.

(ii) If the applicant be a copartnership the name and residence address of each member thereof and the name under which the business is to be conducted; or, if the applicant be a limited liability company, the name of the company, and the name and residence of each of its members; or, if the applicant be a corporation, the name of the corporation and the name and residence address of each of its officers.

(iii) The place or places, including the city, town or village, with the street and number, where the business is to be conducted.

(iv) The business or occupation theretofore engaged in by the applicant, or, if a copartnership, by each member thereof, or, if a limited liability company, by each member thereof, or, if a corporation, by each officer thereof, for a period of two years, immediately preceding the date of such application, setting forth the place or places where such business or occupation was engaged in and the name or names of employers, if any.

(v) The form, information and statement required by section 3-503 of the general obligations law.

(b) Such further information as the department may reasonably require shall be furnished by the applicant including sufficient proof of having taken and passed a written examination and answered such questions as may be prepared by the department to enable it to determine the

trustworthiness of the applicant if an individual, or of each member of a co-partnership or each member of a limited liability company or each officer of a corporation for whom a license as a broker is asked, and their competency to transact the business of real estate broker in such a manner as to safeguard the interests of the public. In determining competency, the department shall require proof that the person being tested to qualify to apply for a broker's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, and leases, a general and fair understanding of the obligations between principal and agent, has taken a class on cultural competency training, a general and fair understanding of the laws, rules and regulations pertaining to fair housing and discrimination in the sale or rental of real property or an interest in real property, as well as of the provisions of this section. The applicant must also furnish proof that they have attended for at least one hundred fifty-two hours and has successfully completed a real estate course or courses approved by the secretary of state as to method and content and supervision which approval may be withdrawn if in the opinion of the secretary of state said course or courses are not being conducted properly as to method, content and supervision, and that either the applicant has actively participated in the general real estate brokerage business as a licensed real estate salesperson under the supervision of a licensed real estate broker for a period of not less than two years or has had the equivalent experience in general real estate business for a period of at least three years, the nature of which experience shall be established by affidavit duly sworn to under oath and/or other and further proof required by the department of state. Computer-based and distance-learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the applicant for the specified time period. Notwithstanding the foregoing authority to approve computer-based and distance-learning courses, the department may prescribe that specified subjects or hours must be presented in a classroom setting. For purposes of this section, cultural competency is defined as understanding cultural norms, preferences and challenges within our diverse communities.

(c) In the event the applicant shall be a licensed salesperson under

this article and shall have submitted acceptable proof pursuant to the provisions of either paragraph (d) of subdivision one-A of this section or paragraph (a) of subdivision three of this section of having attended and successfully completed seventy-seven hours of an approved real estate course or courses, six hours of which have been focused on fair housing and discrimination in the sale or rental of real property or an interest in real property, within eight years of the date of the application, the department may accept and credit same against the one hundred fifty-two hours required hereunder.

(d) The one hundred fifty-two hours of an approved real estate course or courses required by paragraph (b) of this subdivision shall include instruction on fair housing and discrimination in the sale or rental of real property or an interest in real property as described in paragraph (e) of subdivision three of this section and instruction on the licensed real estate broker's responsibility for ensuring that each licensed real estate salesman under such broker's supervision is in compliance with his or her obligations under applicable federal, state, and local laws, rules, and regulations pertaining to fair housing and discrimination in the sale or rental of real property or an interest in real property.

1-A. (a) Every application for a real estate salesperson's license shall set forth:

(i) The name and residence address of the applicant.

(ii) The name and principal business address of the broker with whom they are to be associated.

(iii) The business or occupation engaged in for the two years immediately preceding the date of the application, setting forth the place or places where such business or occupation was engaged in, and the name or names of employers if any.

(iv) The length of time they have been engaged in the real estate business.

(v) The form, information and statement required by section 3-503 of the general obligations law.

(b) Each applicant for a salesperson's license shall provide such further information as the department may reasonably require, appearing at such time and place as may be designated by the department, to take a written examination and answer such questions as may be prepared by the

department to enable it to determine the trustworthiness of the applicant and the applicant's competence to transact the business of real estate salesperson in such a manner as to safeguard the interests of the public, including the applicant's working knowledge of the basic concepts of law pertaining to contracts, real property, agency and this article which govern conduct of such business, knowledge of laws, rules, and regulations pertaining to fair housing and discrimination in the sale or rental of real property or an interest in real property, mastery of basic skills needed to perform the applicant's duties, working knowledge of the ethical obligations of a real estate salesperson, and knowledge of the provisions of the general obligations law pertaining to performance of the applicant's duties.

(c) Each application for either a broker's or salesperson's license under this article shall be subscribed by the applicant; or if made by a co-partnership it shall be subscribed by a member thereof, or if made by a corporation it shall be subscribed by an officer thereof, and shall conform to the requirements of section 3-503 of the general obligations law. Each application shall contain an affirmation by the person so subscribing that the statements therein are true under the penalties of perjury. An application for a license shall be accompanied by the appropriate license fee, as hereinafter prescribed in this article.

(d) Anything to the contrary herein notwithstanding, on and after the effective date of this paragraph, no salesperson's license or conditional license shall be issued by the department unless the application therefor has been accompanied by proof that prior to such application the applicant has attended at least seventy-seven hours and successfully completed a real estate course or courses approved by the secretary of state as to method and content and supervision, which approval may be withdrawn if in the opinion of the secretary of state said course or courses are not properly conducted as to method, content and supervision. Computer-based and distance-learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the applicant for the specified time period. Notwithstanding the foregoing authority to approve computer-based and distance-learning courses, the department may prescribe that specified subjects or hours must be presented in a classroom setting.

2. Renewals. Any license granted under the provision hereof may be renewed by the department upon application therefor by the holder thereof, in such form as the department may prescribe and conforming to the requirements of section 3-503 of the general obligations law, and payment of the fee for such license. In case of application for renewal of license, the department may dispense with the requirement of such statements as it deems unnecessary in view of those contained in the original application for license but may not dispense with the requirements of section 3-503 of the general obligations law. A renewal period within the meaning of this act is considered as being a period of two years from the date of expiration of a previously issued license. The department shall require any applicant, who does not apply for renewal of license within such period, to qualify by passing the written examination as provided herein, and may require any licensee who has not yet passed the written examination, and who cannot reasonably prove to the satisfaction of the department, that he can meet the competency requirements, to pass the written examination before a renewal of license shall be granted; provided, however, that a person who failed or was unable to renew his license by reason of his induction or enlistment in the armed forces of the United States shall not be required to take or pass such examination.

3. (a) No renewal license shall be issued any licensee under this article for any license period commencing November first, nineteen hundred ninety-five unless such licensee shall have within the two year period immediately preceding such renewal attended at least twenty-two and one-half hours which shall include at least two hours of cultural competency training, at least three hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property, at least two hours of instruction pertaining to implicit bias awareness and understanding, at least two and one-half hours of instruction pertaining to ethical business practices, at least one hour of instruction pertaining to recent legal matters governing the practice of real estate brokers and salespersons in New York which may include statutes, laws, regulations, rules, codes, department of state opinions and decisions, and court

decisions and at least one hour of instruction pertaining to the law of agency except in the case of the initial two-year licensing term for real estate salespersons, two hours of agency related instruction must be completed, and successfully completed a continuing education real estate course or courses approved by the secretary of state as to method, content and supervision, which approval may be withdrawn if in the opinion of the secretary of state such course or courses are not being conducted properly as to method, content and supervision. For those individuals licensed pursuant to subdivision six of section four hundred forty-two-g of this article, in the individual's initial license term, at least eleven hours of the required twenty-two and one-half hours of continuing education shall be completed during the first year of the term. Of those eleven hours, three hours shall pertain to applicable New York state statutes and regulations governing the practice of real estate brokers and salespersons. To establish compliance with the continuing education requirements imposed by this section, licensees shall provide an affidavit, in a form acceptable to the department of state, establishing the nature of the continuing education acquired and shall provide such further proof as required by the department of state. For purposes of this subdivision, "implicit bias" shall mean the attitudes or stereotypes that affect an individual's understanding, actions and decisions in an unconscious manner.

(b) Notwithstanding the provisions of section four hundred one of the state administrative procedure act, except as provided in this paragraph, no license issued under this article shall continue in effect beyond the period for which it is issued if the proof of attendance required hereunder is not submitted and accepted prior to such expiration date. The department in its discretion may however issue a temporary renewal license for such period of time it deems appropriate to permit the submission of the required proof of attendance when the failure to submit such proof is not due to the fault of the licensee.

(c) (i) The secretary of state shall promulgate rules establishing the method, content, setting and supervision requirements of the continuing education real estate course or courses provided for in this section. In establishing the requirements for the continuing education course or courses, the secretary of state shall permit alternatives with respect

to content and method of presentation in consideration of the type of brokerage practiced and the availability of the sources of such course or courses in different areas of the state. Each course shall have an established curriculum composed primarily of real estate practice and professional responsibility and ethics and properly prepared written materials of the subject matter which shall be distributed as part of the course. It shall be taught by a qualified faculty with attorneys presenting legal subjects. Credit shall be awarded on the basis of one hour for each sixty minutes of actual attendance and records shall be maintained of attendance at each session which shall be transmitted to the department at the conclusion of the course. Computer-based and distance learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the licensee for the specified time period.

(ii) The secretary of state shall require approved faculty to sign and affirm, under penalty of perjury, a document, approved by and submitted electronically to the department of state, attesting to compliance with all applicable statutory and regulatory requirements pertaining to the instruction of the established curriculum. The secretary of state shall promulgate penalties for faculty that fail to meet the obligations required under this section and department of state regulations including, but not limited to, the temporary suspension of their instructor certificate for the first such failure and the revocation of their instructor certificate for any subsequent failure.

(d) The state real estate board, created pursuant to section four hundred forty-two-i of this article, shall not have the power to promulgate any rule, regulation or guidance requiring continuing education for real estate brokers or salespeople except those requirements set forth in subdivisions two and three of section four hundred forty-two-k of this article.

(e) The secretary of state shall, upon notice and a public hearing, promulgate rules establishing the content of the instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property required by paragraph (a) of this subdivision. Such instruction shall include, but not be limited to, courses on: (1) the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing; (2) unequal access to

amenities and resources on the basis of race, disability, and other protected characteristics; (3) federal, state, and local fair housing laws; and (4) anti-bias training.

4. The fees provided for by this section shall not be refundable.

**§ 441-a. License and pocket card.** 1. The department of state, if satisfied of the competency and trustworthiness of the applicant, shall issue and deliver to them a license in such form and manner as the department shall prescribe, but which must set forth the name and principal business address of the licensee, and, in the case of a real estate salesperson, the name and business address of the broker with whom the salesperson is associated.

2. Terms. A license issued or reissued under the provisions of this article shall entitle the person, co-partnership, limited liability company or corporation to act as a real estate broker, or, if the application is for a real estate salesperson's license, to act as a real estate salesperson in this state up to and including the date in which the license by its terms expires.

3. Place of business; business sign required. Except as otherwise provided in this article, each licensed real estate broker shall have and maintain a definite place of business within this state, and shall conspicuously post on the outside of the building in which said office is conducted a sign of a sufficient size to be readable from the sidewalk indicating the name and the business of the applicant as a licensed real estate broker, unless said office shall be located in an office, apartment or hotel building, in which event the name and the words "licensed real estate broker" shall be posted in the space provided for posting of names of occupants of the building, other than the mail box. Where the applicant for a real estate broker's license maintains more than one place of business, the broker shall apply for and the department shall issue a supplemental license for each branch office so maintained upon payment to the department of state for each supplemental license so issued the same fee prescribed in this article



for a license to act as a real estate broker. Each such branch office shall be under the direct supervision of the broker to whom the license is issued, or a representative broker of a corporation or partnership or manager of a limited liability company holding such license, or a duly appointed office manager. Such fee shall accompany such application and shall be non-refundable. For purposes of this subdivision, the principal residence of a real estate broker or salesperson shall not be deemed a place of business solely because such broker or salesperson shall have included the residence telephone number in their business cards.

4. Display of license. The license of a real estate broker shall be conspicuously displayed in his principal place of business at all times. Licenses issued for branch offices shall be conspicuously displayed therein. The display of a real estate broker's license, the term whereof has expired, by any person, partnership, limited liability company or corporation not duly licensed as a real estate broker for the current license term is prohibited.

5. Change of address. Notice in writing in the manner and form prescribed by the department shall be given the department at its offices in Albany by a licensed real estate broker on their own behalf and on behalf of each salesperson associated with them of any change in their or its principal business address. The filing fee of ten dollars for each licensee named therein shall accompany such notice. Such change by a licensee without such notification shall operate to suspend their license until such suspension shall be vacated by the department.

6. Pocket card. The department shall prepare, issue and deliver, with the assistance of the department of motor vehicles, to each licensee a pocket card in such form and manner as the department shall prescribe, but which shall contain the photo, name and business address of the licensee, and, in the case of a real estate salesperson, the name and business address of the broker with whom they are associated and shall certify that the person whose name appears thereon is a licensed real estate broker or salesperson, as may be. Such cards must be shown on demand. In the case of loss, destruction or damage, the secretary of state may, upon submission of satisfactory proof, issue a duplicate

pocket card upon payment of a fee of ten dollars.

7. License term. From and after the date when this subdivision shall take effect, the term for which a license shall be issued or reissued under this article shall be a period of two years.

8. Death of broker. A license issued to a real estate broker who was, at the time of their death, the sole proprietor of a brokerage office may be used after the death of such licensee by their duly appointed administrator or executor in the name of the estate pursuant to authorization granted by the surrogate under the provisions of the surrogate's court procedure act for a period of not more than one hundred twenty days from the date of death of such licensee in order to complete any unfinished realty transactions in the process of negotiation by the broker or their salespersons existing prior to their decease. There shall be endorsed upon the face of the license, after the name of the decedent, the words "deceased", the date of death and the name of the administrator or executor under whose authority the license is being used. The period of one hundred twenty days may be extended upon application to the secretary of state, for good cause shown, for an additional period not to exceed one hundred twenty days. A license expiring during such period or extension shall be automatically renewed and continued in effect during such period or extension. No fee shall be charged for any such license or renewal thereof.

9. Except for changes made on a renewal application, the fee for changing an address on a license shall be ten dollars.

10. Except for changes made on a renewal application, the fee for changing a name or for changing the status of a real estate broker's license shall be one hundred fifty dollars. The fee for changing a salesperson's name shall be fifty dollars.

11. If a real estate salesperson shall leave the service of a real estate broker, the real estate broker shall file a termination of association notice on such form as secretary may designate. The salesperson's license may be endorsed to a new sponsoring broker upon

the establishment of a new record of association filed with the department of state. The fee for filing a record of association shall be twenty dollars.

12. Whenever any person licensed as a real estate broker or real estate salesperson is convicted in this state or elsewhere of a felony, of a sex offense, as defined in subdivision two of section one hundred sixty-eight-a of the correction law or any offense committed outside of this state which would constitute a sex offense, or a sexually violent offense, as defined in subdivision three of section one hundred sixty-eight-a of the correction law or any offense committed outside this state which would constitute a sexually violent offense, such real estate broker or real estate salesperson shall within five days of the imposition of sentence, transmit a certified copy of the judgment of conviction to the department of state.

**§ 441-b. License fees.** 1. The fee for a license issued or reissued under the provisions of this article entitling a person, co-partnership, limited liability company or corporation to act as a real estate broker shall be one hundred fifty-five dollars plus an additional thirty dollar surcharge. Such surcharge shall be collected by the department of state and deposited into the anti-discrimination in housing fund established pursuant to section eighty-a of the state finance law to be used for statewide fair housing testing efforts. The fee for a license issued or reissued under the provisions of this article entitling a person to act as a real estate salesperson shall be fifty-five dollars plus an additional ten dollar surcharge. Such surcharge shall be collected by the department of state and deposited into the anti-discrimination in housing fund established pursuant to section eighty-a of the state finance law to be used for statewide fair housing testing efforts. Notwithstanding the provisions of subdivision seven of section four hundred forty-one-a of this article, after January first, nineteen hundred eighty-six, the secretary of state shall assign staggered expiration dates for outstanding licenses that have been previously renewed on October thirty-first of each year from the assigned date unless renewed. If the assigned date results in a term that exceeds

twenty-four months, the applicant shall pay an additional prorated adjustment together with the regular renewal fee. The secretary of state shall assign dates to existing licenses in a manner which shall result in a term of not less than two years.

1-A. The fee for a person to take an examination offered by the secretary of state pursuant to this article shall be fifteen dollars. Fees collected by the department of state pursuant to this article shall be deposited to the credit of the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

2. Corporations and co-partnerships. If the licensee be a corporation, the license issued to it shall entitle the president thereof or such other officer as shall be designated by such corporation, to act as a real estate broker. For each other officer who shall desire to act as a real estate broker in behalf of such corporation an additional license expiring on the same date as the license of the corporation shall be applied for and issued, as hereinbefore provided, the fee for which shall be the same as the fee required by this section for the license to the corporation. No license as a real estate salesperson shall be issued to any officer of a corporation nor to any manager or member of a limited liability company nor to a member of a co-partnership licensed as a real estate broker. If the licensee be a co-partnership the license issued to it shall entitle one member thereof to act as a real estate broker, and for each other member of the firm who desires to act as a real estate broker an additional license expiring on the same date as the license of the co-partnership shall be applied for and issued, as hereinbefore provided, the fee for which shall be the same as the fee required by this section for the license to the co-partnership. If the licensee be a limited liability company, the license issued to it shall entitle one member thereof or one manager thereof to act as a real estate broker, and for each other member or manager of the firm who desires to act as a real estate broker an additional license expiring on the same date as the license of the limited liability company shall be applied for and issued, as hereinbefore provided, the fee for which shall be the same as the fee required by this section for the license to

the limited liability company. In case a person licensed individually as a real estate broker thereafter becomes an officer of a corporation or a member or manager of a limited liability company or a member of a co-partnership an application shall be made in behalf of such corporation, limited liability company or co-partnership for a broker's license for them as its representative for the remainder of the then current license term, provided that the license and pocket card previously issued to the licensee in their individual capacity shall have been returned to the department whereupon the department shall cause a properly signed endorsement to be made without charge on the face of such license and pocket card as to such change of license status and return the license and pocket card to the licensee.

3. Disposition of fees. The department of state shall on the first day of each month make a verified return to the department of taxation and finance of all fees received by it under this article during the preceding calendar month, stating from what city or county received and by whom and when paid.

**§ 441-c. Revocation and suspension of licenses.** 1. Powers of department. (a) The department of state may revoke the license of a real estate broker or salesperson or suspend the same, for such period as the department may deem proper, or in lieu thereof may impose a fine not exceeding two thousand dollars payable to the department of state, provided that fifty percent of all moneys received by the department of state for such fines shall be payable to the anti-discrimination in housing fund established pursuant to section eighty-a of the state finance law, or a reprimand upon conviction of the licensee of a violation of any provision of this article, or for a violation of subdivision four of section four hundred forty-two-h of this article, or for a material misstatement in the application for such license, or if such licensee has been guilty of fraud or fraudulent practices, or for dishonest or misleading advertising, or has demonstrated untrustworthiness or incompetency to act as a real estate broker or salesperson, or for a violation of article fifteen of the executive law committed in their capacity as a real estate broker or salesperson, as

the case may be. In the case of a real estate broker engaged in the business of a tenant relocater, untrustworthiness or incompetency shall include engaging in any course of conduct including, but not limited to, the interruption or discontinuance of essential building service, that interferes with or disturbs the peace, comfort, repose and quiet enjoyment of a tenant.

(b) (i) The provisions of this paragraph shall apply in all cases of licensed broker or licensed salesperson who have failed, after receiving appropriate notice, to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding or is in arrears in payment of child support or combined child and spousal support referred to the department by a court pursuant to the requirements of section two hundred forty-four-c of the domestic relations law or pursuant to section four hundred fifty-eight-b or five hundred forty-eight-b of the family court act.

(ii) Upon receipt of an order from the court pursuant to one of the foregoing provisions of law based on arrears in payment of child support or combined child and spousal support, the department, if it finds such person to be so licensed, shall within thirty days of receipt of such order from the court, provide notice to the licensee of, and initiate, a hearing which shall be held by it at least twenty days and no more than thirty days after the sending of such notice to the licensee. The hearing shall be held solely for the purpose of determining whether there exists as of the date of the hearing proof that full payment of all arrears of support established by the order of the court to be due from the licensee have been paid. Proof of such payment shall be a certified check showing full payment of established arrears or a notice issued by the court, or the support collection unit where the order is payable to the support collection unit designated by the appropriate social services district. Such notice shall state that full payment of all arrears of support established by the order of the court to be due have been paid. The licensee shall be given full opportunity to present such proof of payment from the court or support collection unit at the hearing in person or by counsel. The only issue to be determined by the department as a result of the hearing is whether the arrears have been paid. No evidence with respect to the appropriateness of the court order or ability of the respondent party in arrears to comply with such order

shall be received or considered by the department.

(iii) Upon receipt of an order from the court based on failure to comply with a summons, subpoena, or warrant relating to a paternity or child support proceeding, the department, if it finds such person to be so licensed, shall within thirty days of receipt of such order from the court, provide notice to the licensee that his or her license shall be suspended within sixty days unless the conditions in subparagraph (v) of this section are met.

(iv) Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license of a real estate broker or salesperson shall be suspended if at the hearing, provided for by subparagraph (ii) of this paragraph, the licensee fails to present proof of payment as required by such subdivision. Such suspension shall not be lifted unless the court or the support collection unit, where the court order is payable to the support collection unit designated by the appropriate social services district, issues notice to the department that full payment of all arrears of support established by the order of the court to be due have been paid.

(v) Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license of a real estate broker or a salesperson shall be suspended in accordance with the provisions of subparagraph (iii) of this paragraph unless the court terminates its order to commence suspension proceedings. Such suspension shall not be lifted unless the court issues an order to the department terminating its order to commence suspension proceedings.

(vi) The department shall inform the court of all actions taken hereunder as required by law.

(vii) This paragraph applies to paternity and child support proceedings commenced under, and support obligations paid pursuant to any order of child support or child and spousal support issued under provisions of section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five, five-A or five-B of the family court act.

(viii) Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the provisions of this paragraph shall apply to the exclusion of any other requirements of this article and to the exclusion of any other requirement of law to the

contrary.

2. Determination of department. In the event that the department shall revoke or suspend any such license, or impose any fine or reprimand on the holder thereof, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed in the office of the department and copies thereof shall be served personally or by registered mail upon the broker or salesperson and addressed to the principal place of business of such broker or salesperson, and to the complainant. All brokers' and salespersons' licenses and pocket cards shall be returned to the department of state within five days after the receipt of notice of a revocation or suspension, or in lieu thereof, the broker or salesperson whose license has been revoked or suspended shall make and file an affidavit in form prescribed by the department of state, showing that the failure to return such license and pocket card is due either to loss or destruction thereof.

3. The display of a real estate broker's license after the revocation or suspension thereof is prohibited.

4. Whenever the license of a real estate broker or real estate salesperson is revoked by the department, such real estate broker or real estate salesperson shall be ineligible to be relicensed either as a real estate broker or real estate salesperson until after the expiration of a period of one year from the date of such revocation.

**§ 441-d. Salesperson's license suspended by revocation or suspension of employer's license.** The revocation or suspension of a broker's license shall operate to suspend the license of each real estate salesperson associated with such broker, pending a change of association of the salesperson or the expiration of the period of suspension of the broker's license. Such suspension of the salesperson's license shall be deemed to be a discontinuance of association with the broker being suspended.



**§ 441-e. Denial of license; complaints; notice of hearing.** 1. Denial of license. The department of state shall, before making a final determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules. If the applicant is a salesperson or has applied to become a salesperson, the department shall also notify the broker with whom such salesperson is associated, or with whom such salesperson or applicant is about to become associated, of such proposed denial. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification of denial shall become the final determination of the department. The department, acting by such officer or person in the department as the secretary of state may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause their deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant personally or by certified mail or in any manner authorized by the civil practice law and rules, and if the applicant is a salesperson, or has applied to become a salesperson, the department shall notify the broker with whom such applicant is associated.

2. Revocation, suspension, reprimands, fines. The department of state shall, before revoking or suspending any license or imposing any fine or reprimand on the holder thereof or before imposing any fine upon any person not licensed pursuant to this article who is deemed to be in violation of section four hundred forty-two-h of this article, and at least ten days prior to the date set for the hearing, notify in writing the holder of such license or such unlicensed person of any charges made and shall afford such licensee or unlicensed person an opportunity to be

heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the licensee, or by mailing same by certified mail to the last known business address of such licensee or unlicensed person, or by any method authorized by the civil practice law and rules. If said licensee be a salesperson, the department shall also notify the broker with whom they are associated of the charges by mailing notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the department shall prescribe.

3. Power to suspend a license. The department, acting by such officer or person in the department as the secretary of state may designate, shall have the power to suspend a license pending a hearing and to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules.

**§ 441-f. Judicial review.** The action of the department of state in granting or refusing to grant or to renew a license under this article or in revoking or suspending such a license or imposing any fine or reprimand on the holder thereof or refusing to revoke or suspend such a license or impose any fine or reprimand shall be subject to review by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules at the instance of the applicant for such license, the holder of a license so revoked, suspended, fined or reprimanded or the person aggrieved.

**§ 442. Splitting commissions.** 1. No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service, help or aid rendered in any place in which this article is applicable, by such person to the broker in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate including the resale of a condominium or cooperative apartment unless such a person be a duly licensed real estate

salesperson regularly associated with such broker or a duly licensed real estate broker or a person regularly engaged in the real estate brokerage business in a state outside of New York; provided, however, that notwithstanding any other provision of this section, it shall be permissible for a real estate broker to pay any part of a fee, commission, or other compensation received to an unlicensed corporation or an unlicensed limited liability company if each of its shareholders or members, respectively, is associated as an individual with the broker as a duly licensed associate broker or salesperson.

2. Furthermore, notwithstanding any other provision of law, it shall be permissible for a broker properly registered pursuant to the provisions of article twenty-three-A of the general business law who earns a commission on the original sale of a cooperative or homeowners association interest in real estate, including condominium units to pay any part of a fee, commission or other compensation received for bringing about such sale to a person whose principal business is not the sale or offering of cooperatives or homeowners association interests in real property, including condominium units in this state but who is either: (i) a real estate salesperson duly licensed under this article who is regularly associated with such broker; (ii) a broker duly licensed under this article; or a person regularly engaged in the real estate brokerage business in a state outside of New York.

Except when permitted pursuant to the foregoing provisions of this section no real estate broker shall pay or agree to pay any part of a fee, commission, or other compensation received by the broker, or due, or to become due to the broker to any person, firm or corporation who or which is or is to be a party to the transaction in which such fee, commission or other compensation shall be or become due to the broker; provided, however, that nothing in this section shall prohibit a real estate broker from offering any part of a fee, commission, or other compensation received by the broker to the seller, buyer, landlord or tenant who is buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate including the resale of a condominium or cooperative apartment. Such fee, commission, or other compensation must not be made to the seller, buyer, landlord or tenant

for performing any activity requiring a license under this article.

**§ 442-a. Compensation of salespersons; restrictions.** No real estate salesperson in any place in which this article is applicable shall receive or demand compensation of any kind from any person, other than a duly licensed real estate broker with whom they associated, for any service rendered or work done by such salesperson in the appraising, buying, selling, exchanging, leasing, renting or negotiating of a loan upon any real estate.

**§ 442-b. Discontinuance or change of salesperson's association; report.** When the association of any real estate salesperson shall have been terminated for any reason whatsoever, their broker shall forthwith notify the department of state thereof in such manner as the department shall prescribe. Where change of such salesperson's association is the basis for such termination, the salesperson's successor broker shall forthwith notify the department of such change in such manner as the department shall prescribe, such notice to be accompanied by a fee of one dollar. No real estate salesperson shall perform any act within any of the prohibitions of this article from and after the termination for any cause of their association until they thereafter shall have become associated with a licensed real estate broker.

**§ 442-c. Violations by salespersons; broker's responsibility.** No violation of a provision of this article by a real estate salesperson or employee of a real estate broker shall be deemed to be cause for the revocation or suspension of the license of the broker, unless it shall appear that the broker had actual knowledge of such violation or retains the benefits, profits or proceeds of a transaction wrongfully negotiated by their salesperson or employee after notice of the salesperson's or employee's misconduct. A broker shall be guilty of a misdemeanor for having any salesperson associated with their firm who has not secured the required license authorizing such employment.

**§ 442-d. Actions for commissions; license prerequisite.** No person, copartnership, limited liability company or corporation shall bring or maintain an action in any court of this state for the recovery of compensation for services rendered, in any place in which this article is applicable, in the buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and proving that such person was a duly licensed real estate broker or real estate salesperson on the date when the alleged cause of action arose.

**§ 442-e. Violations.** 1. Misdemeanors; triable in court of special sessions. Any person who violates any provision of this article shall be guilty of a misdemeanor. The commission of a single act prohibited by this article shall constitute a violation hereof. All courts of special sessions, within their respective territorial jurisdictions, are hereby empowered to hear, try and determine such crimes, without indictment, and to impose the punishments prescribed by law therefor.

2. Attorney general to prosecute. Criminal actions for violations of this article shall be prosecuted by the attorney general, or his deputy, in the name of the people of the state, and in any such prosecution the attorney general, or his deputy, shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein. The attorney general shall, upon a conviction for a violation of any provision of this article, and within ten days thereafter, make and file with the department of state a detailed report showing the date of such conviction, the name of the person convicted and the exact nature of the charge.

3. Penalty recoverable by person aggrieved. In case the offender shall have received any sum of money as commission, compensation or profit by or in consequence of his violation of any provision of this article, he shall also be liable to a penalty of not less than the amount of the sum of money received by him as such commission, compensation or profit and not more than four times the sum so received by him, as may be

determined by the court, which penalty may be sued for and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction.

4. In any prosecution under this article, any person, firm or corporation who, for another, performs or offers to perform or attempts or offers to attempt, the performance of any one of the acts set forth in section four hundred forty of this article, shall be presumed to do so for a fee, commission or other valuable consideration, but such presumption shall not arise out of a single transaction, except upon proof of repeated and successive acts, offers or attempts of a like nature.

5. The secretary of state shall have the power to enforce the provisions of this article and upon complaint of any person, or on their own initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of any person, firm or corporation applying for or holding a license as a real estate broker or salesperson, if in the opinion of the secretary of state such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the secretary of state, to supply such information as may be required concerning their or its business, business practices or business methods, or proposed business practices or methods.

6. For the purpose of enforcing the provisions of this article and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the department of state, acting by such officer or person in the department as the secretary of state may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state and require the production of any books or papers which he deems relevant to the inquiry and administer an oath to and take testimony of any person or cause his deposition to be taken with the same fees and

mileage and in the same manner as prescribed by law for civil cases in a court of record, except that any applicant or licensee or officer or agent thereof shall not be entitled to such fees and/or mileage. Any person, duly subpoenaed, who fails to obey such subpoena without reasonable cause or without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualification of such applicant or licensee or such applicant's or licensee's business, business practices and methods or such violations, shall be guilty of a misdemeanor.

7. In any criminal proceeding before any court or grand jury, or upon any investigation before the department of state for a violation of any of the provisions of this section, the court or grand jury, or the secretary of state, his deputy or other officer conducting the investigation, may confer immunity, in accordance with the provisions of section 50.20 or 190.40 of the criminal procedure law.

8. Notwithstanding any inconsistent provision of law, with respect to violations of section four hundred forty-two-h of this article, the secretary of state is authorized, upon the complaint of any person or on his or her own initiative, to investigate and prosecute violations of the provisions of such section by persons not licensed pursuant to this article and may impose a fine not exceeding one hundred fifty dollars for the first violation, not exceeding five hundred dollars for a second violation, and not exceeding one thousand dollars for a third and each subsequent violation. The attorney general, acting on behalf of the secretary of state, may commence an action or proceeding in a court of competent jurisdiction to obtain a judgment against such unlicensed person in an amount equal to that imposed as a fine.

**§ 442-f. Saving clause.** The provisions of this article shall not apply to receivers, referees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court; or public officers while performing their official duties, or attorneys at law.

**§ 442-g. Nonresident licensees.** 1. A nonresident of this state may become a real estate broker or a real estate salesperson by conforming to all of the provisions of this article, except that a nonresident broker regularly engaged in the real estate business as a vocation who is licensed and maintains a definite place of business in another state, which offers the same privileges to the licensed brokers of this state, shall not be required to maintain a place of business within this state. Anything to the contrary herein notwithstanding, if any state prohibits or restricts the right of a resident of this state to become a licensed nonresident real estate broker or salesperson, then the issuance of such a license to an applicant resident in such state shall be similarly restricted. The department of state shall recognize the license issued to a real estate broker or salesperson by another state as satisfactorily qualifying them for license as broker or salesperson, as the case may be, under this section; provided that the laws of the state of which they are a resident require that applicants for licenses as real estate brokers and salespersons shall establish their competency by written examinations but permit licenses to be issued to residents of the State of New York duly licensed under this article, without examination. If the applicant is a resident of a state which has not such requirement then the applicant must meet the examination requirement as provided herein and the department of state shall issue a license to such nonresident broker or salesperson upon payment of the license fee and the filing by the applicant with the department of a certified copy of the applicant's license issued by such other state.

2. Every nonresident applicant shall file with his application or renewal application an irrevocable consent on a form prescribed by the department of state submitting himself to the jurisdiction of the courts of this state and designating the secretary of state of the state of New York as his agent upon whom may be served any summons, subpoena or other process against him in any action or special proceeding. Such process may issue in any court in this state having jurisdiction of the subject matter, and the process shall set forth that the action or special proceeding is within the jurisdiction of the court.



3. Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with a fee of five dollars if the action is solely for the recovery of a sum of money not in excess of two hundred dollars and the process is so endorsed, and a fee of ten dollars in any other action or proceeding, which fee shall be a taxable disbursement. If such process is served upon behalf of a county, city, town or village, or other political subdivision of the state, the fee to be paid to the secretary of state shall be five dollars, irrespective of the amount involved or the nature of the action on account of which such service of process is made. If the cost of registered mail for transmitting a copy of the process shall exceed two dollars, an additional fee equal to such excess shall be paid at the time of the service of such process. Proof of service shall be by affidavit of compliance with this subdivision filed by or on behalf of the plaintiff together with the process, within ten days after such service, with the clerk of the court in which the action or special proceeding is pending. Service made as provided in this section shall be complete ten days after such papers are filed with the clerk of the court and shall have the same force and validity as if served on him personally within the state and within the territorial jurisdiction of the court from which the process issues.

4. The secretary of state shall promptly send one of such copies by registered mail, return receipt requested, to the nonresident broker or nonresident salesperson at the post office address of their main office as set forth in the last application filed by him or her.

5. Nothing in this section shall effect the right to serve process in any other manner permitted by law.

6. Notwithstanding any other provisions of this article, the department of state shall grant a real estate broker or a real estate salesperson license to an applicant who is a member of the household of a member of the armed forces of the United States, national guard or

reserves and was a member of such household before such member of the armed forces relocated to the state who submits satisfactory evidence of licensure, certification or registration to practice an equivalent occupation issued by a state, territory, protectorate or dependency of the United States, provided that such license, certification or certificate of registration was current and effective within one year of the date of the individual's application for licensure in New York, was granted in compliance with standards that are, in the judgment of the secretary, no less rigorous than those required for licensure in New York. If such standards for licensure, certification or registration are deemed by the secretary to be less rigorous than those required for licensure in New York, the secretary shall permit an applicant to submit evidence in a form acceptable to the department of state to demonstrate the applicant's competency and trustworthiness. If such evidence is sufficient in the judgment of the secretary, the secretary shall grant a real estate broker or real estate salesperson license.

**§ 442-h. Rules of the secretary of state.** 1. The secretary of state, and not the state real estate board established under section four hundred forty-two-i of this article, shall adopt such rules and regulations as the secretary of state may determine are necessary for the administration and enforcement of this section.

2. (a) If, after a public hearing and a reasonable investigation, the secretary of state determines that the owners of residential real property within a defined geographic area are subject to intense and repeated solicitations by real estate brokers and salespersons or others to place their property for sale with such real estate brokers or salespersons, or otherwise to sell their property, and that such solicitations have caused owners to reasonably believe that property values may decrease because persons of different race, ethnic, social, or religious backgrounds are moving or are about to move into the neighborhood or geographic area, the secretary of state may adopt a rule, to be known as a nonsolicitation order, directing all real estate brokers, salespersons and other persons regularly engaged in the trade or business of buying and selling real estate to refrain from soliciting

residential real estate listings or otherwise soliciting the sale of residential real estate within the subject area. Each area subject to such an order shall be bounded or otherwise specifically defined in the order. The nonsolicitation order shall be subject to such terms and conditions as the secretary of state may determine are, on balance, in the best interest of the public, including but not limited to the affected owners and licensees. A nonsolicitation order may prohibit any or all types of solicitation directed towards particular home-owners, including but not limited to letters, postcards, telephone calls, door-to-door calls, and handbills. Every nonsolicitation order shall contain a provision setting forth the day, month and year that the order shall become effective, as well as the day, month and year that the order shall expire. A nonsolicitation order shall not be effective for more than five years. However, a nonsolicitation order and the boundaries of the area where it applies may be re-adopted or amended from time to time in accordance with the procedures set forth herein.

(b) No real estate broker shall establish a new principal office or branch office within any geographic area which is the subject of a nonsolicitation order without prior approval from the secretary of state. The secretary of state may deny any application for the establishment or relocation of a principal office or branch office if approval of the application would cause the total number of principal and branch offices within the subject area to exceed the total number of principal and branch offices that were licensed within the area on the date the nonsolicitation order became effective.

3. (a) If the secretary of state determines that some owners of residential real property within a defined geographic area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale with such real estate brokers or salespersons, or are subject to intense and repeated solicitation by other persons regularly engaged in the trade or business of buying and selling real estate to sell their real estate, the secretary of state may adopt a rule establishing a cease and desist zone, which zone shall be bounded or otherwise specifically defined in the rule. After the secretary of state has established a cease and desist zone, the owners of residential real property located within the

zone may file an owner's statement with the secretary of state expressing their wish not to be solicited by real estate brokers, salespersons or other persons regularly engaged in the trade or business of buying and selling real estate. The form and content of the statement shall be prescribed by the secretary of state. After a cease and desist zone has been established by the secretary of state, the secretary of state shall provide public notice on its website of such zone, shall publish notice of such zone at least once annually in a newspaper of general circulation in the area affected by the cease and desist zone, and shall provide such further public notice of such cease and desist zone as the secretary of state deems necessary to maximize awareness to owners of residential real property located within the cease and desist zone that they may file a statement pursuant to this paragraph. After a cease and desist zone has been established by the secretary of state, no real estate broker, salesperson or other person regularly engaged in the trade or business of buying and selling real estate shall solicit a listing from any owner who has filed a statement with the secretary of state if such owner's name appears on the current cease and desist list prepared by the secretary of state. The prohibition on solicitation shall apply to direct forms of solicitation such as the use of the telephone, the mail, personal contact and other forms of direct solicitation as may be specified by the secretary of state.

(b) The secretary of state shall compile a cease and desist list for each zone established pursuant to paragraph (a) of this subdivision. In addition to such other information as the secretary of state may deem appropriate, each cease and desist list shall contain the name of each owner who has filed an owner's statement with the secretary, as well as the address of the property within the zone to which the owner's statement applies. The secretary of state shall send to each owner who has filed an owner's statement a written acknowledgement of the secretary of state's receipt thereof and a pamphlet explaining to the owner his or her rights in connection therewith and the procedures and time limits applicable to the filing of complaints for violations. The secretary of state shall allow an owner who files, or on behalf of whom is filed, a complaint or other report of a violation of a cease and desist rule ninety days in which to perfect a complaint by submitting such other or further information or documents as the secretary of state

may require. The secretary of state shall print a list for each zone. Each list shall be revised and reprinted at least annually on or before December thirty-first and shall be made available to the public and to real estate brokers at a reasonable price to be set by the secretary of state and approved by the director of the division of the budget. Additions or deletions shall be made to each list only at the time the list is reprinted, and the secretary of state shall not issue amendments or addenda to any printed list.

(c) No rule establishing a cease and desist zone shall be effective for longer than five years. However, the secretary of state may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. Whenever a rule establishing a cease and desist zone shall have expired or shall have been repealed, all owner's statements filed with the secretary of state pursuant to that rule shall also expire. However, an owner may file a new statement with the secretary of state if a new rule is adopted establishing a cease and desist zone containing the owner's property. Once the boundaries of a cease and desist zone have been established by rule of the secretary of state, the boundaries may not be changed except by repeal of the existing rule and adoption of a new rule establishing the new boundaries.

4. (a) Each real estate broker shall institute standardized operating procedures for the prerequisites prospective homebuyers must meet prior to receiving any services. Such standardized operating procedures shall include but not be limited to the following:

- (i) whether prospective clients shall show identification;
- (ii) whether an exclusive broker agreement is required;
- (iii) whether pre-approval for a mortgage loan is required; and
- (iv) any other such standardized operating procedures as the secretary of state shall determine by regulation and upon notice and public hearing.

(b) Real estate brokers shall date stamp, notarize and post such standardized operating procedures on any publicly available website and mobile device application they maintain, shall make a copy of such procedures available to the public upon request at their office locations, and shall maintain a file of such standardized operating

procedures while the broker's license is active. Any website or mobile device application maintained by a team or a real estate salesperson should also have the brokers' policies posted or have a direct link from such website or mobile device application to the brokers' website or mobile device application. If any alterations are made to the standardized operating procedures subsequent to such posting, real estate brokers shall date stamp, notarize and post such new standard operating procedures on any publicly available website or mobile device application they maintain within thirty days, and archive such alterations. Any broker or salesperson operating under a brokerage license that fails to adhere to such operating procedures shall be subject to the penalties imposed by section four hundred forty-one-c of this article.

(c) Any time a real estate broker is required to renew their license they must affirm to the department of state that they are in compliance with the requirements of this subdivision related to standardized operating procedures.

**§ 442-i. State real estate board.** 1. There is hereby established within the department of state a state real estate board which shall consist of the secretary of state, superintendent of financial services, and thirteen additional members. At least five of these members shall be "real estate brokers", each of whom, at the time of appointment, shall be licensed and qualified as a real estate broker under the laws of New York state and shall have been engaged in the real estate business in this state for a period of not less than ten years prior to appointment. The remaining members shall be "public members" who shall not be real estate licensees.

2. The thirteen members shall be appointed as follows: seven members shall be appointed by the governor, three of whom shall be real estate brokers and four of whom shall be public members; two members shall be appointed by the temporary president of the senate, one of whom shall be a real estate broker and one of whom shall be a public member; two members shall be appointed by the speaker of the assembly, one of whom shall be a real estate broker and one of whom shall be a public member;

one member shall be appointed by the minority leader of the senate, who shall be either a real estate broker or a public member; and one member shall be appointed by the minority leader of the assembly, who shall be either a real estate broker or a public member.

3. Each appointed member shall serve for a term of two years; at any point during such term the appointed member may be removed by the person who appointed such member. In the event that any of said members shall die or resign during the term of office, the successor shall be appointed in the same way and with the same qualifications as set forth above. A member may be reappointed for successive terms but no member shall serve more than ten years in his or her lifetime.

4. A majority of members currently serving on the board shall be required in order to pass any resolution or to approve any matter before the board. The secretary of state shall be chairperson of the board. The vice-chairperson and a secretary shall be elected from among the members. A board member who fails to attend three consecutive meetings shall forfeit the seat unless the secretary of state, upon written request from the member, finds that the member should have been excused from a meeting because of illness or death of a family member.

5. Each member of the board shall receive no compensation other than reimbursement for actual and necessary expenses.

6. The board shall meet no fewer than three times per year and at the call of the secretary of state or a majority of the board. In addition to regularly scheduled meetings of the board, there shall be at least one public hearing each year in New York city, one public hearing each year in Buffalo, and one public hearing each year in Albany. At least fifteen days prior to the holding of any of these public hearings pursuant to this subdivision, the board shall give public notice of the hearing in a newspaper of general circulation in each area where the public meeting is to be held. The purpose of these hearings shall be to solicit from members of the public, suggestions, comments, and observations about real estate practice in New York state.

**§ 442-j. Effect of invalid provision.** Should the courts of this state declare any provision of this article unconstitutional, or unauthorized, or in conflict with any other section or provision of this article, then such decision shall affect only the section or provision so declared to be unconstitutional or unauthorized and shall not affect any other section or part of this article.

**§ 442-k. Powers and duties of the state real estate board.** 1. The state real estate board shall have the power to promulgate rules or regulations affecting brokers and sales persons in order to administer and effectuate the purposes of this article, except that matters pertaining to commingling money of a principal, rendering accounts for a client, managing property for a client, broker's purchase of property listed with him or her, inducing breach of contract of sale or lease, and records of transactions to be maintained are reserved for the exclusive regulatory authority of the secretary of state. The secretary of state, and not the state real estate board, shall promulgate rules and regulations to administer or implement the provisions of sections four hundred forty-one and four hundred forty-two-h of this article. In addition, the secretary of state shall have exclusive regulatory authority to promulgate rules regarding the duties and responsibilities of real estate brokers and salespersons with regard to the handling of clients' funds.

2. Authority to examine applicants. The board is empowered to prescribe the content for the courses of study for the examination and education of persons licensed under this article. The board shall advise the secretary of state on policies governing the administration of the examinations.

3. Approval of schools. The board shall establish the rules and regulations governing the approval by the secretary of state of schools to offer or conduct courses required either for licensure under this article or for the satisfaction of the continuing education requirements contained in paragraph (a) of subdivision three of section four hundred



forty-one of this article.

4. Study of laws and regulations. The board shall study the operation of laws and regulations with respect to the rights, responsibilities and liabilities of real estate licensees arising out of the transfer of interests in real property and shall make recommendation on pending or proposed legislation affecting the same, with the exception of legislation affecting section four hundred forty-two-h of this article.

5. Enforcement programs and activities. The board shall advise and assist the secretary of state in carrying out the provisions and purposes of this article and make recommendations concerning the programs and activities of the department in connection with the enforcement of this article.

6. Administration and enforcement. The department of state shall have the power and its duty shall be to administer and enforce the laws and regulations of the state relating to those activities involving real estate for which licensing is required under this article and to instruct and require its agents to bring prosecutions for unauthorized and unlawful practice.

7. Reports to legislative committees. The board shall submit annually a report to the judiciary committee of the state assembly and the judiciary committee of the state senate, containing a description of the types of complaints received, status of cases, and the length of time from the initial complaint to any final disposition.

**§ 442-1. After-the-fact referral fees.** 1. No real estate broker or salesperson, in any place in which this article is applicable, shall demand or receive a referral fee or compensation of any kind for (i) a referral from any person or other entity relative to finding a seller after a bona fide listing agreement has been signed, (ii) a referral from any person or other entity relative to finding a buyer after a bona fide offer to purchase is accepted, or (iii) a referral from any person or other entity relative to finding a property after a bona fide buyer's

agency agreement has been signed, unless reasonable cause for payment of such compensation exists.

2. A violation of this section shall be a violation of this article and shall constitute a deceptive act or practice within the meaning of section three hundred forty-nine of the general business law.

**§ 443. Disclosure regarding real estate agency relationship; form. 1.** Definitions. As used in this section, the following terms shall have the following meanings:

a. "Agent" means a person who is licensed as a real estate broker, associate real estate broker or real estate salesperson under section four hundred forty-a of this article and is acting in a fiduciary capacity.

b. "Buyer" means a transferee in a residential real property transaction and includes a person who executes an offer to purchase residential real property from a seller through an agent, or who has engaged the services of an agent with the object of entering into a residential real property transaction as a transferee.

c. "Buyer's agent" means an agent who contracts to locate residential real property for a buyer or who finds a buyer for a property and presents an offer to purchase to the seller or seller's agent and negotiates on behalf of the buyer.

d. "Listing agent" means a person who has entered into a listing agreement to act as an agent of the seller or landlord for compensation.

e. "Listing agreement" means a contract between an owner or owners of residential real property and an agent, by which the agent has been authorized to sell or lease the residential real property or to find or obtain a buyer or lessee therefor.

f. "Residential real property" means real property used or occupied,

or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons improved by (i) a one-to-four family dwelling or (ii) condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed.

g. "Seller" means the transferor in a residential real property transaction, and includes an owner who lists residential real property for sale with an agent, whether or not a transfer results, or who receives an offer to purchase residential real property.

h. "Seller's agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, acts as a seller's subagent or acts as a broker's agent to find or obtain a buyer for residential real property.

i. "Dual agent" means an agent who is acting as a buyer's agent and a seller's agent or a tenant's agent and a landlord's agent in the same transaction.

j. "Designated sales agent" means a licensed real estate salesperson or associate broker, working under the supervision of a real estate broker, who has been assigned to represent a client when a different client is also represented by such real estate broker in the same transaction.

k. "Broker's agent" means an agent that cooperates or is engaged by a listing agent, buyer's agent or tenant's agent (but does not work for the same firm as the listing agent, buyer's agent or tenant's agent) to assist the listing agent, buyer's agent or tenant's agent in locating a property to sell, buy or lease respectively, for the listing agent's seller or landlord, the buyer agent's buyer or the tenant's agent tenant. The broker's agent does not have a direct relationship with the seller, buyer, landlord or tenant and the seller, buyer, landlord or tenant can not provide instructions or direction directly to the broker's agent. Therefore, the seller, buyer, landlord or tenant do not have vicarious liability for the acts of the broker's agent. The listing

agent, buyer's agent or tenant's agent do provide direction and instruction to the broker's agent and therefore the listing agent, buyer's agent or tenant's agent will have liability for the broker's agent.

l. "Tenant" means a lessee in a residential real property transaction and includes a person who executes an offer to lease residential real property from a landlord through an agent, or who has engaged the services of an agent with the object of entering into a residential real property transaction as a lessee.

m. "Landlord" means the lessor in a residential real property transaction, and includes an owner who lists residential real property for lease with an agent, whether or not a lease results, or who receives an offer to lease residential real property.

n. "Tenant's agent" means an agent who contracts to locate residential real property for a tenant or who finds a tenant for a property and presents an offer to lease to the landlord or landlord's agent and negotiates on behalf of the tenant.

o. "Landlord's agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, acts as a landlord's subagent or acts as a broker's agent to find or obtain a tenant for residential real property.

p. "Advance consent to dual agency" means written informed consent signed by the seller/landlord or buyer/tenant that the listing agent and/or buyer's agent may act as a dual agent for that seller/landlord and a buyer/tenant for residential real property which is the subject of a listing agreement.

q. "Advance consent to dual agency with designated sales agents" means written informed consent signed by the seller/landlord or buyer/tenant that indicates the name of the agent appointed to represent the seller/landlord or buyer/tenant as a designated sales agent for residential real property which is the subject of a listing agreement.

2. This section shall apply only to transactions involving residential real property.

3. a. A listing agent shall provide the disclosure form set forth in subdivision four of this section to a seller or landlord prior to entering into a listing agreement with the seller or landlord and shall obtain a signed acknowledgment from the seller or landlord, except as provided in paragraph e of this subdivision.

b. A seller's agent or landlord's agent shall provide the disclosure form set forth in subdivision four of this section to a buyer, buyer's agent, tenant or tenant's agent at the time of the first substantive contact with the buyer or tenant and shall obtain a signed acknowledgement from the buyer or tenant, except as provided in paragraph e of this subdivision.

c. A buyer's agent or tenant's agent shall provide the disclosure form to the buyer or tenant prior to entering into an agreement to act as the buyer's agent or tenant's agent and shall obtain a signed acknowledgment from the buyer or tenant, except as provided in paragraph e of this subdivision. A buyer's agent or tenant's agent shall provide the form to the seller, seller's agent, landlord or landlord's agent at the time of the first substantive contact with the seller or landlord and shall obtain a signed acknowledgment from the seller, landlord or the listing agent, except as provided in paragraph e of this subdivision.

d. The agent shall provide to the buyer, seller, tenant or landlord a copy of the signed acknowledgment and shall maintain a copy of the signed acknowledgment for not less than three years.

e. If the seller, buyer, landlord or tenant refuses to sign an acknowledgment of receipt pursuant to this subdivision, the agent shall set forth under oath or affirmation a written declaration of the facts of the refusal and shall maintain a copy of the declaration for not less than three years.

f. A seller/landlord or buyer/tenant may provide advance informed consent to dual agency and dual agency with designated sales agents by indicating the same on the form set forth in subdivision four of this section.

4. a. For buyer-seller transactions, the following shall be the disclosure form:

NEW YORK STATE DISCLOSURE FORM  
FOR  
BUYER AND SELLER  
THIS IS NOT A CONTRACT

New York state law requires real estate licensees who are acting as agents of buyers or sellers of property to advise the potential buyers or sellers with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales agents.

Throughout the transaction you may receive more than one disclosure form. The law may require each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate.

If you need legal, tax or other advice, consult with a professional in that field.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS  
SELLER'S AGENT

A seller's agent is an agent who is engaged by a seller to represent the seller's interests. The seller's agent does this by securing a buyer for the seller's home at a price and on terms acceptable to the seller. A seller's agent has, without limitation, the following fiduciary duties to the seller: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A seller's agent does not represent the interests of the buyer. The obligations of a seller's agent are also subject to any specific provisions set forth in an

agreement between the agent and the seller. In dealings with the buyer, a seller's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

#### BUYER'S AGENT

A buyer's agent is an agent who is engaged by a buyer to represent the buyer's interests. The buyer's agent does this by negotiating the purchase of a home at a price and on terms acceptable to the buyer. A buyer's agent has, without limitation, the following fiduciary duties to the buyer: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A buyer's agent does not represent the interests of the seller. The obligations of a buyer's agent are also subject to any specific provisions set forth in an agreement between the agent and the buyer. In dealings with the seller, a buyer's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the buyer's ability and/or willingness to perform a contract to acquire seller's property that are not inconsistent with the agent's fiduciary duties to the buyer.

#### BROKER'S AGENTS

A broker's agent is an agent that cooperates or is engaged by a listing agent or a buyer's agent (but does not work for the same firm as the listing agent or buyer's agent) to assist the listing agent or buyer's agent in locating a property to sell or buy, respectively, for the listing agent's seller or the buyer agent's buyer. The broker's agent does not have a direct relationship with the buyer or seller and the buyer or seller can not provide instructions or direction directly to the broker's agent. The buyer and the seller therefore do not have vicarious liability for the acts of the broker's agent. The listing agent or buyer's agent do provide direction and instruction to the broker's agent and therefore the listing agent or buyer's agent will have liability for the acts of the broker's agent.

## DUAL AGENT

A real estate broker may represent both the buyer and the seller if both the buyer and seller give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the buyer and seller. The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the buyer and seller. An agent acting as a dual agent must explain carefully to both the buyer and seller that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the buyer and seller are giving up their right to undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation. A seller or buyer may provide advance informed consent to dual agency by indicating the same on this form.

## DUAL AGENT WITH DESIGNATED SALES AGENTS

If the buyer and the seller provide their informed consent in writing, the principals and the real estate broker who represents both parties as a dual agent may designate a sales agent to represent the buyer and another sales agent to represent the seller to negotiate the purchase and sale of real estate. A sales agent works under the supervision of the real estate broker. With the informed consent of the buyer and the seller in writing, the designated sales agent for the buyer will function as the buyer's agent representing the interests of and advocating on behalf of the buyer and the designated sales agent for the seller will function as the seller's agent representing the interests of and advocating on behalf of the seller in the negotiations between the buyer and seller. A designated sales agent cannot provide the full range of fiduciary duties to the buyer or seller. The designated sales agent must explain that like the dual agent under whose supervision they function, they cannot provide undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency



relationship with designated sales agents before agreeing to such representation. A seller or buyer may provide advance informed consent to dual agency with designated sales agents by indicating the same on this form.

This form was provided to me by \_\_\_\_\_ (print name of licensee) of \_\_\_\_\_ (print name of company, firm or brokerage), a licensed real estate broker acting in the interest of the:

|                                         |                                                                  |
|-----------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> Seller as a    | <input type="checkbox"/> Buyer as a                              |
| (check relationship below)              | (check relationship below)                                       |
| <input type="checkbox"/> Seller's agent | <input type="checkbox"/> Buyer's agent                           |
| <input type="checkbox"/> Broker's agent | <input type="checkbox"/> Broker's agent                          |
| <input type="checkbox"/> Dual agent     | <input type="checkbox"/> Dual agent with designated sales agents |

For advance informed consent to either dual agency or dual agency with designated sales agents complete section below:

☐ Advance informed consent dual agency.  
☐ Advance informed consent to dual agency with designated sales agents.

If dual agent with designated sales agents is indicated above:

\_\_\_\_\_ is appointed to represent the buyer; and

\_\_\_\_\_ is appointed to represent the seller in this transaction.

(I)(We) acknowledge receipt of a copy of this disclosure form:

Signature of { } Buyer(s) and/or { } Seller(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

b. For landlord-tenant transactions, the following shall be the disclosure form:

NEW YORK STATE DISCLOSURE FORM  
FOR  
LANDLORD AND TENANT  
THIS IS NOT A CONTRACT

New York state law requires real estate licensees who are acting as agents of landlords and tenants of real property to advise the potential landlords and tenants with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales agents.

Throughout the transaction you may receive more than one disclosure form. The law may require each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate.

If you need legal, tax or other advice, consult with a professional in that field.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS  
LANDLORD'S AGENT

A landlord's agent is an agent who is engaged by a landlord to represent the landlord's interest. The landlord's agent does this by securing a tenant for the landlord's apartment or house at a rent and on terms acceptable to the landlord. A landlord's agent has, without limitation, the following fiduciary duties to the landlord: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A landlord's agent does not represent the interests of the tenant. The obligations of a landlord's agent are also subject to any specific provisions set forth in an agreement between the agent and the landlord. In dealings with the tenant, a landlord's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

## TENANT'S AGENT

A tenant's agent is an agent who is engaged by a tenant to represent the tenant's interest. The tenant's agent does this by negotiating the rental or lease of an apartment or house at a rent and on terms acceptable to the tenant. A tenant's agent has, without limitation, the following fiduciary duties to the tenant: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A tenant's agent does not represent the interest of the landlord. The obligations of a tenant's agent are also subject to any specific provisions set forth in an agreement between the agent and the tenant. In dealings with the landlord, a tenant's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the tenant's ability and/or willingness to perform a contract to rent or lease landlord's property that are not inconsistent with the agent's fiduciary duties to the buyer.

## BROKER'S AGENTS

A broker's agent is an agent that cooperates or is engaged by a listing agent or a tenant's agent (but does not work for the same firm as the listing agent or tenant's agent) to assist the listing agent or tenant's agent in locating a property to rent or lease for the listing agent's landlord or the tenant agent's tenant. The broker's agent does not have a direct relationship with the tenant or landlord and the tenant or landlord can not provide instructions or direction directly to the broker's agent. The tenant and the landlord therefore do not have vicarious liability for the acts of the broker's agent. The listing agent or tenant's agent do provide direction and instruction to the broker's agent and therefore the listing agent or tenant's agent will have liability for the acts of the broker's agent.

## DUAL AGENT

A real estate broker may represent both the tenant and the landlord if both the tenant and landlord give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the landlord and the tenant. The

obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the tenant and landlord. An agent acting as a dual agent must explain carefully to both the landlord and tenant that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the landlord and tenant are giving up their right to undivided loyalty. A landlord and tenant should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation. A landlord or tenant may provide advance informed consent to dual agency by indicating the same on this form.

DUAL AGENT  
WITH  
DESIGNATED SALES AGENTS

If the tenant and the landlord provide their informed consent in writing, the principals and the real estate broker who represents both parties as a dual agent may designate a sales agent to represent the tenant and another sales agent to represent the landlord. A sales agent works under the supervision of the real estate broker. With the informed consent in writing of the tenant and the landlord, the designated sales agent for the tenant will function as the tenant's agent representing the interests of and advocating on behalf of the tenant and the designated sales agent for the landlord will function as the landlord's agent representing the interests of and advocating on behalf of the landlord in the negotiations between the tenant and the landlord. A designated sales agent cannot provide the full range of fiduciary duties to the landlord or tenant. The designated sales agent must explain that like the dual agent under whose supervision they function, they cannot provide undivided loyalty. A landlord or tenant should carefully consider the possible consequences of a dual agency relationship with designated sales agents before agreeing to such representation. A landlord or tenant may provide advance informed consent to dual agency with designated sales agents by indicating the same on this form.

This form was provided to me by \_\_\_\_\_ (print name of licensee) of \_\_\_\_\_ (print name of company, firm or

brokerage), a licensed real estate broker acting in the interest of the:

( ) Landlord as a      ( ) Tenant as a  
(check relationship below) (check relationship below)  
( ) Landlord's agent    ( ) Tenant's agent  
( ) Broker's agent      ( ) Broker's agent  
( ) Dual agent          ( ) Dual agent with designated sales agents

For advance informed consent to either dual agency or dual agency with designated sales agents complete section below:

( ) Advance informed consent dual agency.  
( ) Advance informed consent to dual agency with designated sales agents.

If dual agent with designated sales agents is indicated above:

\_\_\_\_\_ is appointed to represent the tenant; and

\_\_\_\_\_ is appointed to represent the landlord in this transaction.

(I) (We) \_\_\_\_\_ acknowledge receipt of a copy of this disclosure form:

Signature of { } Landlord(s) and/or { } Tenant(s):

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

5. This section shall not apply to a real estate licensee who works with a buyer, seller, tenant or landlord in accordance with terms agreed to by the licensee and buyer, seller, tenant or landlord and in a capacity other than as an agent, as such term is defined in paragraph a of subdivision one of this section.

6. Nothing in this section shall be construed to limit or alter the application of the common law of agency with respect to residential real estate transactions.

**§ 443-a. Disclosure obligations.** 1. Notwithstanding any other provision of law, it is not a material defect or fact relating to property offered for sale or lease, including residential property regardless of the number of units contained therein, that:

(a) an owner or occupant of the property is, or was at any time suspected to be, infected with human immunodeficiency virus or diagnosed with acquired immune deficiency syndrome or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through occupancy of a dwelling place; or

(b) the property is, or is suspected to have been, the site of a homicide, suicide or other death by accidental or natural causes, or any crime punishable as a felony.

2. (a) No cause of action shall arise against an owner or occupant of real property, or the agent of such owner or occupant, or the agent of a seller or buyer of real property, for failure to disclose in any real estate transaction a fact or suspicion contained in subdivision one of this section.

(b) Failure to disclose a fact contained in subdivision one of this section to a transferee shall not be grounds for a disciplinary action against a real estate agent or broker licensed pursuant to this article.

(c) As used in this section, the terms "agent", "buyer" and "seller" shall have the same meanings as such terms are defined in section four hundred forty-three of this article.

3. Notwithstanding the fact that this information is not a material defect or fact, if such information is important to the decision of the buyer to purchase or lease the property, the buyer may, when negotiating or making a bona fide offer, submit a written inquiry for such information. The buyer or the agent of the buyer shall provide the written request to the seller's agent or to the seller if there is no seller's agent. The seller may choose whether or not to respond to the inquiry. The seller's agent, with the consent of the seller and subject to applicable laws regarding privacy, shall report any response and information to the buyer's agent or to the buyer if there is no buyer's agent. If there is no seller's agent, the seller shall inform the buyer's agent, or the buyer if there is no buyer's agent, whether or not

the seller chooses to provide a response.

4. This section shall preempt any local law inconsistent with the provisions of this section.

## ARTICLE 12-B

### HOME INSPECTION PROFESSIONAL LICENSING

Section 444-a. Short title.

444-b. Definitions.

444-c. Code of ethics and standards of practice.

444-d. License requirements for home inspectors.

444-e. Qualifications for licensure.

444-f. License periods, renewals and fees.

444-g. Duty of care of home inspectors.

444-h. Suspension and revocation of licenses.

444-i. Denial of license; complaints; notice of hearing.

444-j. Practice of architecture and professional engineering.

444-k. Liability coverage.

444-l. Duties of the secretary.

444-m. Construction with other laws.

444-n. Unlicensed activities.

444-o. Violations and penalties for unlicensed activities.

444-p. Judicial review.

444-q. Severability.

**§ 444-a. Short title.** This article shall be known and may be cited as the "home inspection professional licensing act".

**§ 444-b. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Client" means any person who engages or seeks to engage the services of a home inspector for the purpose of obtaining inspection of and written report about the condition of a residential building.

2. "Department" means the department of state.

3. "Home inspector" means a person licensed as a home inspector pursuant to the provisions of this article.

4. "Home inspection" means the process by which a home inspector observes and provides a written report of the systems and components of a residential building including but not limited to heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components or any other related residential building component as recommended or required by the department through regulation to provide a client with objective information about the condition of the residential building. The home inspector shall clearly identify in the written report which systems and components of the residential building were observed. A home inspection shall not include an inspection for radon or pests.

5. "Person" means an individual, firm, company, partnership, limited liability company, or corporation.

6. "Residential building" means a structure consisting of one to four dwelling units and their garages and carport but shall not include any such structure newly constructed or not previously occupied as a dwelling unit.

7. "Secretary" means the secretary of the department of state.

**§ 444-c. Code of ethics and standards of practice.** 1. The secretary shall promulgate regulations to implement the provisions of this article including but not limited to:

(a) standards for training including approval of the course of study and examination required for licensure of home inspectors;

(b) requirements and standards for continuing education of home inspectors;



(c) a code of ethics and standards of practice for licensed home inspectors consistent with the provisions of this article and sound ethical practices which code and standards shall be subject to public notice and comment prior to adoption of the regulations. The standards of practice shall not require a reporting format or limit information which licensees are authorized to provide a client pursuant to this article; and

(d) development of information and educational materials about home inspection for distribution to clients.

2. Nothing in this section shall be deemed to supersede any established authority, duty and power established by local law, state law or regulation or otherwise granted to any agency, body or entity.

**§ 444-d. License requirements for home inspectors.** No person shall conduct or represent that he or she has the ability to conduct a home inspection for compensation unless such person is:

1. licensed as home inspector pursuant to this article; or

2. a person regulated by the state or a political subdivision thereof as an architect who is acting within the scope of his or her profession; or

3. a person regulated by the state or a political subdivision thereof as an engineer who is acting within the scope of his or her profession; or

4. a person who is employed as a code enforcement official by the state or a political subdivision thereof when acting within the scope of that government employment; or

5. a person making home inspections for the purpose of meeting the requirements of section four hundred forty-four-e of this article to qualify for licensure as a home inspector.

**§ 444-e. Qualifications for licensure.** 1. An applicant for a license as a home inspector shall:

(a) have successfully completed high school or its equivalent; and

(b) (i) have successfully completed a course of study of not less than one hundred forty hours approved by the secretary, of which at least forty hours shall have been in the form of unpaid field based inspections in the presence of and under the direct supervision of a home inspector licensed by the state of New York or a professional engineer or architect regulated by the state of New York who oversees and takes full responsibility for the inspection and any report provided to a client; or

(ii) have performed not less than one hundred home inspections in the presence of and under the direct supervision of a home inspector licensed by the state of New York or a professional engineer or architect regulated by the state of New York who oversees and takes full responsibility for the inspection and any report provided to a client; and

(c) have passed the National Home Inspector examination or an examination offered by the secretary. Any examination offered by the secretary must meet or exceed the national exam standards set by the Examination Board of Professional Home Inspectors in consultation with the New York State Association of Home Inspectors to include questions related to state-specific procedures, rules, and regulations, and changes to state and federal law, and be updated annually; and

(d) pay the applicable fees.

2. The provisions of this section shall not apply to a person performing a home inspection pursuant to subparagraph (ii) of paragraph (b) of subdivision one of this section for the purpose of meeting requirements for a home inspector license.

3. Upon submission of an application and payment of the application and licensure fee to the secretary, the secretary shall issue a home inspector's license to a person who holds a valid license as a home inspector issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to

those of this state as determined by the secretary.

4. On or before the effective date of this article, the secretary shall, upon application, issue a home inspector license to a person who:

(a) meets the requirements of paragraphs (a) and (c) of subdivision one of this section and has performed one hundred or more home inspections for compensation within two years prior to the effective date of this section; or

(b) meets the requirements of paragraph (a) of subdivision one of this section and has been engaged in the practice of home inspection for compensation for not less than three years prior to the effective date of this section during which such person has performed two hundred fifty home inspections for compensation within three years prior to the effective date of this section; or

(c) has education and experience which the secretary, considers equivalent to that required pursuant to paragraphs (a) and (b) of this subdivision.

**§ 444-f. License periods, renewals and fees.** 1. Home inspector licenses and renewals thereof shall be issued for a period of two years, except that the secretary may, in order to stagger the expiration date thereof, provide that those licenses first issued or renewed after the effective date of this section shall expire or become void on a date fixed by the secretary, not sooner than six months nor later than twenty-nine months after the date of issue. No renewal of a license shall be issued unless the applicant has successfully completed a course of continuing education approved by the secretary.

2. The secretary shall collect a fee of two hundred fifty dollars for the first application for a license and the license as a home inspector. The secretary shall collect a fee of one hundred dollars to renew a home inspector license. The secretary shall collect an examination fee of fifty dollars. All fees and any fines imposed by the secretary pursuant to this article shall be deposited in the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

**§ 444-g. Duty of care of home inspectors.** 1. Every home inspector shall comply with the provisions of this article, and the rules, regulations and standards adopted pursuant thereto. The duty of every home inspector shall be to the client.

2. Every home inspector shall display his or her license number and status as a licensed home inspector on every home inspection report and in all advertising. Upon request of any client or interested party to a real estate transaction, every home inspector shall provide such proof of licensure pursuant to this article as shall be issued by the secretary for such purpose.

3. No later than five business days after the completion of a home inspection on behalf of a client, each home inspector shall provide such client with a written report of the findings of such inspection. The home inspection shall clearly identify in the written report which systems and components of the residential building were observed. Every such written report and the information contained therein shall be deemed confidential and shall not be disclosed without the express consent of the client; provided, however, that department representatives, conducting an investigation or other official business for the purpose of enforcing this article, shall have access to such reports and the information contained therein.

4. No home inspector shall:

(a) perform or offer to perform, for any additional fee, any repair, improvement or replacement of any component or system in a residential building for which such inspector, or partner thereof shall have prepared a home inspection report prior to the close of escrow. This paragraph shall not include repairs to components and systems not included in the standards of practice adopted pursuant to this article;

(b) inspect any residential building in which such inspector, partner or relative thereof has a financial interest or any interest in the transfer thereof, including the receipt of any commission as an agent;

(c) offer to provide or provide any commission, referral fee or

kickback to the seller of any inspected residential building, or to the agent of either or both the seller and buyer of such building, for the referral of any business to such inspector or partner thereof; or

(d) agree to perform any home inspection or prepare any home inspection report for which compensation or employment is contingent upon the conclusions of the home inspection report, pre-established or prescribed findings, or the closing of a real estate transaction.

Nothing in this article authorizes a home inspector to practice engineering or architecture.

**§ 444-h. Suspension and revocation of licenses.** 1. The secretary may refuse to grant or may suspend or revoke a home inspector license, and may impose a civil penalty not to exceed one thousand dollars per violation, upon proof to the satisfaction of the secretary that the holder thereof has:

(a) Violated the provisions of subdivision four of section four hundred forty-four-g of this article;

(b) Disclosed any information concerning the results of the home inspection without the approval of the client or the client's representatives;

(c) Accepted compensation from more than one interested party for the same service without the consent of all interested parties;

(d) Accepted commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible;

(e) Failed to disclose promptly to a client information about any business interest of the licensee which may reasonably affect the client in connection with the home inspection;

(f) Been convicted of a felony involving fraud, theft, perjury or bribery;

(g) Failed to pay a fine or restitution ordered by the secretary within a reasonable time; or

(h) Made a willfully false statement in the context of home inspection activities or an application for licensure pursuant to this article.

2. Whenever a license is revoked pursuant to this section, such license shall not be reinstated or reissued until after the expiration of a period of five years from the date of such revocation.

3. A violation of this article by a professional engineer or architect regulated by the state of New York shall be enforced by their respective state licensing boards.

**§ 444-i. Denial of license; complaints; notice of hearing.** The department shall, before making a final determination to deny an application for a license, revoke a license, suspend a license, issue a reprimand, or impose a civil penalty for violation of this article, notify the applicant or licensee in writing of the reasons for such proposed denial, revocation, suspension, reprimand, or imposition of a civil penalty and afford the applicant or licensee an opportunity to be heard in person or by counsel. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe and shall be conducted in accordance with the provisions of the state administrative procedure act. If the applicant or licensee fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification shall become the final determination of the department. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state and administer an oath to and take testimony of any person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the license is denied, revoked, or suspended, a reprimand is issued, or a civil penalty is imposed, written notice of such determination shall be served upon the applicant or licensee personally or by certified mail or in any manner authorized by the civil practice law and rules for the service of a summons.

**§ 444-j. Practice of architecture and professional engineering.** A person regulated by the state of New York to engage in the practice of architecture when acting within the scope of that practice, a person licensed in the state of New York to practice professional engineering when acting within the scope of that practice or a person who is employed as a code enforcement official by the state or a political subdivision thereof when acting within the scope of that government employment may perform home inspections without need of licensure pursuant to this article.

**§ 444-k. Liability coverage.** 1. Every licensed home inspector who is engaged in home inspection shall secure, maintain, and file with the secretary proof of a certificate of liability coverage, which terms and conditions shall be determined by the secretary.

2. Every proof of liability coverage required to be filed with the secretary shall provide that cancellation or nonrenewal of the policy shall not be effective unless and until at least ten days' notice of intention to cancel or nonrenew has been received in writing by the secretary.

**§ 444-l. Duties of the secretary.** The secretary shall establish such rules and regulations as shall be necessary to implement the provisions of this article.

**§ 444-m. Construction with other laws.** Nothing in this article shall prevent any licensed engineer, registered architect or any other licensed or regulated profession or governmental employee from acting within the scope of his or her profession or employment.

**§ 444-n. Unlicensed activities.** The secretary may issue an order requiring restitution and/or directing the cessation of any activity for

which a license is required by this article upon a determination that a person has engaged in or followed the business or occupation of, or held himself, herself, or itself out as or acted as, temporarily or otherwise, a home inspector within this state without a valid license. The department shall, before making such determination and order, give such person notice as provided in section four hundred forty-four-i of this article and afford such person an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to this article.

**§ 444-o. Violations and penalties for unlicensed activities.** Any person subject to an administrative order issued by the secretary directing the cessation of any activity for which a license is required and/or suspending or revoking a license previously issued who directly or indirectly engages in the business of home inspection, holds himself, herself, or itself out to the public as being able to engage in the business of home inspection without a license therefor, engages in the business of home inspection after having his or her license revoked or suspended, or without a license to engage in the business of home inspection, directly or indirectly employs, permits or authorizes an unlicensed person to engage in the business of home inspection shall be guilty of a misdemeanor and upon the first conviction thereof shall be sentenced to a fine of not more than one thousand dollars; upon a second or subsequent conviction thereof shall be sentenced to a fine of not less than one thousand dollars nor more than five thousand dollars. Each violation of this article shall be deemed a separate offense.

**§ 444-p. Judicial review.** The action of the secretary in suspending, revoking, or refusing to issue or renew a license, or imposing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be reviewed by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules.

**§ 444-q. Severability.** In the event it is determined by a court of



competent jurisdiction that any phrase, clause, part, subdivision, paragraph or section, or any of the provisions of this article, is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article.

## ARTICLE 12-C

### APARTMENT INFORMATION VENDORS

Section 446-a. Definitions.

446-b. License required.

446-c. Contracts; fees; reporting procedures.

446-d. Display of license and business sign.

446-e. Revocation and suspension of licenses.

446-f. Notice of hearing on complaints.

446-g. Judicial review.

446-h. Violations.

446-i. Rules and regulations.

446-j. Partial invalidity.

**§ 446-a. Definitions.** As used in this article, unless the context otherwise requires: 1. "Person" means any natural person, corporation, limited liability company, partnership, firm, or association.

2. "Apartment information vendor" means any person who engages in the business of claiming, demanding, charging, receiving, collecting, or contracting for the collection of, a fee from a customer for furnishing information concerning the location and availability of real property, including apartment housing, which may be leased, rented, shared or sublet as a private dwelling, abode, or place of residence. The definition of apartment information vendor shall include an apartment sharing agent which means any person who, for a fee, arranges, conducts, coordinates, handles or causes meetings between a customer and the current owner or occupant of legally occupied real property, including apartment housing, who wishes to share that housing with one or more individuals as a private dwelling, abode or place of residence, but it

shall not apply to any person who for another and for a fee, commission or other valuable consideration, supervises, organizes, arranges, coordinates, handles or is otherwise in charge of or responsible for the relocation of commercial or residential tenants from buildings or structures that are to be demolished, rehabilitated, remodeled or otherwise structurally altered.

3. "Advance fee" means any fee claimed, demanded, charged, received or collected from a customer before the customer has leased or rented a private dwelling, abode or place of residence through the information provided by an apartment information vendor.

**§ 446-b. License required.** 1. It is unlawful for any person to act or engage in the business as an apartment information vendor in this state without first having obtained a license from the secretary of state. No person shall be granted a license until he has established that he is trustworthy and bears a reputation for good and fair dealing.

2. The application for such license shall be filed in the office of the secretary of state on such forms as the secretary may prescribe.

3. When the apartment information vendor maintains more than one place of business, he shall apply for a supplemental license for each branch office so maintained. Supplemental licenses shall be conspicuously displayed in each branch office. The display of an expired license by any person, firm, partnership or corporation is a violation of the provisions of this article.

4. From and after the date when this subdivision shall take effect, the term for which a license shall be issued or reissued under this article shall be a period of one year beginning the first day of November in any year and ending the thirty-first day of October one year later. A license which takes effect on a day other than the first day of November in any year shall extend for a term expiring on the thirty-first day of October following the date on which the license takes effect.

5. Any license granted under the provisions hereof may be renewed for one year by the secretary upon application therefor by the holder, in such form as the secretary may prescribe. The secretary may dispense with the requirement for the filing of such statements as was contained in the original application for license.

6. Every applicant for a license under the provisions of this section, shall establish and maintain a special interest bearing trust account in the minimum amount of five thousand dollars in a branch of a national or state chartered banking institution having a place of business within the state, plus twenty-five hundred dollars for each additional licensed office, except that any applicant whose business is limited exclusively to acting as an apartment sharing agent shall be required to establish and maintain an account of only twenty-five hundred dollars plus twelve hundred fifty dollars for each additional licensed office. No license shall be issued unless a copy of a certificate of deposit showing the minimum balance in said special interest bearing trust account has been filed with the secretary simultaneously with the filing of the license application. Moneys may be withdrawn, from such account only upon the certification of the secretary.

7. No license shall be granted to a person under the age of eighteen or a corporation, limited liability company, partnership or association whose principal shareholder, member or partner is under such age.

**§ 446-c. Contracts; fees; reporting procedures.** 1. Every apartment information vendor licensed under this article shall furnish customers with a contract prepared on a form approved by the secretary of state. Such contract shall include in plain language form a statement setting forth the sources of information concerning the location and availability of real property, including apartment housing, which may be leased, rented, shared or sublet as a private dwelling, abode, or place of residence.

1-a. Each listing of real property furnished by the apartment

information vendor shall cite the source of information for each property in plain language form, provided, however, that the failure to provide such information shall not constitute a violation of this article but shall be grounds for license suspension pursuant to section four hundred forty-six-e of this article.

2. No apartment information vendor shall claim, demand, charge, receive, collect or contract for an advance fee from a customer except as set forth in subdivision five of this section. In no event shall the fee charged to the customer or legal occupant exceed one month's rent.

3. Notwithstanding the above, an apartment information vendor may at any time accept a fee from the current legal occupant of real property including apartment housing available to share or sublet.

4. Each apartment information vendor shall file a quarterly report with the secretary containing such information as the secretary may require.

5. (a) An apartment information vendor may retain not more than fifteen dollars out of any advance fee for administrative services. The balance of any advance fee shall be placed in an account similar to that required by subdivision six of section four hundred forty-six-b of this article, except that it need not be interest bearing and moneys from such account may be withdrawn as provided in paragraph (b) of this subdivision. The balance of the advance fee shall continue to be the property of the person paying the advance fee and shall be held in trust by the apartment information vendor. Such balance may be mingled with other moneys in such account and any interest thereon shall be the property of the apartment information vendor. Such vendor shall notify in writing each person paying an advance fee giving the name and address of the banking organization in which the advance fee is deposited.

(b) If the customer pays an advance fee, the contract with the apartment information vendor shall contain a provision stating that the customer may, under the circumstances set forth in this paragraph, recover his advance fee less the amount deducted for administrative services. The vendor shall be entitled to his fee when a customer has

leased or rented a private dwelling, abode or place of residence through the information provided by the vendor. Within ten days of the receipt by the apartment information vendor of written notice stating that the customer paying an advance fee has not leased or rented a private dwelling, abode or place of residence through the information supplied by the vendor and does not intend to rent any such private dwelling, abode or place of residence, the vendor shall refund the advance fee, less the fee for administrative services, to such customer. The vendor shall also be required to refund any portion of the advance fee in excess of one month's rent to a customer who has leased or rented a private dwelling, abode or place of residence through the information supplied by the vendor.

(c) Notwithstanding anything in this subdivision five to the contrary, if the services to be rendered by the apartment information vendor to a particular customer relate exclusively to acting as an apartment sharing agent, the vendor may retain the full advance fee, whether or not the customer leases or rents a private dwelling, abode or place of residence through the information provided by the vendor, and the provisions of paragraphs (a) and (b) of this subdivision five shall not be applicable to such transaction.

**§ 446-d. Display of license and business sign.** 1. A license issued hereunder shall be conspicuously displayed at all times by the apartment information vendor at the place of business for which it was granted.

2. The secretary shall be notified in writing at his or her office in Albany of any change of a licensee's business address or name, and the secretary shall issue a license for the unexpired term, upon return of the original license. A licensee who fails to notify the secretary of any change in business address or name within ten days shall forfeit his or her license.

**§ 446-e. Revocation and suspension of licenses.** 1. Powers of secretary of state. The secretary may revoke or suspend a license, impose a fine not to exceed five thousand dollars, order refunds to aggrieved parties,

and issue reprimands, upon a finding that a licensee has violated any of the provisions of this article, or has made a material misstatement in his application for such license, or has been found to be engaged in fraudulent practices, dishonest or misleading advertising, or has demonstrated untrustworthiness or incompetency to act as an apartment information vendor.

2. Determination of secretary. In the event that the secretary shall revoke or suspend any such license, impose a fine or issue a reprimand, his determination shall be in writing and signed by him. The original thereof shall be filed in the office of the secretary and copies served personally or by registered mail upon the licensee, addressed to his principal place of business. All licenses shall be returned to the secretary within five days after receipt of notice of revocation or suspension, or in lieu thereof, the licensee shall make and file an affidavit in form prescribed by the secretary showing that the failure to return such license is due either to loss or destruction thereof.

3. The display of a license after revocation or suspension thereof is a violation of this article.

**§ 446-f. Notice of hearing on complaints.** The secretary shall, before denying an application for, revoking or suspending a license, or imposing any fine or issuing a reprimand to the licensee, and at least ten days prior to the date set for the hearing, notify in writing the applicant, or licensee of any charges made and shall afford said applicant or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery thereof personally to the applicant or licensee, or by certified mail to the last known business address of such licensee, or in the case of an applicant to the business address indicated on the application for license. The hearing on such charges shall be at such time and place as the secretary shall prescribe. The secretary, acting by such officer or person as he may designate, shall have the power to suspend a license pending a hearing and to subpoena and bring before the officer or person so designated any person, firm or corporation in this state, and

administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules.

**§ 446-g. Judicial review.** The action of the secretary in granting or refusing to grant or to renew a license under this article or in revoking or suspending such a license or imposing any fine or issuing a reprimand to the licensee or refusing to do any of the foregoing shall be subject to review by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules at the instance of the applicant for such license or holder of a license so revoked, suspended, fined or reprimanded or the person aggrieved.

**§ 446-h. Violations.** 1. Misdemeanors. Any person, firm or corporation violating any provision of this article shall be guilty of a misdemeanor. The commission of a single act prohibited by this article shall constitute a violation hereof.

2. Criminal actions for violations of this article shall be prosecuted by the attorney general, or his deputy, in the name of the people of the state, and in any such prosecution the attorney general, or his deputy, shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein. The attorney general shall, upon a conviction for a violation of any provision of this article, and within ten days thereafter, make and file with the secretary a detailed report showing the date of such conviction, the name of the person convicted and the exact nature of the charge.

3. In case the offender shall have received any sum of money as compensation or profit by or in consequence of his violation of any provision of this article, he shall also be liable to a penalty of not less than the amount of the sum of money received by him as such compensation or profit and not more than four times the sum so received by him, as may be determined by the court, which penalty may be sued for

and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction.

4. The secretary shall have the power to enforce the provisions of this article and upon complaint of any person, or on his own initiative, to investigate the business, business practices and business methods of any person, firm or corporation applying for or holding a license as an apartment information vendor, if in his opinion such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the secretary to supply such information as may be required concerning his or its business, business practices or business methods, or proposed business practices or methods.

5. For the purpose of enforcing the provisions of this article and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the secretary shall have the power to subpoena and bring before the officer or person so designated any person in this state and require the production of any books or papers which he deems relevant to the inquiry and administer an oath to and take testimony of any person or cause his deposition to be taken with the same fees and mileage and in the same manner as prescribed by law for civil cases in a court of record, except that any applicant or licensee or officer or agent thereof shall not be entitled to such fees and/or mileage. Any person, duly subpoenaed, who fails to obey such subpoena without reasonable cause or without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualification of such applicant or licensee or such applicant's or licensee's business, business practices and methods or such violations, shall be guilty of a misdemeanor.

6. In any criminal proceeding before any court, magistrate or grand jury, or upon any investigation before the department of state for a violation of any of the provisions of this section, the court, magistrate or grand jury, or the secretary of state, his deputy or other



officer conducting the investigation, may confer immunity, in accordance with the provisions of the criminal procedure law.

**§ 446-i. Rules and regulations.** The secretary may enact rules and regulations necessary to accomplish the purposes of this article.

**§ 446-j. Partial invalidity.** If any provision of this article shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder thereof.

## ARTICLE 12-D

### SHORT-TERM RENTAL UNITS

Section 447-a. Definitions.

447-b. Short-term rental units; regulation.

447-c. Registration.

447-d. Exceptions.

447-e. Penalties.

447-f. Enforcement.

447-g. Data sharing.

**§ 447-a. Definitions.** For the purposes of this article, the following terms shall have the following meanings:

1. "Covered jurisdiction" means every county, city, town, and village in the state except for:

(a) a city with a population of one million or more;

(b) a county within a city with a population of one million or more;

(c) a county which enacts a local law pursuant to paragraph (b) of subdivision one of section four hundred forty-seven-c of this article stating that such county opts not to establish a registration system for short-term rental units pursuant to such subdivision, provided that if such county repeals such local law, such county shall become a covered

jurisdiction immediately upon the repeal of such local law;

(d) any city, town, or village located within a county which enacts a local law pursuant to paragraph (b) of subdivision one of section four hundred forty-seven-c of this article stating that such county opts not to establish a registration system for short-term rental units pursuant to such subdivision, provided that if such county repeals such local law, such city, town, or village will become a covered jurisdiction immediately upon the repeal of such local law unless after such county enacted such local law and prior to such county repealing such local law, such city, town, or village enacts a local law creating its own registry for short-term rental units or non-covered short-term rental units located within such city, town, or village;

(e) any county, city, town, or village that has a registration system for non-covered short-term rental units or short-term rentals of dwelling units or other living or sleeping spaces, with the coverage and requirements of such registration system as established pursuant to local law, where such registry exists as of the effective date of this article; and

(f) a county, city, town, or village that has lawfully enacted or lawfully enacts a local law prohibiting short-term rental units or non-covered short-term rental units, or short-term rentals of dwelling units or other living or sleeping spaces, within such county, city, town, or village, regardless of whether such county, city, town, or village is or is not a covered jurisdiction or located within a covered jurisdiction prior to such enactment.

2. "Short-term rental unit" means an entire dwelling unit, or a room, group of rooms, other living or sleeping space, or any other space within a dwelling, made available for rent by guests for less than thirty consecutive days, where the unit is offered for tourist or transient use by the short-term rental host of the residential unit, and where such unit is located in a covered jurisdiction.

3. "Non-covered short-term rental unit" means an entire dwelling unit, or a room, group of rooms, other living or sleeping space, or any other space within a dwelling, made available for rent by guests for less than thirty consecutive days, where the unit is offered for tourist or

transient use by a person or entity in lawful possession of the unit, and where such unit is in New York state but is not located in a covered jurisdiction, provided that, however, in a city with a population of one million or more, "non-covered short-term rental unit" shall also include any building or portion of a building that is a short-term rental, as such term is defined in section 26-3101 of chapter thirty-one of title twenty-six of the administrative code of the city of New York.

4. "Short-term rental host" means a person or entity in lawful possession of a short-term rental unit who rents such unit to guests in accordance with this article.

5. "Booking service" means a person or entity who, directly or indirectly:

(a) provides one or more online, computer or application-based platforms that individually or collectively can be used to:

(i) list or advertise offers for short-term rentals of short-term rental units, and

(ii) either accept such offers, or reserve or pay for such rentals; and

(b) charges, collects or receives a fee for the use of such a platform or for provision of any service in connection with a short-term rental of a short-term rental unit.

**§ 447-b. Short-term rental units; regulation.** 1. A short-term rental host may operate a dwelling unit as a short-term rental unit provided such dwelling unit:

(a) is registered in accordance with section four hundred forty-seven-c of this article;

(b) is not used to provide single room occupancy as defined by subdivision forty-four of section four of the multiple residence law and subdivision sixteen of section four of the multiple dwelling law;

(c) includes a conspicuously posted evacuation diagram identifying all means of egress from the unit and the building in which it is located;

(d) includes a conspicuously posted list of emergency phone numbers for police, fire, and poison control;

(e) has a working fire-extinguisher;

(f) is insured by an insurer licensed to write insurance in this state or procured by a duly licensed excess line broker pursuant to section two thousand one hundred eighteen of the insurance law for a minimum of three hundred thousand dollars coverage for third party claims of property damage or bodily injury that arise out of the operation of a short-term rental unit. Such liability insurance coverage may be satisfied by insurance maintained by a booking service that provides equal or greater coverage if a short-term rental host lists a short-term rental unit with such booking service. Notwithstanding any other provision of law, no insurer shall be required to provide such coverage;

(g) is not subject to the emergency tenant protection act of nineteen seventy-four, the rent stabilization law of nineteen sixty-nine, the emergency housing rent control law, the local emergency housing rent control act or otherwise regulated or supervised by a federal, state, or local agency pursuant to any other law or rule or an agreement with such federal, state, or local agency;

(h) is in compliance with any additional health and safety requirements or any other regulatory requirements applicable to short-term rental units established by any covered jurisdiction in which such short-term rental unit is located; and

(i) is not otherwise prohibited from operating as a short-term rental unit by federal, state, or local law, rules, and regulations.

2. Short-term rental hosts shall maintain records related to guest stays for two years following the end of the calendar year in which an individual rental stay occurred, including the date of each stay and number of guests, the cost for each stay, including an itemization of the sales tax and hotel and motel occupancy tax collected, and records related to their registration as short-term rental hosts with the county in which the short-term rental unit is located or with the multi-county registry that includes such county. Short-term rental hosts shall make such records available to local enforcement agencies for the covered jurisdiction in which the short-term rental unit is located when lawfully requested.

3. (a) Booking services shall collect data related to all short-term

rental unit guest stays that the booking service facilitates within the state. Booking services shall maintain such data related to short-term rental unit guest stays that the booking service has facilitated in the state for two years following the end of the calendar year in which an individual rental stay occurred. The data maintained by booking services shall include the dates of each stay and the number of guests, the cost for each stay, including an itemization of the sales tax and hotel and motel occupancy tax collected, the physical address, including any unit designation, of each short-term rental unit booked, the full legal name of each short-term rental unit host, and each short-term rental unit's registration number. Beginning ninety days after the effective date of this article, and on the first day of every January, April, July, and October thereafter, the booking service shall report such data to each county within which any short-term rental unit included in such data is located. In the event a booking service does not comply with its reporting obligations pursuant to this subdivision, or more information is requested by the attorney general or a covered jurisdiction or any of such covered jurisdiction's enforcement agencies, then the data required to be reported pursuant to this subdivision and all relevant records from a booking service shall be produced in response to valid legal process. The county which has received such data from a booking service shall share such data with all city, town, or village governments located within such county within sixty days of receiving such data and shall make such data available to city, town, or village enforcement agencies upon request. Such data and any records provided to generate such data shall not be made publicly available.

(b) Booking services may require short-term rental hosts, as a term or condition of service, to consent to booking services producing data pursuant to paragraph (a) of this subdivision.

(c) Nothing in this subdivision shall prevent a county, city, town, or village that is not a covered jurisdiction from establishing, amending, or maintaining its own booking service reporting obligations, nor shall this subdivision supersede any existing booking service reporting obligations in a county, city, town, or village that is not a covered jurisdiction.

4. It shall be unlawful for a booking service to collect a fee for

facilitating booking transactions for short-term rental units if the booking service has not verified with the county in which the short-term rental unit is located or multi-county registry that includes such county the short-term rental unit and its owner or tenant have been issued a current, valid registration by the county in which the short-term rental unit is located or by the multi-county registry that includes such county.

5. Nothing in subdivisions one, two, or subdivision four of this section, or in paragraph (a) of subdivision three of this section shall require a short-term rental host or booking service to comply with the requirements of such subdivisions and paragraph before such time as a county has established a registry or multi-county registry pursuant to paragraph (a) of subdivision one of section four hundred forty-seven-c of this article.

6. The provisions of this article shall apply to all short-term rental units; provided, however, that a county, city, town, or village, including but not limited to a city with a population of one million or more, that has its own short-term rental unit or non-covered short-term rental unit registry or its own registration system for short-term rentals of dwelling units or other living or sleeping spaces, with the coverage and requirements of such registration system as established pursuant to local law, as of the effective date of this article may continue such registry or registration system and all short-term rental units or non-covered short-term rental units in such county, city, town, or village shall only register with such county, city, town or village as provided in a local law, rule, or regulation and shall not be required to register pursuant to this article. Counties, cities, towns, and villages, including but not limited to a city with a population of one million or more, with such registries as of the effective date of this article shall maintain the authority to manage, amend, repeal, and establish requirements and regulations for such existing registries and to impose and collect fines or otherwise enforce violations related to such registries. Where a county, city, town, or village, including but not limited to a city with a population of one million or more, has such a registry as of the effective date of this article, nothing in this

article shall prevent such county, city, town, or village from enacting and enforcing local laws or ordinances which meet or exceed the standards or requirements set forth in this article.

7. No city, town, or village shall create its own short-term rental unit or non-covered short-term rental unit registry after the effective date of this article unless such city, town or village is not a covered jurisdiction and is not located within a covered jurisdiction. A city, town, or village which is not a covered jurisdiction and which is not located within a covered jurisdiction may create such a registry. Nothing in this article shall prevent a city, town, or village that is not a covered jurisdiction and is not located within a covered jurisdiction from enacting and enforcing local laws or ordinances which meet or exceed the standards or requirements set forth in this article.

**§ 447-c. Registration.** 1. (a) All counties that are covered jurisdictions shall be required to establish a registration system for short-term rental units located within such county provided, however, that counties may establish shared registries.

(b) Paragraph (a) of this subdivision shall not apply to any county which, on or before the later of December thirty-first, two thousand twenty-five or nine months after the effective date of this section, adopts a local law stating that such county opts not to establish a registration system for short-term rental units pursuant to this subdivision. No such local law may be adopted after the later of December thirty-first, two thousand twenty-five, or nine months after the effective date of this section, provided, however, that a local law repealing such local law may be adopted after such date.

(c) The establishment of a county or multi-county short-term rental unit registration system pursuant to paragraph (a) of this subdivision shall not prevent any city, town, or village therein from enacting local laws or regulations concerning the operation of short-term rental units within such city, town, or village.

(d) Notwithstanding any other provisions of this article to the contrary, a county, city, town, or village may enact a local law prohibiting or further limiting the listing or use of dwelling units, or

portions thereof, as short-term rental units or non-covered short-term rental units, regardless of whether such county, city, town, or village is or is not a covered jurisdiction or located within a covered jurisdiction.

2. Short-term rental hosts shall be required to register a short-term rental unit with the county within which such unit is located or with the multi-county registry that includes such county.

(a) Registration shall be valid for two years, after which time the short-term rental host may renew the registration in a manner prescribed by the county in which the short-term rental unit is located or by the multi-county registry that includes such county. The county in which the short-term rental unit is located or the multi-county registry that includes such county may revoke the registration of a short-term rental host upon a determination that the short-term rental host has violated any provision of this article at least three times in two consecutive calendar years, and may determine that the short-term rental host shall be ineligible for registration for a period of up to twelve months from the date of such determination or at the request of the covered jurisdiction in which the short-term rental unit is located when such covered jurisdiction requests such revocation due to illegal occupancy. Listing or offering a dwelling unit, or portion thereof, as a short-term rental unit without current, valid registration shall be unlawful and shall make persons who list or offer such unit ineligible for registration for a period of twelve months from the date a determination is made that a violation has occurred. Any covered jurisdiction may contract with another covered jurisdiction to provide either personnel or services to facilitate the registration of short-term rental units or enforcement of such registrations.

(b) A short-term rental host shall include their current, valid registration number on all offerings, listings or advertisements for short-term rental unit guest stays.

(c) A tenant, or other person that does not own a unit that is used as a short-term rental unit but is in lawful possession of a short-term rental unit, shall not qualify for registration if they are not the permanent occupant of the dwelling unit in question and have not been granted permission in writing by the owner for its short-term rental.



Proof of written consent by the owner shall be provided to and verified by the county in which the short-term rental unit is located or by the multi-county registry that includes such county before the issuing or renewal of a registration number.

(d) The county in which the short-term rental unit is located or the multi-county registry that includes such county shall make available to booking services the data necessary to allow booking services to verify the registration status of a short-term rental unit and that the unit is associated with the short-term rental host who registered the unit.

(e) No short-term rental unit shall be registered unless the short-term rental host has paid the application and renewal registration fees in an amount to be established by the county in which the short-term rental unit is located or the multi-county registry that includes such county.

(f) Such application and registration fees shall include a fee for the actual and necessary expenses associated with the construction, operation, and maintenance of the county or multi-county registry and for the enforcement of this article.

(g) Nothing in paragraphs (a) through (f) of this subdivision shall require a short-term rental host or booking service to comply with the requirements of such paragraphs before such time as a county has established a registry or multi-county registry pursuant to paragraph (a) of subdivision one of this section.

3. A county or multi-county registry may create a registration system for booking services.

4. If a county creates a registration system for booking services pursuant to subdivision three of this section, the county within which a short-term rental unit is located or the multi-county registry that includes such county shall set a fee for booking service registration with the county or multi-county registry that includes such county, provided that such fee shall not exceed the actual and necessary expenses associated with the construction, operation, and maintenance of such booking services registration system.

5. Nothing herein shall prevent one or more counties that are covered

jurisdictions from establishing shared registration systems for short-term rental units and/or booking services, provided any amount allocated from the application and registration fees for the construction, operation and maintenance of such shared short-term rental unit and/or booking service registration systems shall be remitted pursuant to the agreement establishing such multi-county registry.

6. Each county that is a covered jurisdiction shall post on its website a prominent link to its registry or the multi-county registry in which it is included.

**§ 447-d. Exceptions.** This article shall not apply to:

1. Incidental and occasional occupancy of a dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent for personal reasons, such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy; or

2. Temporary housing or lodging permitted by the department of health.

**§ 447-e. Penalties.** 1. (a) Except as provided in paragraph (b) of this subdivision, any booking service which collects a fee related to booking a unit as a short-term rental unit where such short-term rental unit is not registered in accordance with this article may be fined in accordance with subdivisions four and five of this section. Any covered jurisdiction in which such unregistered short-term rental unit is located or the attorney general or the attorney general's designee may also seek an injunction from a court of competent jurisdiction prohibiting the collection of any fees relating to the offering or renting of such short-term rental unit as a short-term rental.

(b) A booking service shall not be subject to a fine pursuant to paragraph (a) of this subdivision before such time as a county has established a registry or multi-county registry pursuant to paragraph (a) of subdivision one of section four hundred forty-seven-c of this

article.

2. (a) Except as provided in paragraph (b) of this subdivision, any person who offers a short-term rental unit without registering with the county within which such unit is located or with the multi-county registry that includes such county, or any person who offers an eligible short-term rental unit as a short-term rental while the short-term rental unit's registration on the short-term rental unit registry is suspended, may be fined in accordance with subdivisions four and five of this section.

(b) A person shall not be subject to a fine pursuant to paragraph (a) of this subdivision before such time as a county has established a registry or multi-county registry pursuant to paragraph (a) of subdivision one of section four hundred forty-seven-c of this article.

3. Any person who fails to comply with any notice of violation or other order issued pursuant to this article by any covered jurisdiction in which the short-term rental unit concerning the violation is located or by the attorney general or the attorney general's designee for a violation of any provision of this article may be fined in accordance with subdivisions four and five of this section.

4. (a) Except as provided in paragraph (b) of this subdivision, a short-term rental host that violates the requirements of this article shall receive a warning notice issued, without penalty, by the county within which the applicable short-term rental unit is located or by the multi-county registry that includes such county upon the first and second violation. The warning notice shall detail actions to be taken to cure the violation. For a third violation a fine up to two hundred dollars may be imposed by the county within which the applicable short-term rental unit is located or by the multi-county registry that includes such county. For each subsequent violation, a fine of up to five hundred dollars per day may be imposed by the county within which the applicable short-term rental unit is located or by the multi-county registry that includes such county. Upon the issuance of a violation, a seven-day period to cure the violation shall be granted. During such cure period, no further fines shall be accumulated against the

short-term rental host, except where a new violation is related to a different short-term rental unit.

(b) Nothing in paragraph (a) of this subdivision shall supersede or limit in any way the authority of enforcement agencies for a covered jurisdiction in which the short-term rental unit is located, or the authority of any other entity with enforcement authority over local health and safety matters, to timely enforce violations of any health and safety laws or regulations.

5. A booking service that violates the requirements of this article may be issued a fine by any county in which a short-term rental unit associated with a violation is located or by a multi-county registry that includes such county of up to five hundred dollars per day, per violation, until such violation is cured.

6. Nothing in this section shall prevent a county, city, town, or village that is not a covered jurisdiction and is not within a covered jurisdiction and that has its own registration system for non-covered short-term rental units or short-term rentals of dwelling units or other living or sleeping spaces, with the coverage and requirements of such registration system as established pursuant to local law, from maintaining, establishing, amending, and effectuating its own penalty system related to such registration system.

**§ 447-f. Enforcement.** 1. The provisions of this article may be enforced in accordance with article eight of the multiple dwelling law or article eight of the multiple residence law, as applicable in the covered jurisdiction where the short-term unit is located.

2. Counties that are covered jurisdictions may enter into agreements with a booking service for assistance in enforcing the provisions of this section, including but not limited to an agreement whereby the booking service agrees to remove a listing from its platform that is deemed ineligible for use as a short-term rental unit under the provisions of this article, and whereby the booking service agrees to prohibit a short-term rental host from listing any listing without a

valid registration number.

3. The attorney general shall be authorized to bring an action for a violation of this article for any such violations occurring in the state.

4. A covered jurisdiction shall be entitled to bring an action for a violation of this article for any such violations of this article occurring in the covered jurisdiction, and may notify the attorney general.

**§ 447-g. Data sharing.** Booking services shall provide to the department of state, at the same times and on the same recurring basis that they provide data pursuant to subdivision three of section four hundred forty-seven-b of this article, an electronic report aggregating the number of short-term rental unit guest stays that the booking service facilitated within the state for the applicable reporting period, which shall be for the ninety days preceding the date of production in the case of the first such report and for the period since the prior report for each subsequent report. The report shall include the aggregate number of short-term rental unit guest stays that the booking service facilitated during the applicable reporting period for each county where the listings are located. Such electronic report shall be in a form and manner as determined by the department of state.

## ARTICLE 13

### CEMETERY LANDS

Section 450. Lands used for cemetery purposes not to be sold or mortgaged.

451. Acquisition of lands for cemetery purposes in certain counties.

#### **§ 450. Lands used for cemetery purposes not to be sold or mortgaged.**

1. No land actually used and occupied for cemetery purposes shall be

sold under execution or for any tax or assessment, nor shall such tax or assessment be levied, collected or imposed, nor shall it be lawful to mortgage such land, or to apply it in payment of debts, so long as it shall continue to be used for such cemetery purposes, except cemetery lands in which interments have not been made may be sold under execution to satisfy a valid judgment of a court of record. Whenever any such land shall cease to be used for cemetery purposes, any judgment, tax or assessment which, but for the provisions of this section would have been levied, collected or imposed, shall thereupon forthwith, together with interest thereon, become and be a lien and charge upon such land, and collectible out of the same. The provisions of this section shall not apply to any lands held by the city of Rochester or to lands lying within the village of Lewiston, Niagara county.

2. The provisions of subdivision one of this section shall not apply to real property taxes and assessments levied or imposed on the land described in subdivision one of this section on or after the first day of January, nineteen hundred eighty-two, but the provisions of section four hundred forty-six of the real property tax law shall be applicable to such land on or after such date.

**§ 451. Acquisition of lands for cemetery purposes in certain counties.** It shall not be lawful for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of Westchester, Kings, Queens, Richmond, Bronx, New York, Rockland, Suffolk, Putnam or Nassau, for cemetery purposes without the consent of the board of supervisors for such county, or of the city council of the city of New York, as the case may be, first had and obtained in like manner as provided for in the membership corporations law; and said board of supervisors or city council in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require.

#### ARTICLE 14

#### PROPERTY CONDITION DISCLOSURE IN THE SALE OF RESIDENTIAL REAL

## **PROPERTY**

- Section 460. Short title.
- 461. Definitions.
  - 462. Property condition disclosure statement.
  - 463. Exemptions.
  - 464. Revision.
  - 465. Liability.
  - 466. Duty of an agent.

**§ 460. Short title.** This article shall be known and may be cited as the "property condition disclosure act".

**§ 461. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Agent" means a person who is licensed as a real estate broker or a real estate salesperson pursuant to section four hundred forty-a of this chapter and is acting in a fiduciary capacity.

2. "Binding contract of sale" means a real estate purchase contract or offer that would, upon signing by the seller and subject to satisfaction of any contingencies, require the buyer to accept a transfer of title.

3. "Knowledge" means only actual knowledge of a defect or condition on the part of the seller of residential real property.

4. "Real estate purchase contract" means any of the following:

- (a) a contract which provides for the purchase and sale or exchange of residential real property;
- (b) a lease with an option to purchase residential real property;
- (c) a lease-with-obligation-to-purchase agreement for residential real property; or
- (d) an installment land sale contract for residential real property.

5. "Residential real property" means real property 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 (a) unimproved real property upon which such dwellings are to be constructed, or (b) condominium units or cooperative apartments, or (c) property in a homeowners' association that is not owned in fee simple by the seller.

6. "Transfer of title" means delivery of a properly executed instrument conveying title to residential real property and shall include delivery of a real estate purchase contract that is a lease or installment land sale contract.

**§ 462. Property condition disclosure statement.** 1. Except as is provided in section four hundred sixty-three of this article, every seller of residential real property pursuant to a real estate purchase contract shall complete and sign a property condition disclosure statement as prescribed by subdivision two of this section and cause it, or a copy thereof, to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale. A copy of the property condition disclosure statement containing the signatures of both seller and buyer shall be attached to the real estate purchase contract. Nothing contained in this article or this disclosure statement is intended to prevent the parties to a contract of sale from entering into agreements of any kind or nature with respect to the physical condition of the property to be sold, including, but not limited to, agreements for the sale of real property "as is".

2. The following shall be the disclosure form:

PROPERTY CONDITION DISCLOSURE STATEMENT

NAME OF SELLER OR SELLERS:

PROPERTY ADDRESS:

THE PROPERTY CONDITION DISCLOSURE ACT REQUIRES THE SELLER OF RESIDENTIAL REAL PROPERTY TO CAUSE THIS DISCLOSURE STATEMENT OR A COPY THEREOF TO BE DELIVERED TO A BUYER OR BUYER'S AGENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE.



PURPOSE OF STATEMENT: THIS IS A STATEMENT OF CERTAIN CONDITIONS AND INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER. THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR BY ANY AGENT REPRESENTING THE SELLER IN THIS TRANSACTION. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR TESTS AND THE BUYER IS ENCOURAGED TO OBTAIN HIS OR HER OWN INDEPENDENT PROFESSIONAL INSPECTIONS AND ENVIRONMENTAL TESTS AND ALSO IS ENCOURAGED TO CHECK PUBLIC RECORDS PERTAINING TO THE PROPERTY.

A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE TRANSFER OF TITLE.

"RESIDENTIAL REAL PROPERTY" MEANS REAL PROPERTY 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 (A) UNIMPROVED REAL PROPERTY UPON WHICH SUCH DWELLINGS ARE TO BE CONSTRUCTED OR (B) CONDOMINIUM UNITS OR COOPERATIVE APARTMENTS OR (C) PROPERTY ON A HOMEOWNERS' ASSOCIATION THAT IS NOT OWNED IN FEE SIMPLE BY THE SELLER.

INSTRUCTIONS TO THE SELLER:

- (a) ANSWER ALL QUESTIONS BASED UPON YOUR ACTUAL KNOWLEDGE.
- (b) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED.
- (c) COMPLETE THIS FORM YOURSELF.
- (d) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK "NA" (NON-APPLICABLE). IF YOU DO NOT KNOW THE ANSWER CHECK "UNKN" (UNKNOWN).

SELLER'S STATEMENT: THE SELLER MAKES THE FOLLOWING REPRESENTATIONS TO THE BUYER BASED UPON THE SELLER'S ACTUAL KNOWLEDGE AT THE TIME OF SIGNING THIS DOCUMENT. THE SELLER AUTHORIZES HIS OR HER AGENT, IF ANY, TO PROVIDE A COPY OF THIS STATEMENT TO A PROSPECTIVE BUYER OF THE RESIDENTIAL REAL PROPERTY. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE SELLER'S AGENT.

GENERAL INFORMATION

1. HOW LONG HAVE YOU OWNED THE PROPERTY?

2. HOW LONG HAVE YOU OCCUPIED THE PROPERTY?

3. WHAT IS THE AGE OF THE STRUCTURE OR STRUCTURES? NOTE TO BUYER--IF THE STRUCTURE WAS BUILT BEFORE 1978 YOU ARE ENCOURAGED TO INVESTIGATE FOR THE PRESENCE OF LEAD BASED PAINT.

4. DOES ANYBODY OTHER THAN YOURSELF HAVE A LEASE, EASEMENT OR ANY OTHER RIGHT TO USE OR OCCUPY ANY PART OF YOUR PROPERTY OTHER THAN THOSE STATED IN DOCUMENTS AVAILABLE IN THE PUBLIC RECORD, SUCH AS RIGHTS TO USE A ROAD OR PATH OR CUT TREES OR CROPS. YES NO UNKN NA

5. DOES ANYBODY ELSE CLAIM TO OWN ANY PART OF YOUR PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

6. HAS ANYONE DENIED YOU ACCESS TO THE PROPERTY OR MADE A FORMAL LEGAL CLAIM CHALLENGING YOUR TITLE TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

7. ARE THERE ANY FEATURES OF THE PROPERTY SHARED IN COMMON WITH ADJOINING LAND OWNERS OR A HOMEOWNERS ASSOCIATION, SUCH AS WALLS, FENCES OR DRIVEWAYS? YES NO UNKN NA (IF YES DESCRIBE BELOW)

8. ARE THERE ANY ELECTRIC OR GAS UTILITY SURCHARGES FOR LINE EXTENSIONS, SPECIAL ASSESSMENTS OR HOMEOWNER OR OTHER ASSOCIATION FEES THAT APPLY TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

9. ARE THERE CERTIFICATES OF OCCUPANCY RELATED TO THE PROPERTY? YES NO UNKN NA (IF NO, EXPLAIN BELOW)

#### ENVIRONMENTAL

NOTE TO SELLER - IN THIS SECTION, YOU WILL BE ASKED QUESTIONS REGARDING PETROLEUM PRODUCTS AND HAZARDOUS OR TOXIC SUBSTANCES THAT YOU KNOW TO HAVE BEEN SPILLED, LEAKED OR OTHERWISE BEEN RELEASED ON THE PROPERTY OR FROM THE PROPERTY ONTO ANY OTHER PROPERTY. PETROLEUM PRODUCTS MAY INCLUDE, BUT ARE NOT LIMITED TO, GASOLINE, DIESEL FUEL, HOME HEATING FUEL, AND LUBRICANTS. HAZARDOUS OR TOXIC SUBSTANCES ARE

PRODUCTS OR OTHER MATERIAL THAT COULD POSE SHORT- OR LONG-TERM DANGER TO PERSONAL HEALTH OR THE ENVIRONMENT IF THEY ARE NOT PROPERLY DISPOSED OF, APPLIED OR STORED. THESE INCLUDE, BUT ARE NOT LIMITED TO, FERTILIZERS, PESTICIDES AND INSECTICIDES, PAINT INCLUDING PAINT THINNER, VARNISH REMOVER AND WOOD PRESERVATIVES, TREATED WOOD, CONSTRUCTION MATERIALS SUCH AS ASPHALT AND ROOFING MATERIALS, ANTIFREEZE AND OTHER AUTOMOTIVE PRODUCTS, BATTERIES, CLEANING SOLVENTS INCLUDING SEPTIC TANK CLEANERS, HOUSEHOLD CLEANERS, POOL CHEMICALS, PRODUCTS CONTAINING MERCURY AND LEAD AND INDOOR MOLD.

NOTE TO BUYER - IF CONTAMINATION OF THIS PROPERTY FROM PETROLEUM PRODUCTS AND/OR HAZARDOUS OR TOXIC SUBSTANCES IS A CONCERN TO YOU, YOU ARE URGED TO CONSIDER SOIL AND GROUNDWATER TESTING OF THIS PROPERTY.

10. IS ANY OR ALL OF THE PROPERTY LOCATED IN A FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) DESIGNATED FLOODPLAIN? YES NO UNKN NA  
(IF YES, EXPLAIN BELOW)

11. IS ANY OR ALL OF THE PROPERTY LOCATED WHOLLY OR PARTIALLY IN THE SPECIAL FLOOD HAZARD AREA ("SFHA"; "100-YEAR FLOODPLAIN") ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S (FEMA'S) CURRENT FLOOD INSURANCE RATE MAPS FOR YOUR AREA? YES NO UNKN NA  
(IF YES, EXPLAIN BELOW)

12. IS ANY OR ALL OF THE PROPERTY LOCATED WHOLLY OR PARTIALLY IN A MODERATE RISK FLOOD HAZARD AREA ("500-YEAR FLOODPLAIN") ACCORDING TO FEMA'S CURRENT FLOOD INSURANCE RATE MAPS FOR YOUR AREA? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

13. IS THE PROPERTY SUBJECT TO ANY REQUIREMENT UNDER FEDERAL LAW TO OBTAIN AND MAINTAIN FLOOD INSURANCE ON THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)  
HOMES IN THE SPECIAL FLOOD HAZARD AREA, ALSO KNOWN AS HIGH RISK FLOOD ZONES, ON FEMA'S FLOOD INSURANCE RATE MAPS WITH MORTGAGES FROM FEDERALLY REGULATED OR INSURED LENDERS ARE REQUIRED TO OBTAIN AND MAINTAIN FLOOD INSURANCE. EVEN WHEN NOT REQUIRED, FEMA ENCOURAGES HOMEOWNERS IN HIGH RISK, MODERATE RISK, AND LOW RISK

FLOOD ZONES TO PURCHASE FLOOD INSURANCE THAT COVERS THE STRUCTURE(S) AND THE PERSONAL PROPERTY WITHIN THE STRUCTURE(S). ALSO NOTE THAT HOMES IN COASTAL AREAS MAY BE SUBJECT TO INCREASED RISK OF FLOODING OVER TIME DUE TO PROJECTED SEA LEVEL RISE AND INCREASED EXTREME STORMS CAUSED BY CLIMATE CHANGE WHICH MAY NOT BE REFLECTED IN CURRENT FLOOD INSURANCE RATE MAPS.

14. HAVE YOU EVER RECEIVED ASSISTANCE, OR ARE YOU AWARE OF ANY PREVIOUS OWNERS RECEIVING ASSISTANCE, FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), THE U.S. SMALL BUSINESS ADMINISTRATION (SBA), OR ANY OTHER FEDERAL DISASTER FLOOD ASSISTANCE FOR FLOOD DAMAGE TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW) FOR PROPERTIES THAT HAVE RECEIVED FEDERAL DISASTER ASSISTANCE, THE REQUIREMENT TO OBTAIN FLOOD INSURANCE PASSES DOWN TO ALL FUTURE OWNERS. FAILURE TO OBTAIN AND MAINTAIN FLOOD INSURANCE CAN RESULT IN AN INDIVIDUAL BEING INELIGIBLE FOR FUTURE ASSISTANCE.
15. IS THERE FLOOD INSURANCE ON THE PROPERTY? YES NO UNKN NA (IF YES, ATTACH A COPY OF THE POLICY)  
A STANDARD HOMEOWNER'S INSURANCE POLICY TYPICALLY DOES NOT COVER FLOOD DAMAGE. YOU ARE ENCOURAGED TO EXAMINE YOUR POLICY TO DETERMINE WHETHER YOU ARE COVERED.
16. IS THERE A FEMA ELEVATION CERTIFICATE AVAILABLE FOR THE PROPERTY? YES NO UNKN NA (IF YES, ATTACH A COPY OF THE CERTIFICATE)  
AN ELEVATION CERTIFICATE IS A FEMA FORM, COMPLETED BY A LICENSED SURVEYOR OR ENGINEER. THE FORM PROVIDES CRITICAL INFORMATION ABOUT THE FLOOD RISK OF THE PROPERTY AND IS USED BY FLOOD INSURANCE PROVIDERS UNDER THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) TO HELP DETERMINE THE APPROPRIATE FLOOD INSURANCE RATING FOR THE PROPERTY. A BUYER MAY BE ABLE TO USE THE ELEVATION CERTIFICATE FROM A PREVIOUS OWNER FOR THEIR FLOOD INSURANCE POLICY.
17. HAVE YOU EVER FILED A CLAIM FOR FLOOD DAMAGE TO THE PROPERTY WITH ANY INSURANCE PROVIDER, INCLUDING THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

18. IS ANY OR ALL OF THE PROPERTY LOCATED IN A DESIGNATED WETLAND?  
YES NO UNKN NA (IF YES, EXPLAIN BELOW)
19. IS THE PROPERTY LOCATED IN AN AGRICULTURAL DISTRICT? YES NO  
UNKN NA (IF YES, EXPLAIN BELOW)
20. WAS THE PROPERTY EVER THE SITE OF A LANDFILL? YES NO UNKN NA  
(IF YES, EXPLAIN BELOW)
21. ARE THERE OR HAVE THERE EVER BEEN FUEL STORAGE TANKS ABOVE OR  
BELOW THE GROUND ON THE PROPERTY? YES NO UNKN NA IF YES,  
ARE THEY CURRENTLY IN USE? YES NO UNKN NA LOCATION(S) ARE THEY  
LEAKING OR HAVE THEY EVER LEAKED? YES NO UNKN NA (IF YES,  
EXPLAIN BELOW)
22. IS THERE ASBESTOS IN THE STRUCTURE? YES NO UNKN NA (IF YES, STATE  
LOCATION OR LOCATIONS BELOW)
23. IS LEAD PLUMBING PRESENT? YES NO UNKN NA (IF YES, STATE LOCATION  
OR LOCATIONS BELOW)
24. HAS A RADON TEST BEEN DONE? YES NO UNKN NA (IF YES, ATTACH A COPY  
OF THE REPORT)
25. HAS MOTOR FUEL, MOTOR OIL, HOME HEATING FUEL, LUBRICATING OIL OR  
ANY OTHER PETROLEUM PRODUCT, METHANE GAS, OR ANY HAZARDOUS OR  
TOXIC SUBSTANCE SPILLED, LEAKED OR OTHERWISE BEEN RELEASED ON  
THE PROPERTY OR FROM THE PROPERTY ONTO ANY OTHER PROPERTY? YES  
NO UNKN NA (IF YES, DESCRIBE BELOW)
26. HAS THE PROPERTY BEEN TESTED FOR THE PRESENCE OF MOTOR FUEL, MOTOR  
OIL, HOME HEATING FUEL, LUBRICATING OIL, OR ANY OTHER PETROLEUM  
PRODUCT, METHANE GAS, OR ANY HAZARDOUS OR TOXIC SUBSTANCE? YES  
NO UNKN NA (IF YES, ATTACH REPORT(S))
27. HAS THE PROPERTY BEEN TESTED FOR INDOOR MOLD? YES NO UNKN (IF YES,  
ATTACH A COPY OF THE REPORT)

## STRUCTURAL

28. IS THERE ANY ROT OR WATER DAMAGE TO THE STRUCTURE OR STRUCTURES?  
YES NO UNKN NA (IF YES, EXPLAIN BELOW)
29. IS THERE ANY FIRE OR SMOKE DAMAGE TO THE STRUCTURE OR STRUCTURES?  
YES NO UNKN NA (IF YES, EXPLAIN BELOW)
30. IS THERE ANY TERMITE, INSECT, RODENT OR PEST INFESTATION OR  
DAMAGE? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
31. HAS THE PROPERTY BEEN TESTED FOR TERMITE, INSECT, RODENT OR PEST  
INFESTATION OR DAMAGE? YES NO UNKN NA (IF YES, PLEASE ATTACH  
REPORT(S))
32. WHAT IS THE TYPE OF ROOF/ROOF COVERING (SLATE, ASPHALT, OTHER.)?  
ANY KNOWN MATERIAL DEFECTS? HOW OLD IS THE ROOF? IS THERE A  
TRANSFERABLE WARRANTY ON THE ROOF IN EFFECT NOW? YES NO UNKN NA  
(IF YES, EXPLAIN BELOW)
33. ARE THERE ANY KNOWN MATERIAL DEFECTS IN ANY OF THE FOLLOWING  
STRUCTURAL SYSTEMS: FOOTINGS, BEAMS, GIRDERS, LINTELS, COLUMNS OR  
PARTITIONS? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

## MECHANICAL SYSTEMS & SERVICES

34. WHAT IS THE WATER SOURCE (CIRCLE ALL THAT APPLY - WELL, PRIVATE,  
MUNICIPAL, OTHER)? IF MUNICIPAL, IS IT METERED? YES NO UNKN NA
35. HAS THE WATER QUALITY AND/OR FLOW RATE BEEN TESTED? YES NO UNKN NA  
(IF YES, DESCRIBE BELOW)
36. WHAT IS THE TYPE OF SEWAGE SYSTEM (CIRCLE ALL THAT APPLY - PUBLIC  
SEWER, PRIVATE SEWER, SEPTIC OR CESSPOOL)? IF SEPTIC OR CESSPOOL,  
AGE? \_\_\_\_\_ DATE LAST PUMPED? \_\_\_\_\_ FREQUENCY OF PUMPING?  
\_\_\_\_\_ ANY KNOWN MATERIAL DEFECTS? YES NO UNKN NA (IF YES,  
EXPLAIN BELOW)

More information on "septic system operation and maintenance" can be found on the NYS Department of Health website in the informational health pamphlet made available by the Department of Health pursuant to section 396-s of NYS general business law.

37. WHO IS YOUR ELECTRIC SERVICE PROVIDER? \_\_\_\_\_ WHAT IS THE AMPERAGE? \_\_\_\_\_ DOES IT HAVE CIRCUIT BREAKERS OR FUSES? \_\_\_\_\_ PRIVATE OR PUBLIC POLES? \_\_\_\_\_ ANY KNOWN MATERIAL DEFECTS? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

38. ARE THERE ANY FLOODING, DRAINAGE OR GRADING PROBLEMS THAT RESULTED IN STANDING WATER ON ANY PORTION OF THE PROPERTY? YES NO UNKN NA (IF YES, STATE LOCATIONS AND EXPLAIN BELOW)

39. HAS THE STRUCTURE(S) EXPERIENCED ANY WATER PENETRATION OR DAMAGE DUE TO SEEPAGE OR A NATURAL FLOOD EVENT, SUCH AS FROM HEAVY RAINFALL, COASTAL STORM SURGE, TIDAL INUNDATION OR RIVER OVERFLOW? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

ARE THERE ANY KNOWN MATERIAL DEFECTS IN ANY OF THE FOLLOWING (IF YES, EXPLAIN BELOW. USE ADDITIONAL SHEETS IF NECESSARY.):

40. PLUMBING SYSTEM? YES NO UNKN NA

41. SECURITY SYSTEM? YES NO UNKN NA

42. CARBON MONOXIDE DETECTOR? YES NO UNKN NA

43. SMOKE DETECTOR? YES NO UNKN NA

44. FIRE SPRINKLER SYSTEM? YES NO UNKN NA

45. SUMP PUMP? YES NO UNKN NA

46. FOUNDATION/SLAB? YES NO UNKN NA

47. INTERIOR WALLS/CEILINGS? YES NO UNKN NA

48. EXTERIOR WALLS OR SIDING? YES NO UNKN NA

49. FLOORS? YES NO UNKN NA

50. CHIMNEY/FIREPLACE OR STOVE? YES NO UNKN NA

51. PATIO/DECK? YES NO UNKN NA

52. DRIVEWAY? YES NO UNKN NA

53. AIR CONDITIONER? YES NO UNKN NA

54. HEATING SYSTEM? YES NO UNKN NA

55. HOT WATER HEATER? YES NO UNKN NA

56. THE PROPERTY IS LOCATED IN THE FOLLOWING SCHOOL DISTRICT UNKN  
NOTE: BUYER IS ENCOURAGED TO CHECK PUBLIC RECORDS CONCERNING THE  
PROPERTY (E.G. TAX RECORDS AND WETLAND AND FEMA'S CURRENT FLOOD  
INSURANCE RATE MAPS AND ELEVATION CERTIFICATES)

THE SELLER SHOULD USE THIS AREA TO FURTHER EXPLAIN ANY ITEM ABOVE. IF  
NECESSARY, ATTACH ADDITIONAL PAGES AND INDICATE HERE THE NUMBER OF  
ADDITIONAL PAGES ATTACHED.

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SELLER'S CERTIFICATION: SELLER CERTIFIES THAT THE INFORMATION IN THIS  
PROPERTY CONDITION DISCLOSURE STATEMENT IS TRUE AND COMPLETE TO THE  
SELLER'S ACTUAL KNOWLEDGE AS OF THE DATE SIGNED BY THE SELLER. IF A



SELLER OF RESIDENTIAL REAL PROPERTY ACQUIRES KNOWLEDGE WHICH RENDERS MATERIALLY INACCURATE A PROPERTY CONDITION DISCLOSURE STATEMENT PROVIDED PREVIOUSLY, THE SELLER SHALL DELIVER A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT TO THE BUYER AS SOON AS PRACTICABLE. IN NO EVENT, HOWEVER, SHALL A SELLER BE REQUIRED TO PROVIDE A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT AFTER THE TRANSFER OF TITLE FROM THE SELLER TO THE BUYER OR OCCUPANCY BY THE BUYER, WHICHEVER IS EARLIER.

SELLER\_\_\_\_\_ DATE\_\_\_\_\_

SELLER\_\_\_\_\_ DATE\_\_\_\_\_

BUYER'S ACKNOWLEDGMENT: BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS STATEMENT AND BUYER UNDERSTANDS THAT THIS INFORMATION IS A STATEMENT OF CERTAIN CONDITIONS AND INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR SELLER'S AGENT AND IS NOT A SUBSTITUTE FOR ANY HOME, PEST, RADON OR OTHER INSPECTIONS OR TESTING OF THE PROPERTY OR INSPECTION OF THE PUBLIC RECORDS.

BUYER\_\_\_\_\_ DATE\_\_\_\_\_

BUYER\_\_\_\_\_ DATE \_\_\_\_\_

3. Nothing in this article shall require a seller to undertake or provide for any investigation or inspection of his or her residential real property or to check any public records.

**§ 463. Exemptions.** A property condition disclosure statement shall not be required in connection with any of the following transfers of residential real property:

1. A transfer pursuant to a court order, including, but not limited to, a transfer order by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy or debtor-in-possession, a transfer as a result of the exercise of the power of eminent domain, and a

transfer that results from a decree for specific performance of a contract or other agreement between two or more persons;

2. A transfer to mortgagee or an affiliate or agent thereof by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

3. A transfer to a beneficiary of a deed of trust;

4. A transfer pursuant to a foreclosure sale that follows a default in the satisfaction of an obligation that is secured by a mortgage;

5. A transfer by a sale under a power of sale that follows a default in the satisfaction of an obligation that is secured by a mortgage;

6. A transfer by a mortgagee, or a beneficiary under a mortgage, or an affiliate or agent thereof, who has acquired the residential real property at a sale under a mortgage or who has acquired the residential real property by a deed in lieu of foreclosure;

7. A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;

8. A transfer from one co-owner to one or more other co-owners;

9. A transfer made to the transferor's spouse or to one or more persons in the lineal consanguinity of one or more of the transferors;

10. A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of property settlement, agreement incidental to a decree of divorce, dissolution of marriage, annulment or legal separation;

11. A transfer to or from the state, a political subdivision of the state, or another governmental entity;

12. A transfer that involves newly constructed residential real property that previously had not been inhabited;

13. A transfer by a sheriff; or

14. A transfer pursuant to a partition action.

**§ 464. Revision.** If a seller of residential real property acquires knowledge which renders materially inaccurate a property condition disclosure statement provided previously, the seller shall deliver a revised property condition disclosure statement to the buyer as soon as practicable. In no event, however, shall a seller be required to provide a revised property condition disclosure statement after the transfer of title from the seller to the buyer or occupancy by the buyer, whichever is earlier.

**§ 465. Liability.** 1. Nothing contained in this article shall be construed as limiting any existing legal cause of action or remedy at law, in statute or in equity.

2. Any seller who provides a property condition disclosure statement or provides or fails to provide a revised property condition disclosure statement shall be liable only for a willful failure to perform the requirements of this article. For such a willful failure, the seller shall be liable for the actual damages suffered by the buyer in addition to any other existing equitable or statutory remedy.

**§ 466. Duty of an agent.** An agent representing a seller of residential real property as a listing broker shall have the duty to timely inform each seller represented by that agent of the seller's obligations under this article. An agent representing a buyer of residential real property, or, if the buyer is not represented by an agent, the agent representing a seller of residential real property and dealing with a prospective buyer, shall have the duty to timely (in any event, before

the buyer signs a binding contract of sale) inform such buyer of the buyer's rights and obligations under this article. If an agent performs the duties and obligations imposed upon him or her pursuant to this section, the agent shall have no further duties under this article and shall not be liable to any party for a violation of this article.

ARTICLE 15  
**PROHIBITION AND DISCLOSURE OF  
PRIVATE TRANSFER FEE OBLIGATIONS**

Section 470. Short title.

471. Intent.

472. Definitions.

473. Prohibition.

474. Liability for violation.

475. Disclosure.

476. Notice requirements for existing transfer fee obligations.

**§ 470. Short title.** This article shall be known and may be cited as the "private transfer fee obligation act."

**§ 471. Intent.** The legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. Thus, the legislature finds and declares that a private transfer fee obligation shall not run with the title to property or otherwise bind subsequent owners of property under any common law or equitable principle.

**§ 472. Definitions.** 1. "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

2. "Private transfer fee" means a fee, charge or any portion thereof, required by a private transfer fee obligation and payable, directly or indirectly, upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The following are not private transfer fees for purposes of this section:

(a) Any consideration payable by the transferee to the transferor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the transferee based upon any subsequent appreciation, development, or sale of the property, provided such additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property. For the purposes of this subparagraph, an interest in real property may include a separate mineral estate and its appurtenant surface access rights.

(b) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee, including any subsequent additional commission for that transfer payable by the transferor or the transferee based upon any subsequent appreciation, development, or sale of the property.

(c) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property, including, but not limited to, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration and payable to the lender in connection with the loan.

(d) Any rent, reimbursement, charge, fee, or other amount payable by a

lessee to a lessor under a lease, including, but not limited to, any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

(e) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person.

(f) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.

(g) Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration, covenant, duly adopted by-law, proprietary lease or law applicable to such association, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent. No amount shall be paid to a homeowners', condominium, cooperative, mobile home, or property owners' association for the payment to the declarant of the condominium or the creator of a homeowners', cooperative, mobile home or property owners' association, or their designee.

(h) Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering a community, and payable to a not-for-profit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community that is subject to the declaration or covenant.

(i) Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member, including, but not limited to, any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.

(j) Any fee, charge or assessment payable by the transferee to a corporation or company formed pursuant to the private housing finance law.

(k) Any fee, charge or assessment payable by the transferee to a corporation or company that has received a loan or subsidy pursuant to the private housing finance law or general municipal law.

(1) Any amounts payable to a government entity.

3. "Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee to the declarant or other person specified in the declaration, covenant or agreement, or to their successors or assigns, upon a subsequent transfer of an interest in the real property.

**§ 473. Prohibition.** A private transfer fee obligation recorded or entered into in this state on or after the effective date of this section does not run with the land and is not binding on or enforceable at law or in equity against any owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after the effective date of this section is void and unenforceable. This section shall not apply to a private transfer fee obligation recorded or entered into prior to the effective date of this section. This section shall not be deemed to require that a private transfer fee obligation recorded, filed or entered into in this state before the effective date of this section is presumed valid and enforceable. It is the public policy of this state that no private transfer fee obligation shall be valid or enforceable whenever entered into, recorded or filed. Furthermore, this article shall not validate any private transfer fee agreement that is contrary to the law of this state.

**§ 474. Liability for violation.** Any person who records or enters into an agreement imposing a private transfer fee obligation in their favor or in the favor of a third party after the effective date of this section shall be liable for (1) any and all damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including, without limitation, the amount of any transfer fee paid by a party to the transfer, and (2) all attorneys'

fees, expenses and costs incurred by a party to the transfer or mortgagee of the real property to recover any transfer fee paid or in connection with an action to quiet title. Where an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal, rather than the agent.

**§ 475. Disclosure.** Prior to the signing by the buyer of a binding contract for the sale of real property, the seller shall furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation. This written statement shall include a description of the private transfer fee obligation and include a statement that private transfer fee obligations are subject to prohibitions under this section.

**§ 476. Notice requirements for existing transfer fee obligations. 1.** For a private transfer fee obligation imposed prior to the effective date of this section, the receiver of the fee shall record, prior to six months after the effective date of this section, against the real property subject to the private transfer fee obligation a separate document in the county records in which the real property is located that meets all of the following requirements:

(a) The title of the document shall be "Notice of Private Transfer Fee Obligation" in at least 14-point boldface type;

(b) The names of all current owners of the real property subject to the transfer fee, and the legal description and assessor's parcel number for the affected real property.

(c) The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the transfer fee, or such other basis by which the transfer fee is to be calculated;

(d) If the real property is residential property, actual dollar-cost examples of the transfer fee for a home priced at two hundred fifty thousand dollars (\$250,000), five hundred thousand dollars (\$500,000), and seven hundred fifty thousand dollars (\$750,000);

(e) The date or circumstances under which the private transfer fee obligation expires, if any;



(f) The purpose for which the funds from the private transfer fee obligation will be used;

(g) The name of the person or entity to which funds are to be paid and specific contact information regarding where the funds are to be sent;

(h) The acknowledged signature of the receiver of the fee; and

(i) The legal description of the real property burdened by the private transfer fee obligation.

2. The person or entity to which the transfer fee is to be paid may file an amendment to the notice of transfer fee containing new contact information, but such amendment must contain the recording information of the notice of transfer fee which it amends and the legal description of the property burdened by the private transfer fee obligation.

3. If the receiver of the fee fails to comply fully with subdivision one of this section, the transferor of any real property burdened by the private transfer fee obligation may proceed with the conveyance of any interest in the real property to any transferee and in so doing shall be deemed to have acted in good faith and shall not be subject to any obligations under the private transfer fee obligation. In such event, the real property thereafter shall be conveyed free and clear of such transfer fee and private transfer fee obligation.

4. Should the receiver of the fee fail to provide a written statement of the transfer fee payable within thirty days of the date of a written request for the same sent to the address shown in the notice of transfer fee, then the transferor, on recording of the affidavit required under subdivision five of this section, may convey any interest in the real property to any transferee without payment of the transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event the real property shall be conveyed free and clear of the transfer fee and private transfer fee obligation.

5. An affidavit stating the facts enumerated under subdivision six of this section shall be recorded in the office of the county clerk and recorder in the county in which the real property is situated prior to or simultaneously with a conveyance pursuant to subdivision four of this

section of real property unburdened by a private transfer fee obligation. An affidavit filed under this subdivision shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the person appearing by the record to be the owner of such real property at the time of the signing of such affidavit, a reference (by recording information) to the instrument of record containing the private transfer fee obligation and an acknowledgment that the affiant is testifying under penalty of perjury.

6. When recorded, an affidavit as described in subdivision five of this section shall constitute conclusive evidence that:

(a) A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(b) The entity listed on the notice of transfer fee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notification.

## ARTICLE 16

### **NINETY-DAY WAITING PERIOD FOR SALE OF SINGLE-FAMILY AND TWO-FAMILY RESIDENCES TO CERTAIN PURCHASERS**

Section 520. Definitions.

521. Ninety-day waiting period.

522. Enforcement.

**§ 520. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Community land trust" shall mean a nonprofit organization exempt from certain taxes pursuant to section 501 (c) (3) or section 501(c) (4) of the United States internal revenue code and/or that is incorporated under the not-for-profit corporation law whose primary purpose is to

provide affordable housing by owning land and leasing or selling residential housing situated on that land to households that meet certain income requirements.

2. (a) "Covered entity" shall mean an institutional real estate investor or an entity that receives funding from an institutional real estate investor for the purchase of a single-family residence or two-family residence. A loan provided in exchange for a mortgage of the residence that is being purchased shall not be considered funding for the purposes of this subdivision, provided that such mortgage must be of a type for which members of the general public can apply.

(b) "Covered entity" shall not include:

(i) an organization which is described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code;

(ii) a land bank;

(iii) a community land trust; or

(iv) a creditor or its loan servicer acquiring ownership of real property in full or partial satisfaction of a secured debt.

3. (a) "Institutional real estate investor" shall mean an entity or combined group that, directly or indirectly:

(i) owns ten or more single-family residences and/or two-family residences;

(ii) manages or receives funds pooled from investors and acts as a fiduciary with respect to one or more investors; and

(iii) has thirty million dollars or more in net value or assets under management on any day during the taxable year.

(b) An entity is considered owning a single-family residence or two-family residence if it directly owns the single-family residence or two-family residence or indirectly owns ten percent or more of the single-family residence or two-family residence.

4. "Land bank" shall mean an entity created in accordance with article sixteen of the not-for-profit corporation law.

5. "Single-family residence" shall mean a residential property

consisting of one dwelling unit; provided that such term shall not include:

(a) any single-family residence that is to be used as the principal residence of any person who has an ownership interest in the covered entity that seeks to purchase the single-family residence; or

(b) any single-family residence constructed, acquired, or operated with federal, state, or local appropriated funding sources.

6. "Two-family residence" shall mean a residential property consisting of two dwelling units; provided that such term shall not include:

(a) any two-family residence in which one of the dwelling units is to be used as the principal residence of any person who has an ownership interest in the covered entity that seeks to purchase the two-family residence; or

(b) any two-family residence constructed, acquired, or operated with federal, state, or local appropriated funding sources.

**§ 521. Ninety-day waiting period.** 1. Notwithstanding any other provision of law, on and after July first, two thousand twenty-five, it shall be unlawful for a covered entity to purchase, acquire, or offer to purchase or acquire any interest in a single-family residence or two-family residence unless the single-family residence or two-family residence has been listed for sale to the general public for at least ninety days.

2. The ninety-day waiting period set forth in subdivision one of this section shall restart if the seller changes the asking price for the single-family residence or two-family residence, and a covered entity shall be prohibited from purchasing, acquiring, or offering to purchase or acquire any interest in the single-family residence or two-family residence until it has been listed for sale to the general public at the new asking price for at least an additional ninety days.

3. A covered entity that violates subdivision one or two of this section may be subject to civil damages and penalties in an amount not to exceed two hundred fifty thousand dollars.

4. (a) At the time an offer is made by a covered entity purchasing such residence, such covered entity shall be required to submit to the seller or anyone acting as an agent for such seller, a form that has been signed by the covered entity purchaser, or an authorized agent thereof, and notarized, stating that the purchaser is a covered entity.

(b) Within three days of submitting a form to a seller or seller's agent pursuant to paragraph (a) of this subdivision, a covered entity shall file such form with the department of law. The department of law may issue regulations or guidance regarding the procedure for making such filing.

(c) Any covered entity or covered entity's agent that violates this subdivision may be subject to civil damages and penalties in an amount not to exceed ten thousand dollars.

5. The following form shall be completed by a covered entity purchasing a single-family residence or two-family residence:

"COMPLIANCE WITH REAL PROPERTY LAW ARTICLE 16

Pursuant to Article 16 of the New York State Real Property Law, covered entities are required to wait at least 90 days after a single-family residence or two-family residence has been listed for sale to the general public to purchase, acquire, or offer to purchase or acquire any interest in the single-family residence or two-family residence. At the time an offer is made, the covered entity or its agent is required to complete this form and submit it to the seller stating that the purchaser is a covered entity. Within three days of submitting the form to the seller, the covered entity or its agent is required to file this form with the New York state office of the attorney general, in accordance with any regulations or guidance that the attorney general may issue with respect to such filing.

The buyer of this single-family residence or two-family residence is a covered entity as defined in New York State Real Property Law § 520. The buyer is subject to the statutory 90-day waiting period. Failure to comply with the 90-day waiting period may result in civil fines and penalties.

Any covered entity or covered entity's agent that does not complete and submit this form as required by statute, or abide by the statutory waiting period, may be liable for civil damages.

IDENTIFYING INFORMATION

BUYER OR BUYERS OF THIS RESIDENCE:

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Printed Name and Mailing Address

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Printed Name and Mailing Address

By signing this form, the buyer or its agent affirms that the statements herein are true under the penalties of perjury.

SIGNATURE OF BUYER(S) OR ITS AGENT OF THIS SINGLE-FAMILY RESIDENCE OR TWO-FAMILY RESIDENCE:

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Signature Date

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Signature Date

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SIGNATURE OF WITNESSES

---

Signature Date

---

Signature Date

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NOTARY ACKNOWLEDGEMENT

(insert notary acknowledgement for this form here)"

**§ 522. Enforcement.** Notwithstanding any other provision of law, the attorney general of the state of New York shall have the authority to enforce the provisions of section five hundred twenty-one of this article by applying, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such violative activity, including but not limited to by bringing an action for injunctive or declaratory relief if a single-family residence or two-family residence

is in the process of being or has been sold in a manner that contravenes the requirements of section five hundred twenty-one of this article, and imposing civil damages and penalties pursuant to subdivisions three and four of section five hundred twenty-one of this article, as applicable.

## ARTICLE 20

### **LAWS REPEALED; CONSTRUCTION; WHEN TO TAKE EFFECT**

Section 600. Laws repealed.

601. Construction.

602. When to take effect.

**§ 600. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 601. Construction.** This chapter does not alter or impair any vested estate, interest or right, or alter or affect the construction of any conveyance, will or other instrument which has taken effect at any time before this chapter becomes a law.

**§ 602. When to take effect.** This chapter shall take effect immediately.