

CHAPTER 472

AN ACT to amend the real property actions and proceedings law, the civil practice law and rules, the banking law and the general obligations law, in relation to home mortgage loans; to amend the penal law and the criminal procedure law, in relation to creating new crimes relating to mortgage fraud; and to amend the real property law, in relation to distressed property consulting contracts

Became a law August 5, 2008, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

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

Section 1. Section 1303 of the real property actions and proceedings law, as added by chapter 308 of the laws of 2006 and subdivision 1 as amended by chapter 154 of the laws of 2007, is amended to read as follows:

§ 1303. Foreclosures; required notices. 1. The foreclosing party in a mortgage foreclosure action, which involves residential real property consisting of owner-occupied one-to-four-family dwellings shall provide notice to the mortgagor in accordance with the provisions of this section with regard to information and assistance about the foreclosure process.

2. The notice required by this section shall be delivered with the summons and complaint to commence a foreclosure action. The notice required by this section shall be in bold, fourteen-point type and shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page.

3. The notice required by this section shall appear as follows:

Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

[Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be extremely careful about any such promises.]

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. [There] In addition to seeking assistance from an attorney or legal aid office, there are government agencies[, legal aid entities] and [other] non-profit organizations that you may contact for informa-

EXPLANATION--Matter in italics is new; matter in brackets [] is old law to be omitted.

tion about [~~for~~ eclosure while you are working] possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at _____ (enter number) or visit the Department's website at _____ (enter web address).

~~[The State does not guarantee the advice of these agencies.]~~

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

4. The banking department shall prescribe the telephone number and web address to be included in the notice.

5. The banking department shall post on its website or otherwise make readily available the name and contact information of government agencies or non-profit organizations that may be contacted for information about the foreclosure process, including maintaining a toll-free helpline to disseminate the information required by this section.

§ 2. The real property actions and proceedings law is amended by adding a new section 1304 to read as follows:

§ 1304. Required prior notices. 1. Notwithstanding any other provision of law, with regard to a high-cost home loan, as such term is defined in section six-1 of the banking law, a subprime home loan or a non-traditional home loan, at least ninety days before a lender or a mortgage loan servicer commences legal action against the borrower, including mortgage foreclosure, the lender or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include the following:

"YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

"As of _____, your home loan is _____ days in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of dollars by _____.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish, you may also contact us directly at _____ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Banking Department's toll-free helpline at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at <http://www.banking.state.ny.us>"

2. Such notice shall be sent by the lender or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and if different, to the residence which is the subject of the mortgage. Notice is considered given as of the date it is mailed. The notice shall contain a list of at least five United States department of housing and urban development approved housing counseling agencies, or other housing counseling agencies as designated by the division of housing and community renewal, that serve the region where the borrower resides. The list shall include the counseling agencies' last known addresses and telephone numbers. The banking department and/or the division of housing and community renewal shall make available a listing, by region, of such agencies which the lender or mortgage loan servicer may use to meet the requirements of this section.

3. The ninety day period specified in the notice contained in subdivision one of this section shall not apply, or shall cease to apply, if the borrower has filed an application for the adjustment of debts of the borrower or an order for relief from the payment of debts, or if the borrower no longer occupies the residence as the borrower's principal dwelling.

4. The notice and the ninety day period required by subdivision one of this section need only be provided once in a twelve month period to the same borrower in connection with the same loan.

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

(b) "Home loan" means a home loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(i) The principal amount of the loan at origination did not exceed the conforming loan size that was in existence at the time of origination for a comparable dwelling as established by the federal national mortgage association;

(ii) The borrower is a natural person;

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

(iv) The loan is secured by a mortgage or deed of trust on real estate 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 borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

(c) "Subprime home loan" for the purposes of this section, means a home loan consummated between January first, two thousand three and September first, two thousand eight in which the terms of the loan exceed the threshold as defined in paragraph (d) of this subdivision. A subprime home loan excludes a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where

the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit.

(d) "Threshold" means, for a first lien mortgage loan, the annual percentage rate of the home loan at consummation of the transaction exceeds three percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month in which the loan was consummated; or for a subordinate mortgage lien, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds five percentage points over the yield on treasury securities having comparable periods of maturity on the fifteenth day of the month in which the loan was consummated; as determined by the following rules: if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate which applies after the initial or introductory period.

(e) "Non-traditional home loan" shall mean a payment option adjustable rate mortgage or an interest only loan consummated between January first, two thousand three and September first, two thousand eight.

(f) For purposes of determining the threshold, the banking department shall publish on its website a listing of constant maturity yields for U.S. Treasury securities for each month between January first, two thousand three and September first, two thousand eight, as published in the Federal Reserve Statistical Release on selected interest rates, commonly referred to as the H.15 release, in the following maturities, to the extent available in such release: six month, one year, two year, three year, five year, seven year, ten year, thirty year.

(g) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of the banking law or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of the banking law.

§ 3. The civil practice law and rules is amended by adding a new rule 3408 to read as follows:

Rule 3408. Mandatory settlement conference in residential foreclosure actions. (a) In any residential foreclosure action involving a high-cost home loan consummated between January first, two thousand three and September first, two thousand eight, or a subprime or nontraditional home loan, as those terms are defined under section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property subject to foreclosure, the court shall hold a mandatory conference within sixty days after the date when proof of service is filed with the county clerk, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, and for whatever other purposes the court deems appropriate.

(b) At the initial conference held pursuant to this section, any defendant currently appearing pro se, shall be deemed to have made a motion to proceed as a poor person under section eleven hundred one of this chapter. The court shall determine whether such permission shall be granted pursuant to standards set forth in section eleven hundred one of

this chapter. If the court appoints defendant counsel pursuant to subdivision (a) of section eleven hundred two of this chapter, it shall adjourn the conference to a date certain for appearance of counsel and settlement discussions pursuant to subdivision (a) of this section, and otherwise shall proceed with the conference.

(c) At any conference held pursuant to this section, the plaintiff shall appear in person or by counsel, and if appearing by counsel, such counsel shall be fully authorized to dispose of the case. The defendant shall appear in person or by counsel. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant. Where appropriate, the court may permit a representative of the plaintiff to attend the settlement conference telephonically or by video-conference.

§ 3-a. For any foreclosure action on a residential mortgage loan, in which the action was initiated prior to September 1, 2008 but where the final order of judgment has not yet been issued, the court shall request each plaintiff to identify whether the loan in foreclosure is a subprime home loan as defined in section 1304 of the real property actions and proceedings law or is a high-cost home loan as defined in section 6-1 of the banking law.

If the loan is a subprime home loan or high-cost home loan, the court shall notify the defendant that if he or she is a resident of such property, he or she may request a settlement conference.

If the defendant requests a conference, the court shall hold such conference as soon as practicable for the purpose of holding settlement discussions pertaining to the rights and obligations of the parties under the mortgage loan documents, including but not limited to, determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, and for whatever other purposes the court deems appropriate.

At any conference held pursuant to this section, the plaintiff shall appear in person or by counsel, and if appearing by counsel, such counsel shall be fully authorized to dispose of the case. The defendant shall appear in person or by counsel. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant. Where appropriate, the court may permit a representative of the plaintiff to attend the settlement conference telephonically or by video-conference.

§ 4. Paragraphs (c), (h) and (j) of subdivision 2 of section 6-1 of the banking law, as added by chapter 626 of the laws of 2002, are amended and five new paragraphs (r), (s), (t), (u) and (v) are added to read as follows:

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

(h) No financing of insurance or other products sold in connection with the loan. No high-cost home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment, or

credit property insurance, or any other life or health insurance premiums, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, [except that insurance] or any product or service that is not necessary or related to the high-cost home loan such as auto club memberships or credit report monitoring, but not including fees paid to the lender, broker, or closing agent, fees related to the recording of the mortgage, title insurance or other settlement fees. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed.

(j) No refinancing of special mortgages. No lender or mortgage broker making or arranging a high-cost home loan may refinance an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which either bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage, unless the lender is provided prior to loan closing documentation by a HUD [certified] approved housing counselor or the lender who originally made the special mortgage that a borrower has received home loan counseling in which the advantages and disadvantages of the refinancing has been received.

(r) No prepayment penalties. No prepayment penalties or fees shall be charged or collected on a high-cost home loan. A prepayment penalty in a high-cost home loan shall be unenforceable.

(s) No abusive yield spread premiums. In arranging a high-cost home loan, the mortgage broker shall, at the time of application, disclose the exact amount and methodology of total compensation that the broker will receive. Such amount may be paid as direct compensation from the lender, direct compensation from the borrower, or a combination of the two. The provisions of this paragraph shall not restrict the ability of a borrower to utilize a yield spread premium in order to offset any up front costs by accepting a higher interest rate. If the borrower chooses this option, any compensation from the lender which exceeds the exact amount of total compensation owed to the broker must be credited to the borrower. The superintendent shall prescribe the form that such disclosure shall take. This provision shall not restrict a broker from accepting a lesser amount.

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

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

as soon as reasonably possible the approximate amount of the initial periodic payment for property taxes and hazard insurance.

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

§ 4-a. Subparagraph (ii) of paragraph (1) of subdivision 2 of section 6-1 of the banking law, as added by chapter 626 of the laws of 2002, is amended to read as follows:

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

"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

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

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

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

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

[Proper-- ty taxes and homeowner's insur ___ ance are your responsibility. Not all ___ lenders provide escrow services for these payments. You should ask o ___ ur lender about these services.]

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors. **[Accor dingly, it is important that you make regular paymen ___ ts to your existing creditors.]"**

§ 5. The banking law is amended by adding a new section 6-m to read as follows:

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

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

(b) "Fully indexed rate" means the index rate that would have applied at the time of the closing had the initial interest rate been determined by the application of the same interest rate formula, (for example, an interest rate index plus or minus a margin) that applies under the terms of the loan documents to subsequent interest rate adjustments, disregarding any limitations on the amount by which the interest rate may change at any one time.

(c) A "Subprime home loan" means a home loan in which the fully indexed annual percentage rate exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) as posted in the week prior to the week when the lender receives a completed application. A subprime home loan excludes a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit.

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

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

(d) "Home loan" means a home loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(i) The principal amount of the loan does not exceed the conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association;

(ii) The borrower is a natural person;

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

(iv) The loan is secured by a mortgage or deed of trust on real estate 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 borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

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

(f) "Mortgage broker" means a mortgage broker as defined in paragraph

(g) of subdivision one of section five hundred ninety of this chapter and a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of this chapter, when such mortgage banker solicits, processes, places or negotiates a mortgage loan for others.

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

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

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

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

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

(e) No modification or deferral fees. A lender may not charge a borrower any fees to modify, renew, extend, or amend a subprime home loan or to defer any payment due under the terms of a subprime home loan if, after the modification, renewal, extension or amendment, the loan is still a subprime home loan or, if no longer a subprime home loan, the annual percentage rate has not been decreased by at least two percentage points. For purposes of this paragraph, fees shall not include interest that is otherwise payable and consistent with the provisions of the loan documents. This paragraph shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing subprime home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for subprime home loans. This paragraph shall not apply if the existing subprime home loan is in default or is sixty or more days delinquent and

the modification, renewal, extension, amendment or deferral is part of a work-out process.

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

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

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

(i) No refinancing of special mortgages. No lender making a subprime home loan may refinance an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which either bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage, unless the lender is provided prior to loan closing documentation by a HUD approved housing counselor or the lender who originally made the special mortgage that the borrower has received home loan counseling about the advantages and disadvantages of the refinancing.

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

(k) No encouragement of default. In making or arranging a subprime home loan, a lender or mortgage broker shall not recommend or encourage default on an existing loan or other debt prior to and in connection

with the closing or planned closing of the subprime home loan that refinances all or any portion of such existing loan or debt.

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

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

(n) No abusive yield spread premiums. In arranging a subprime home loan, the mortgage broker shall, at the time of application, disclose the exact amount and methodology for determining the total compensation that the broker will receive. Such amount may be paid as direct compensation from the lender, direct compensation from the borrower, or a combination of the two. The provisions of this paragraph shall not restrict the ability of a borrower to utilize a yield spread premium in order to offset any upfront costs by accepting a higher interest rate. If the borrower chooses this option, any compensation from the lender which exceeds the exact amount of total compensation owed to the broker must be credited to the borrower. The superintendent shall prescribe the form that such disclosure shall take. This paragraph shall not restrict a broker from accepting a lesser amount.

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

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

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

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

4. No arrangement of certain subprime loans. No lender or mortgage broker shall make or arrange a subprime home loan unless the lender or mortgage broker reasonably and in good faith believes at the time the loan is consummated that one or more of the borrowers, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If a lender or mortgage broker making or arranging a subprime home loan knows that one or more home loans secured by the same

real property will be made contemporaneously to the same borrower with the subprime home loan being made or arranged by that lender or mortgage broker, the lender or mortgage broker making or arranging the subprime home loan must document the borrower's ability to repay the combined payments of all loans on the same real property.

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

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

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

(d) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan may utilize reasonable commercially recognized underwriting standards and methodologies, including automated underwriting systems, provided the standards and methodologies comply with the provisions of this section.

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

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

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

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

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

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

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

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

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

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

§ 6. The banking law is amended by adding a new section 590-b to read as follows:

§ 590-b. Responsibilities. 1. Each mortgage broker shall, in addition to the duties imposed by otherwise applicable provisions of state and federal law, with respect to any transaction, including any practice, or course of business in connection with the transaction, in which the mortgage broker solicits, processes, places or negotiates a home loan:

(a) act in the borrower's interest;
(b) act with reasonable skill, care and diligence;
(c) act in good faith and with fair dealing;
(d) not accept, give, or charge any undisclosed compensation, directly or indirectly, that inures to the benefit of the mortgage broker, whether or not characterized as an expenditure made for the borrower;

(e) clearly disclose to the borrower, not later than three days after receipt of the loan application, all material information as specified by the superintendent that might reasonably affect the rights, interests, or ability of the borrower to receive the borrower's intended benefit from the home loan, including total compensation that the broker would receive from any of the loan options that the lender or mortgage broker presents to the borrower; and

(f) diligently work to present the borrower with a range of loan products for which the borrower likely qualifies and which are appropriate to the borrower's existing circumstances, based on information known by, or obtained in good faith by, the broker.

2. No lender or mortgage broker shall improperly influence or attempt to improperly influence the development, reporting, result or review of a real estate appraisal relating to real property securing a home loan, provided that it shall not be a violation of this prohibition to:

(a) ask an appraiser to consider additional information about a borrower's principal dwelling or about comparable properties;

(b) request that an appraiser provide additional information about the basis for a valuation;

(c) request that an appraiser correct factual errors in a valuation;

(d) obtain multiple appraisals of a borrower's principal dwelling, so long as the lender or mortgage broker adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;

(e) withhold compensation from an appraiser for breach of contract or substandard performance of services;

(f) terminate a relationship with an appraiser for violations of applicable state or federal law or breaches of ethical or professional standards; and

(g) take action permitted or required by applicable state or federal statute, regulation, or agency guidance.

3. Any mortgage broker found by a preponderance of evidence to have violated subdivision one of this section, shall be liable to the borrower for actual damages.

4. Any lender or mortgage broker found by a preponderance of evidence to have violated subdivision two of this section, shall be liable to the borrower for actual damages.

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

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

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

8. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower.

§ 7. Paragraph (g) of subdivision 1 of section 590 of the banking law, as amended by chapter 293 of the laws of 1987, is amended and two new paragraphs (h) and (i) are added to read as follows:

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

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

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

§ 8. Subdivisions 2, 3, 4 and 5 of section 590 of the banking law, subdivisions 2, 3 and 5 as added by chapter 571 of the laws of 1986, paragraph (b) of subdivision 2 and subdivision 4 as amended by chapter 293 of the laws of 1987, are amended to read as follows:

2. Necessity for license. (a) No person, partnership, association, corporation or other entity shall engage in the business of making five or more mortgage loans in any one calendar year without first obtaining a license from the superintendent in accordance with the licensing procedure provided in this article and such regulations as may be promulgated by the banking board or prescribed by the superintendent. The licensing provisions of this subdivision shall not apply to any

exempt organization nor to any entity or entities which shall be exempted in accordance with regulations promulgated by the banking board hereunder.

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

(b-1) No person, partnership, association, corporation or other entity shall engage in the business of servicing mortgage loans with respect to any property located in this state without first being registered with the superintendent as a mortgage loan servicer in accordance with the registration procedure provided by such regulations as may be prescribed by the superintendent. The superintendent may refuse to register a mortgage loan servicer on the same grounds that he or she may refuse to issue a registration certificate to a mortgage broker pursuant to subdivision two of section five hundred ninety-two-a of this article. The registration provisions of this subdivision shall not apply to any exempt organization, mortgage banker, or mortgage broker or any person or entity which shall be exempted in accordance with regulations prescribed by the superintendent hereunder; provided that such exempt organization, mortgage banker, mortgage broker, or exempted person notifies the superintendent that it is acting as a mortgage loan servicer in this state and complies with any regulation applicable to mortgage loan servicers, promulgated by the banking board or prescribed by the superintendent with respect to mortgage loan servicers.

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

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

3. [Banking __ board] Rules and regulations. In addition to such powers as may otherwise be prescribed by this chapter, the banking board is hereby authorized and empowered to promulgate such rules and regulations as may in the judgement of the banking board be consistent with the

purposes of this article, or appropriate for the effective administration of this article, including, but not limited to:

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

(b) Such rules and regulations as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of mortgage brokers, mortgage bankers, mortgage loan servicers and exempt organizations in making mortgage loans;

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

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

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

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

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

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

(b) Mortgage brokers shall solicit, process, place and negotiate mortgage loans **[only]** in conformity with the provisions of this **[article and] chapter**, such rules and regulations as may be promulgated by the banking board or prescribed by the superintendent **[pursuant __ to this article] thereunder and all applicable federal laws and the rules and regulations promulgated thereunder;**

(c) Mortgage bankers and exempt organizations shall make mortgage loans **[only]** in conformity with the provisions of this **[article and] chapter**, such rules and regulations as may be promulgated by the banking board or prescribed by the superintendent **[pursuant __ to this article] thereunder and all applicable federal laws and the rules and regulations promulgated thereunder;**

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

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

§ 9. The banking law is amended by adding a new section 595-b to read as follows:

§ 595-b. Regulation of mortgage loan servicers. 1. Establishment of grounds to impose a fine or penalty. In addition to such other rules, regulations and policies as the banking board may promulgate or the superintendent may prescribe to effectuate the purposes of this article, the superintendent shall promulgate regulations and policies governing the establishment of grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer.

2. Servicing practices. In addition to such other rules, regulations and policies as the banking board may promulgate to effectuate the purposes of this article, the superintendent may prescribe regulations which relate to: (a) providing for disclosures to borrowers of the basis for any interest rate resets; (b) requirements for the provision of pay-off statements; and (c) governing the timing of the crediting of payments made by the borrower.

§ 10. Section 596 of the banking law, as amended by chapter 571 of the laws of 1986, is amended to read as follows:

§ 596. Superintendent authorized to examine; expenses. For the purpose of discovering violations of this article or securing information lawfully required by him hereunder, the superintendent may at any time, and as often as he or she may determine, either personally or by a person duly designated by him, investigate the business and examine the books, accounts, records, and files used therein of every licensee, servicer and registrant. For that purpose the superintendent and his or her duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such licensees, servicers and registrants. The superintendent and any person duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may require relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee, servicer or registrant so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees, servicers or registrants in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee, servicer or registrant shall become liable for and shall pay such assessment to the superintendent.

In any hearing in which the bank examiner acting under authority of this chapter is available for cross-examination, any official written report, worksheet, other related papers, or duly certified copy thereof, compiled, prepared, drafted, or otherwise made by said bank examiner, after being duly authenticated by said examiner, may be admitted as competent evidence upon the oath of said examiner that said worksheet, investigative report, or other related documents were prepared as a result of an examination of the books and records of a licensee, servicer or registrant or other person, conducted pursuant to the authority of this chapter.

§ 11. Section 597 of the banking law, as amended by chapter 571 of the laws of 1986 and the opening paragraph as amended by chapter 499 of the laws of 1995, is amended to read as follows:

§ 597. Books and records; reports. Each licensee, servicer, registrant and exempt organization shall keep and use in its business such books, accounts and records as will enable the superintendent to determine whether such licensee, servicer, registrant or exempt organization is

complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent and the banking board. Every licensee, servicer, registrant and exempt organization shall preserve such books, accounts, and records, for at least three years; provided, however, that preservation by photographic reproduction thereof or records in photographic form, including an optical disk storage system and the use of electronic data processing equipment that provides comparable records to those otherwise required and which are available for examination upon request shall constitute compliance with the requirements of this section.

Each licensee and registrant shall annually, on or before a date to be determined by the superintendent, file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of such licensee or registrant under authority of this article. Such report shall be subscribed and affirmed as true by the licensee or registrant under the penalties of perjury and shall be in the form prescribed by the superintendent. In addition to annual reports, the superintendent may require such additional regular or special reports as he may deem necessary to the proper supervision of licensees and [registrant] registrants under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

The superintendent may require servicers to file annual reports or other regular or special reports, including reports with respect to mortgage delinquencies and foreclosures. Such reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

§ 12. Subdivision 1 of section 598 of the banking law, as amended by section 57 of part 0 of chapter 59 of the laws of 2006, is amended to read as follows:

1. In addition to such penalties as may otherwise be applicable by law, the superintendent may, after notice and hearing as provided elsewhere in this article, require any entity, licensee, servicer, registrant or exempt organization found violating the provisions of this article or the rules or regulations promulgated hereunder to pay to the people of this state an additional penalty for each violation of the article or any regulation or policy promulgated hereunder a sum not to exceed an amount as determined pursuant to section forty-four of this chapter for each such violation.

§ 13. Subdivision 3 of section 599-b of the banking law, as amended by chapter 553 of the laws of 2007, is amended to read as follows:

3. "Originating entity" means a person or entity licensed as a mortgage banker or registered as a mortgage broker pursuant to article twelve-D of this chapter.

§ 14. Subdivision 10 of section 36 of the banking law, as amended by chapter 566 of the laws of 2004, is amended to read as follows:

10. All reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations, including any duly authenticated copy or copies thereof in the possession of any banking organization, bank holding company or any subsidiary thereof (as such terms "bank holding company" and "subsidiary" are defined in article three-A of this chapter), any corporation or any other entity affiliated with a banking organization within the meaning of subdivision six of this section and any non-banking subsidiary of a corporation or any other entity which is an affiliate of a

banking organization within the meaning of subdivision six-a of this section, foreign banking corporation, licensed lender, licensed casher of checks, licensed mortgage banker, registered mortgage broker, licensed sales finance company, registered mortgage loan servicer, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or the department, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event the superintendent may publish or authorize the publication of a copy of any such report or any part thereof in such manner as may be deemed proper. For the purposes of this subdivision, "reports of examinations and investigations, and any correspondence and memoranda concerning or arising out of such examinations and investigations", includes any such materials of a bank, insurance or securities regulatory agency or any unit of the federal government or that of this state any other state or that of any foreign government which are considered confidential by such agency or unit and which are in the possession of the department or which are otherwise confidential materials that have been shared by the department with any such agency or unit and are in the possession of such agency or unit.

§ 15. Subdivisions 1, 2 and 5 of section 39 of the banking law, as amended by chapter 553 of the laws of 2007, are amended to read as follows:

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

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

discretion, issue an order directing the discontinuance of such unauthorized or unsafe and unsound practices, and fixing a time and place at which such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, authorized mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation may voluntarily appear before him or her to present any explanation in defense of the practices directed in said order to be discontinued.

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

§ 16 Paragraph (a) of subdivision 1 of section 44 of the banking law, as amended by chapter 553 of the laws of 2007, is amended to read as follows:

(a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any safe deposit company, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed mortgage banker, registered mortgage broker, authorized mortgage loan originator, registered mortgage loan servicer or licensed budget planner to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent or banking board in connection with the grant of any application or request, or any written agreement entered into with the superintendent.

§ 17 Section 1302 of the real property actions and proceedings law, as added by chapter 626 of the laws of 2002, is amended to read as follows:

§ 1302. Foreclosure of high-cost home loans and subprime home loans.
1. Any complaint served in a proceeding initiated pursuant to this article relating to a high-cost home loan or a subprime home loan, as such terms are defined in section six-1 and six-m of the banking law, respectively, must contain an affirmative allegation[, which allegation must

be proven to the satisfaction of the court before entry of judgment by default __ or otherwise,] that at the time the proceeding is commenced, the plaintiff [mortgag__e banker or exempt organization]:

(a) is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the subject mortgage and note; and

(b) has complied with all of the provisions of section five hundred ninety-five-a of the banking law and any rules and regulations promulgated thereunder, section six-l or six-m of the banking law, and section thirteen hundred four of this article.

2. It shall be a defense to an action to foreclose a mortgage for a high-cost home loan or subprime home loan that the terms of the home loan [violates] or the actions of the lender violate any provision of section six-l or six-m of the banking law or section thirteen hundred four of this article.

§ 18. Paragraph b of subdivision 3 of section 5-501 of the general obligations law, as amended by chapter 883 of the laws of 1980, is amended to read as follows:

b. notwithstanding any other provision of law, the unpaid balance of the loan or forbearance may be prepaid, in whole or in part, at any time. If prepayment is made on or after one year from the date the loan or forbearance is made, no penalty may be imposed. If prepayment is made prior to such time, no penalty may be imposed unless provision therefor is expressly made in the loan contract, provided that no penalty may be imposed if prohibited by sections six-l and six-m of the banking law.

In all cases, the right of prepayment shall be stated in the instrument evidencing the loan or forbearance, provided, however, that the provisions of this subdivision shall not apply to the extent such provisions are inconsistent with any federal law or regulation.

§ 19. The penal law is amended by adding a new article 187 to read as follows:

ARTICLE 187

RESIDENTIAL MORTGAGE FRAUD

Section 187.00 Definitions.

187.05 Residential mortgage fraud in the fifth degree.

187.10 Residential mortgage fraud in the fourth degree.

187.15 Residential mortgage fraud in the third degree.

187.20 Residential mortgage fraud in the second degree.

187.25 Residential mortgage fraud in the first degree.

§ 187.00 Definitions.

As used in this article:

1. "Person" means any individual or entity, other than an individual who applies for a residential mortgage loan and intends to occupy such residential property which such mortgage secures unless such person acts as an accessory to an individual or entity in committing any crime defined in this article.

2. "Residential mortgage loan" means a loan or agreement to extend credit, including the renewal or refinancing of any such loan, made to a person, which loan is primarily secured by either mortgage, deed of trust, or other lien upon any interest in residential real property or certificate of stock or other evidence of ownership in a corporation or partnership formed for the purpose of cooperative ownership of residential real property.

3. "Residential real property" means real property improved by a one-to-four family dwelling, or a residential unit in a building including units owned as condominiums or on a cooperative basis, 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.

4. "Residential mortgage fraud" is committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be used in soliciting an applicant for a residential mortgage loan, or in applying for, the underwriting of, or closing of a residential mortgage loan, or in documents filed with a county clerk of any county in the state arising out of and related to the closing of a residential mortgage loan, any written statement which he or she knows to:

(a) contain materially false information concerning any fact material thereto; or

(b) conceal, for the purpose of misleading, information concerning any fact material thereto.

§ 187.05 Residential mortgage fraud in the fifth degree.

A person is guilty of residential mortgage fraud in the fifth degree when he or she commits residential mortgage fraud.

Residential mortgage fraud in the fifth degree is a class A misdemeanor.

§ 187.10 Residential mortgage fraud in the fourth degree.

A person is guilty of residential mortgage fraud in the fourth degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of one thousand dollars.

Residential mortgage fraud in the fourth degree is a class E felony.

§ 187.15 Residential mortgage fraud in the third degree.

A person is guilty of residential mortgage fraud in the third degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of three thousand dollars.

Residential mortgage fraud in the third degree is a class D felony.

§ 187.20 Residential mortgage fraud in the second degree.

A person is guilty of residential mortgage fraud in the second degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of fifty thousand dollars.

Residential mortgage fraud in the second degree is a class C felony.

§ 187.25 Residential mortgage fraud in the first degree.

A person is guilty of residential mortgage fraud in the first degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of one million dollars.

Residential mortgage fraud in the first degree is a class B felony.

§ 20. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as separately amended by chapters 568 and 570 of the laws of 2007, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in

section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of

the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a [dangerous] weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

§ 21. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 568 of the laws of 2007, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,

170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 and 220.60 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07 and 235.21 relating to obscenity; section 263.10 relating to promoting an obscene sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

§ 22 Section 78 of the banking law, as added by chapter 321 of the laws of 1992, is amended to read as follows:

§ 78. Powers of the bureau. If the criminal investigations bureau has a reasonable suspicion that a person or entity subject to the jurisdiction of the department has, in connection with activities authorized by this chapter, engaged in, or is engaging in an activity which is a misdemeanor or felony under this chapter or under [articles] article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law, the superintendent may undertake such investigation as is deemed necessary, and in the enforcement of this chapter, determine whether any such person or entity has violated or is about to violate any of the above referenced laws or articles. Provided, however, that the scope of authority set forth in this section shall not be deemed to otherwise limit or impair the ability of the department to assist any other entity in an investigation involving a violation of law.

§ 23 Subdivision 2 of section 592 of the banking law, as amended by chapter 146 of the laws of 2003, is amended to read as follows:

2. The superintendent may refuse to issue a license pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided

that such crime would be a felony if committed and prosecuted under the laws of this state or (b) has had a license or registration revoked by the superintendent or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockholder", as used in this subdivision, shall be deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 24. Subdivision 2 of section 592-a of the banking law, as amended by chapter 146 of the laws of 2003, is amended to read as follows:

2. The superintendent may refuse to issue a certificate pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state or (b) has had a license or registration revoked by the superintendent or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockholder", as used in this subdivision, shall be deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 25. Paragraph (a) of subdivision 3 of section 599-c of the banking law, as amended by chapter 553 of the laws of 2007, is amended to read as follows:

(a) The superintendent may refuse to issue a certificate pursuant to this article if he or she shall find that the applicant (i) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state, or (ii) has had an authorization revoked by the superintendent or a regulatory person or entity of another state that regulates persons engaging in mortgage loan originating, or (iii) has been a director, partner, or substantial stockholder of an originating entity which has had a registration or license revoked by the superintendent or a regulatory person or entity of another state that regulates such originating entity, or (iv) has been an employee,

officer or agent of, or a consultant to, an originating entity which has had a registration or license revoked by the superintendent or a regulatory person or entity of another state that regulates such originating entity where such person shall have been found by the superintendent or by such similar regulatory person or entity of another state to bear responsibility in connection with such revocation.

§ 26. The real property law is amended by adding a new section 265-b to read as follows:

§ 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 nonpayment of taxes.

(d) "Distressed home loan" means a home loan that is in danger of being foreclosed because the homeowner has one or more defaults under the mortgage that entitle the lender to accelerate full payment of the mortgage and repossess the property, 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 consultant does not include the following:

(i) an attorney admitted to practice in the state of New York;

(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 banks 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;

(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 banks 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 payment for consulting services before the full 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; or

(e) inducing or attempting to induce a homeowner to enter a consulting contract that does not fully comply with the provisions of this article.

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 Banking Department, www.banking.state.ny.us or by calling the Banking Department toll-free at 1-877-BANK-NYS (1-877-226-5697). 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.

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.

§ 27 Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 28 This act shall take effect immediately; provided, however, that:

a. sections one and seventeen of this act shall apply to actions that are commenced on or after September 1, 2008;

b. sections two and twenty-six of this act shall take effect September 1, 2008;

c. sections four, five, six, thirteen and eighteen of this act shall apply to loans that are consummated on or after September 1, 2008;

d. section four-a of this act shall of this act take effect July 1, 2010;

e. sections seven through twelve and fourteen through sixteen of this act shall take effect July 1, 2009;

f. sections nineteen through twenty-five of this act shall take effect on the first day of November next succeeding the date upon which it shall have become a law; and

g. provided however, effective immediately the promulgation of any rules, regulations or actions necessary for timely implementation of the provisions of this act are hereby authorized.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

SUMMARY:

S8143-A FARLEY Same as [A 10817-A](#) Towns
FARLEY, PADAVAN, MALTESE, BONACIC, ROBACH, CONNOR, FLANAGAN, FUSCHILLO,
LARKIN, LAVALLE, LEIBELL, MORAHAN, RATH, SALAND, TRUNZO, VOLKER
Amd SS1303 & 1302, add S1304, RPAP L; add R3408, CPLR; amd Bank L, generally; amd S5-501,
Gen Ob L; add Art 187 SS187.00 - 187.25, amd S460.10, Pen L; amd S700.05, CP L; add S265-b, RP L
Requires lender and mortgage loan servicers to give borrowers with high-cost home loans or higher-
priced home loans ninety days notice before certain actions are taken; establishes all home loans shall be
subject to certain standards and limitations; creates the crimes of residential mortgage fraud in the first,
second, third, fourth and fifth degrees; relates to distressed property consulting contracts.
CRIMINAL SANCTION IMPACT.
EFF. DATE 08/05/2008 (SEE TABLE)
Governor's Program

SPONSORS MEMO:

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8143A

SPONSOR: FARLEY

TITLE OF BILL:

An act to amend the real property actions and proceedings law, the civil practice law and rules, the banking law and the general obligations law, in relation to home mortgage loans; to amend the penal law and the criminal procedure law, in relation to creating new crimes relating to mortgage fraud; and to amend the real property law, in relation to distressed property consulting contracts

PURPOSE:

This bill seeks to address the mortgage foreclosure crisis in the state by: (1) providing additional protections and foreclosure prevention opportunities for homeowners at risk of losing their homes; (2) strengthening the Banking Law to prevent similar crises from occurring in the future; (3) establishing standards for lenders and mortgage brokers to prevent borrowers from being placed into unaffordable home loans; (4) registering and regulating mortgage loan servicers to enhance loan servicing standards in the state; and (5) defining the crime of residential mortgage fraud and establishing strict criminal penalties to deter those who may engage in such activity.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends Real Property Actions and Proceedings Law ("RPAPL") § 1303 to provide a clear and concise notice detailing instructions and potential options for those homeowners against whom foreclosure proceedings are being commenced.

Section 2 of the bill adds a new Real Property Actions and Proceedings Law ("RPAPL") § 1304 to require lenders and mortgage loan servicers to

send a notice to borrowers who took out a subprime or nontraditional loan between January 1, 2003 and September 1, 2008, at least 90 days before they may commence legal action against the borrower. The notice would provide the names and telephone numbers of housing counseling agencies approved by the United States Department of Housing and Urban Development ("HUD") or designated by the Division of Housing and Community Renewal ("DHCR") and serving the borrower's area.

Section 3 of the bill adds a new CPLR Rule 3408 to require a court, in a residential foreclosure action involving a subprime or a non-traditional home loan made between January 1, 2003 and September 1, 2008, to schedule a settlement conference within 60 days of when the proof of service of the complaint is filed with the county clerk's office. The plaintiff, or a representative with authority to settle the matter, must appear at the conference. The court may allow the plaintiff's representative to appear via phone or video-conference. If the homeowner appears and is not represented by counsel, he or she would be deemed to have made a motion to proceed as a "poor person" under CPLR § 1101, and the judge may relieve the defendant of certain procedural court requirements and appoint counsel under CPLR § 1102(a).

Section 3-a of the bill allows those homeowners against whom a foreclosure action has already been commenced to also participate in a settlement conference.

Sections 4 and 4-a of the bill make certain conforming changes to Banking Law § 6-1.

Section 5 of the bill adds a new Banking Law § 6-m which: (1) defines the term "subprime home loan"; (2) provides consumer protections and minimum underwriting standards for such loans; and (3) establishes an enforcement mechanism for these provisions, and remedies for violations. The bill allows the Superintendent of Banks ("Superintendent") to adjust the definition of subprime home loan under certain circumstances. In addition, this provision of the bill provides an opportunity to cure a violation to those lenders who, while acting in good faith, violate Banking Law § 6-m. The Attorney General or the Superintendent may enforce the provisions of the new Banking Law § 6-m, and a borrower may raise the violation of this section as a defense to foreclosure.

Section 6 of the bill adds a new Banking Law § 590-b to establish certain responsibilities for lenders and mortgage brokers. In particular, this section of the bill establishes: (1) a duty of care for mortgage brokers in soliciting, placing, processing and arranging home loans; and (2) standards for lenders and mortgage brokers in their dealings with appraisers. Section 6 of the bill further establishes remedies for violations of these provisions, and allows the Attorney General or Superintendent to enforce the provisions of Banking Law § 590-b.

Sections 7 through 16 of the bill amend the Banking Law to require mortgage loan servicers to register with the Superintendent before engaging in the business of mortgage loan servicing in the state. These sections of the bill further empower the Banking Board to promulgate regulations and require mortgage loan servicers to comply with the regulations. These provisions of the bill would also permit the Superintendent to inspect the books and records of registered mortgage loan servicers.

Section 17 of the bill amends RPAPL § 1302 to extend its application to subprime home loans. Plaintiffs in a legal action brought under Article 13 of the RPAPL will be required to make an affirmative allegation that

at the time the proceeding is commenced the plaintiff is the owner and the holder of the mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the mortgage and the note. In addition, plaintiffs in foreclosure actions involving subprime loans will be required to make an affirmative allegation of compliance with Banking Law § 6-m and RPAPL § 1304. This section of the bill further provides that a violation Banking Law § 6-m or RPAPL §1304 will be a defense to a subprime foreclosure action.

Section 18 of the bill amends General Obligations Law § 5-501(3)(b) to make a technical amendment related to Banking Law § 6-1 and 6-m.

Section 19 of the bill adds a new Article 187 to the Penal Law to define the crime of residential mortgage fraud.

Section 20 of the bill amends Criminal Procedure Law § 700.5(8)(b) to add residential mortgage fraud in the first, second, third and fourth degrees as predicate crimes in the crimes of enterprise corruption.

Section 21 of the bill amends Penal Law § 460.10(1)(a) to add violations of the mortgage fraud statute to the predicate crimes of money laundering.

Sections 22 through 25 of the bill amend various sections of the Banking Law that allow the Superintendent to refuse a license or registration to a person for having committed certain named felonies to add residential mortgage fraud to the named felonies.

Section 26 of the bill adds a new Real Property Law § 265-b to prevent certain foreclosure rescue scams by prohibiting "distressed property consultants" from performing services without a written and fully executed consulting contract with the homeowner; and from charging or accepting payment for consulting services before completion of services. In addition, the new Real Property Law § 265-b requires these consultants to provide the homeowner with an opportunity to review a contract before signing it, and requires that the contract be in the language that was used in discussions between the consultant and the homeowner, and contain a notice of the homeowner's right to cancel the contract.

Section 27 of the bill contains a severability clause.

Section 28 of the bill provides for the effective date of various provisions of the bill.

EXISTING LAW:

RPAPL §§ 1303 and 1320 require that a notice be sent to the borrower when legal action is commenced. There is no present requirement that borrowers receive any notice prior to the commencement of a foreclosure action, nor any requirement for an early settlement conference in such actions.

If a litigant wishes to be considered for "poor person" status, the litigant must make a motion under CPLR § 1101. If the court determines that the litigant is a poor person, then the court will waive certain procedural requirements for the borrower, and may, in its discretion, appoint counsel under CPLR § 1102(a).

While New York does have an Antipredatory Lending Law, Banking Law § 6-1, very few subprime home loans actually receive protections under this law.

At present, an ability to pay standard has not been established in the

state for subprime home loans that are not protected under Banking Law § 6-1. This standard, however, is part of strong underwriting criteria considered by many lenders.

Mortgage brokers do not at present have a duty of care towards borrowers. In addition, the State does not register or regulate any mortgage loan servicers. Furthermore, there is no defined crime of "residential mortgage fraud" and prosecutors must typically rely on the larceny and scheme to defraud statutes to prosecute such cases. Lastly, while the state recently enacted the Home Equity Theft Prevention Act, that law did not cover distressed property consultants that often prey on homeowners at risk of foreclosure.

STATEMENT IN SUPPORT:

New York State faces a mortgage crisis of immense magnitude. Many families have lost their homes and entire neighborhoods have been devastated. In 2007, there were more than 52,000 foreclosure filings in the state - an increase of 10% from 2006 and 55% from 2005. These statistics, especially in light of inaction by the federal government, make clear the need for state action on this issue.

This bill attempts to address the mortgage foreclosure crisis in two ways. First, this bill provides assistance to homeowners currently at risk of losing their homes by providing additional protections and foreclosure prevention opportunities for such homeowners. Second, this bill establishes further protections in the law to mitigate the possibility of similar crises in the future.

1. Elements of legislation targeted to help homeowners currently at risk of foreclosure

A. Pre-Foreclosure Notice

According to industry experts, a majority of distressed homeowners do not attempt to contact their lender prior to the commencement of foreclosure proceedings. While there are a myriad of reasons for this, it is undisputed that this lack of communication often leads to needless foreclosure proceedings in cases where a foreclosure alternative might otherwise have been possible. This legislation seeks to bridge that communication gap in order to facilitate a resolution that avoids foreclosure.

In particular, this bill would require lenders and mortgage loan servicers to provide a pre-foreclosure notice to borrowers with subprime loans at least 90 days before a legal action may be commenced against the borrower. The notice would advise the borrower of HUD-approved and DHCR designated housing counseling services available in the borrower's area. The additional period of time in many cases would allow borrowers to work on a resolution without fear of imminent loss of their homes. This proposal recognizes that avoiding foreclosure is a better outcome than a quick foreclosure. However, if the borrower is unable to reach resolution with the lender in the prescribed time, the lender will have the opportunity to pursue legal action against the borrower.

B. Early Settlement Conference

While reaching resolution during the pre-foreclosure time period is indeed preferred, that will not always occur. As a result, this bill provides that if an action is commenced, the homeowner will receive a second opportunity to reach resolution with the lender early in the foreclosure process, without delaying the continuation of the action. In particular, this bill would require a court in a residential foreclosure action to schedule a mandatory settlement conference within 60 days of when the plaintiff files a proof of service of the complaint with the county clerk. The plaintiff, or its representative with authority to settle the matter, must appear at that conference. The court may allow an appearance by phone or video conference for the plaintiff's representative. If the homeowner appears and does not have an attorney, he or

she will be deemed to have made a motion to proceed as a "poor person" under CPLR § 1101 and the court may, in its discretion, waive certain procedural requirements and even appoint counsel to the homeowner under CPLR § 1102(a). Under the bill, the mandatory settlement conference would also be available for certain homeowners who are already in foreclosure when this act takes effect.

C. Affirmative Allegation of Ownership

Because of the practice of bundling and selling mortgages as investment products, often it is difficult to determine who owns the mortgage and note. In addition, mortgage loan servicers frequently change over time. To maintain the integrity of New York's standing requirements, it is critically important to ensure that those who initiate a foreclosure action actually have standing to do so. Therefore, this bill would require the plaintiff in a foreclosure action to make an affirmative allegation that it is the holder of the note and mortgage, or has been given the authority to commence the action by the holder of the note and mortgage. In addition, this bill would also require a plaintiff in a subprime foreclosure action to make an affirmative allegation of compliance with the new Banking Law § 6-m, as well as the new RPAPL § 1304.

D. Rescue Scams

Distressed homeowners are not only at risk of losing their homes, but of also being scammed by those who operate fraudulent rescue scams.

Indeed, as homeowners become more desperate to keep their homes, they also become more prone to being swindled. This bill enacts tough measures to help prevent distressed homeowners from falling prey to rescue scams.

In particular, this provision of the bill would target foreclosure rescue scams operated by "consultants" who seek to take advantage of homeowners in default. These consultants take upfront payments from consumers in exchange for false promises that they will negotiate with the lender on the borrower's behalf or take other action that will prevent foreclosure. In fact, they often perform no such services or do anything more than, for example, advise the lender to file for bankruptcy.

This bill would prohibit a "distressed property consultant" from performing services without a written and fully executed consulting contract, and prohibit the consultant from charging for or accepting payment for consulting services before completing all services. The bill would further require that a consultant provide the homeowner with an opportunity to review the contract before signing it, that the contract be in the language that was used in discussions between the consultant and the homeowner, and that the contract contain a notice of the homeowner's right to cancel the contract. Establishing these standards will help ensure that legitimate consultants remain in business, while protecting homeowners from those fraudsters who might have otherwise been successful in preying on them.

II. Elements of the bill targeted to prevent similar future crises

A. New Banking Law §6-m

The scope of the current New York State Anti-predatory lending law is extremely narrow. Indeed, only a handful of loans fall within its protections each year. With property values soaring in the recent past and predatory lending practices ever-evolving, the current Anti-predatory Lending Law does not provide adequate protections for homeowners. This bill would add a new Banking Law § 6-m to establish standards and limitations for lenders and brokers making "subprime home loans." Banking Law § 6-m defines the term "subprime home loan" as a home loan in which the fully indexed annual percentage rate exceeds by more than 1.75 percentage points for a first lien loan, or by more than 3.75 percentage points for a subordinate lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration

of such home loan, as published by the Federal Home Loan Mortgage Corporation ("Freddie Mac") in its weekly Primary Mortgage Market Survey ("PMMS"). This definition of subprime home loan would target the protections to specific loans, while not intruding into the prime market.

This bill applies certain standards and prohibitions to "subprime home loans" including: (a) no prepayment penalties, (b) no abusive yield spread premiums; (c) no option adjustable rate mortgages where one or more options causes the principal balance to increase; (d) no loan flipping; and (e) no negative amortization. The bill would also require the escrow of taxes and insurance and the timely disclosure taxes and insurance payments

This section of the bill would also establish an "ability to pay" standard for making and arranging all subprime home loans. Under the bill, lenders would have to make a reasonable and good faith determination of the borrower's ability to repay the loan, including the principal, interest, taxes, insurance, assessments, points and fees, based upon the borrower's income, employment status and other financial resources. The borrower's ability to pay would be verified based on tax returns, payroll receipts or other third-party income verification. The Attorney General and the Superintendent would be permitted to enforce the provisions of this statute and homeowners would be permitted to raise a violation of Banking Law § 6-m as a defense to foreclosure.

B. Standards for Mortgage Brokers

One of the major causes for the current mortgage crisis is that borrowers were placed into loans they could not afford. While many lenders adhered to strong underwriting standards, other lenders did not. Unscrupulous lenders and brokers sometimes placed borrowers into loans that were more costly than loans the borrowers would have otherwise qualified for.

This bill would also establish a general duty of care for mortgage brokers with regard to all home loans. For example, this bill would require brokers to: (1) act in the borrower's interest; (2) act with reasonable care, skill and diligence; (3) act with good faith and fair dealing; (4) not accept, give, or charge any undisclosed compensation; (5) disclose all material facts known to the broker that might reasonably affect the borrower's rights, and interests; and (6) diligently work to present a range of loan products for which the borrower likely qualifies and which are appropriate for the borrower's circumstances. The ability to pay standard along with the mortgage broker duty of care would help prevent borrowers from being steered into home loans they cannot afford.

C. Registration of Servicers

Mortgage loan servicers perform administrative functions for the owner of the mortgage and the note, such as collecting checks and crediting payment. Even though mortgage loan servicers perform a central function in the mortgage industry, they are not at present regulated by the state. This bill would require mortgage loan servicers to be registered with the Superintendent in order to engage in the business of mortgage loan servicing. The bill would further require mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board.

D. Mortgage Fraud

There currently is no separate Penal Law provision expressly prohibiting residential mortgage fraud, and thus prosecutors must bring such cases under different theories, such as scheme to defraud and larceny. This bill therefore seeks to simplify such prosecutions by explicitly defining and criminalizing the act of residential mortgage fraud.

In particular, the bill would define residential mortgage fraud as conduct in which a person, knowingly and with intent to defraud, among

other things, presents, or causes to be presented a written statement that the person knows contains materially false information, or conceals, for the purpose of misleading, facts that are material. Under the bill, the magnitude of the fraud may be aggregated and stiffer penalties may be sought by prosecutors. In addition, while under the scheme to defraud theory the most a person may be charged with is a Class E felony, this bill would allow a person guilty of residential mortgage fraud in excess of \$1 million to be charged with a Class B felony. However, the bill provides that a person does not commit mortgage fraud when he or she is acting to obtain a residential mortgage loan and intends to occupy residential property, although criminal liability is not precluded for a person acting as an accessory to an individual or entity committing a crime under Penal Law Article 187.

BUDGET IMPLICATIONS:

This bill would not have a significant impact on state finances.

EFFECTIVE DATE:

This bill would take effect immediately, unless otherwise provided under section 28 of the bill.
