

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

S. _____
Senate

s20 Adams	s03 Foley	s24 Lanza	s12 Onorato	s09 Skelos
s15 Addabbo	s08 Fuschillo	s39 Larkin	s37 Oppenheimer	s14 Smith
s55 Alesi	s22 Golden	s01 LaValle	s11 Padavan	s25 Squadron
s48 Aubertine	s47 Griffo	s40 Leibell	s21 Parker	s58 Stachowski
s42 Bonacic	s06 Hannon	s52 Libous	s30 Perkins	s16 Stavisky
s46 Breslin	s36 Hassell-	s45 Little	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	Thompson	s05 Marcellino	s56 Robach	Cousins
s32 Diaz	s10 Huntley	s62 Maziarz	s41 Saland	s60 Thompson
s17 Dilan	s07 Johnson, C.	s43 McDonald	s19 Sampson	s49 Valesky
s29 Duane	s04 Johnson, O.	s13 Monserrate	s23 Savino	s59 Volker
s33 Espada	s34 Klein	s18 Montgomery	s31 Schneiderman	s53 Winner
s44 Farley	s26 Krueger	s38 Morahan	s28 Serrano	s57 Young
s02 Flanagan	s27 Kruger	s54 Nozzolio	s51 Seward	

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

REALPALA

(Relates to home mortgage loans, the
crime of mortgage fraud, and appro-
priations to the NYS housing trust
fund corporation)

RPAP L. mortgage loans

AN ACT

to amend the real property actions
and proceedings law, the uniform
commercial code, the civil practice
law and rules, the banking law and
chapter 472 of the laws of 2008
amending the real property actions
and proceedings law and other laws
relating to foreclosure actions on
home mortgage loans, in relation to
home mortgage loans; to amend the
penal law, in relation to the crime
of mortgage fraud; and to amend the

a049 Abbate	a010 Conte	a148 Hayes	a017 McKeivitt	a067 Rosenthal
a001 Alessi	a032 Cook	a083 Heastie	a022 Meng	a118 Russell
a021 Alfano	a142 Corwin	a028 Hevesi	a102 Miller, J.	a012 Saladino
a105 Amedore	a085 Crespo	a048 Hikind	a038 Miller, M.	a113 Sayward
a084 Arroyo	a107 Crouch	a018 Hooper	a052 Millman	a029 Scarborough
a035 Aubry	a063 Cusick	a144 Hoyt	a103 Molinaro	a016 Schimel
a136 Bacalles	a045 Cymbrowitz	a060 Hyer-Spencer	a132 Morelle	a140 Schiminger
a099 Ball	a138 DelMonte	a042 Jacobs	a037 Nolan	a145 Schroeder
a124 Barclay	a034 DenDekker	a095 Jaffee	a128 Oaks	a122 Scozzafava
a014 Barra	a116 Destito	a057 Jeffries	a069 O'Donnell	a064 Silver
a040 Barron	a081 Dinowitz	a131 John	a137 O'Mara	a100 Skartados
a082 Benedetto	a114 Duprey	a112 Jordan	a051 Ortiz	a093 Spano
a079 Benjamin	a003 Eddington	a074 Kavanagh	a150 Farment	a121 Stirpe
a073 Bing	a004 Englebright	a065 Kellner	a088 Paulin	a011 Sweeney
a055 Boyland	a130 Errigo	a129 Kolb	a141 Peoples-	a110 Tediaco
a008 Boyle	a072 Espaillet	a135 Koon	Stokes	a002 Thiele
a089 Bradley	a071 Farrell	a025 Lancman	a039 Peralta	a061 Titone
a044 Brennan	a005 Fields	a091 Latimer	a058 Perry	a031 Titus
a092 Brodsky	a123 Finch	a013 Lavine	a023 Pheffer	a052 Tobacco
a046 Brook-Krasny	a007 Fitzpatrick	a050 Lentol	a068 Powell	a054 Towns
a147 Burling	a143 Gabryszak	a125 Lifton	a087 Pretlow	a115 Townsend
a117 Butler	a090 Galef	a127 Lopez, P.	a146 Quinn	a015 Walker
a101 Cahill	a133 Gantt	a053 Lopez, V.	a097 Rabbitt	a041 Weinstein
a096 Calhoun	a036 Gianaris	a126 Lupardo	a009 Raia	a020 Weisenberg
a043 Camara	a077 Gibson	a111 Magee	a006 Ramos	a024 Weprin
a106 Canestrari	a149 Giglio	a120 Magnarelli	a134 Reilich	a070 Wright
a026 Carrozza	a066 Glick	a059 Maisel	a109 Reilly	a094 Zebrowski
a086 Castro	a108 Gordon	a030 Markey	a078 Rivera, J.	
a119 Christensen	a075 Gottfried	a027 Meyersohn	a080 Rivera, N.	
a033 Clark	a098 Gunther	a019 McDonough	a076 Rivera, P.	
a047 Colton	a139 Hawley	a104 McEneny	a056 Robinson	

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill). Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

real property law, in relation to distressed property consultants; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. Section 1303 of the real property actions and proceedings
2 law, as amended by chapter 472 of the laws of 2008, is amended to read
3 as follows:

4 § 1303. Foreclosures; required notices. 1. The foreclosing party in a
5 mortgage foreclosure action, [which involves] involving residential real
6 property [consisting of owner-occupied one-to-four-family dwellings]
7 shall provide notice to [the mortgagor]:

8 (a) any mortgagor if the action relates to an owner-occupied one-to-
9 four family dwelling; and

10 (b) any tenant of a dwelling unit in accordance with the provisions of
11 this section [with regard to information and assistance about the fore-
12 closure process].

13 2. The notice to any mortgagor required by paragraph (a) of subdivi-
14 sion one of this section shall be delivered with the summons and
15 complaint [to commence a foreclosure action]. [The] Such notice
16 [required by this section] shall be in bold, fourteen-point type and
17 shall be printed on colored paper that is other than the color of the
18 summons and complaint, and the title of the notice shall be in bold,
19 twenty-point type. The notice shall be on its own page.

20 3. The notice to any mortgagor required by paragraph (a) of subdivi-
21 sion one of this section shall appear as follows:

22 Help for Homeowners in Foreclosure

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

25 Summons and Complaint

26 You are in danger of losing your home. If you fail to respond to the
27 summons and complaint in this foreclosure action, you may lose your
28 home. Please read the summons and complaint carefully. You should imme-

1 diately contact an attorney or your local legal aid office to obtain
2 advice on how to protect yourself.

3 Sources of Information and Assistance

4 The State encourages you to become informed about your options in
5 foreclosure. In addition to seeking assistance from an attorney or legal
6 aid office, there are government agencies and non-profit organizations
7 that you may contact for information about possible options, including
8 trying to work with your lender during this process.

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

13 Foreclosure rescue scams

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

23 4. The notice to any tenant required by paragraph (b) of subdivision
24 one of this section shall be delivered within ten days of the service of
25 the summons and complaint. Such notice shall be in bold, fourteen-point
26 type and shall be printed on colored paper that is other than the color
27 of the summons and complaint, and the title of the notice shall be in
28 bold, twenty-point type. The notice shall be on its own page. For build-

1 ings with fewer than five dwelling units, the notice shall be delivered
2 to the tenant, by certified mail, return receipt requested, and by
3 first-class mail to the tenant's address at the property if the identity
4 of the tenant is known to the plaintiff, and by first-class mail deliv-
5 ered to "occupant" if the identity of the tenant is not known to the
6 plaintiff. For buildings with five or more dwelling units, a legible
7 copy of the notice shall be posted on the outside of each entrance and
8 exit of the building.

9 5. The notice required by paragraph (b) of subdivision one of this
10 section shall appear as follows:

11 Notice to Tenants of Buildings in Foreclosure

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

14 The dwelling where your apartment is located is the subject of a fore-
15 closure proceeding. If you have a lease, are not the owner of the resi-
16 dence, and the lease requires payment of rent that at the time it was
17 entered into was not substantially less than the fair market rent for
18 the property, you may be entitled to remain in occupancy for the remain-
19 der of your lease term. If you do not have a lease, you will be entitled
20 to remain in your home until ninety days after any person or entity who
21 acquires title to the property provides you with a notice as required by
22 section 1305 of the Real Property Actions and Proceedings Law. The
23 notice shall provide information regarding the name and address of the
24 new owner and your rights to remain in your home. These rights are in
25 addition to any others you may have if you are a subsidized tenant under
26 federal, state or local law or if you are a tenant subject to rent
27 control, rent stabilization or a federal statutory scheme.

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

4 6. The banking department shall prescribe the telephone number and web
5 address to be included in [the] either notice.

6 [5] 7. The banking department shall post on its website or otherwise
7 make readily available the name and contact information of government
8 agencies or non-profit organizations that may be contacted by mortgagors
9 for information about the foreclosure process, including maintaining a
10 toll-free helpline to disseminate the information required by this
11 section.

12 § 1-a. Subdivisions 1, 2 and 5 of section 1304 of the real property
13 actions and proceedings law, as added by chapter 472 of the laws of
14 2008, are amended to read as follows:

15 1. Notwithstanding any other provision of law, with regard to a [high-
16 cost] home loan[, as such term is defined in section six-1 of the bank-
17 ing law, a subprime home loan or a non-traditional home loan], at least
18 ninety days before a lender, an assignee or a mortgage loan servicer
19 commences legal action against the borrower, including mortgage foreclo-
20 sure, [the] such lender, assignee or mortgage loan servicer shall give
21 notice to the borrower in at least fourteen-point type which shall
22 include the following:

23 "YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING

24 NOTICE CAREFULLY"

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

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

12 While we cannot assure that a mutually agreeable resolution is possi-
13 ble, we encourage you to take immediate steps to try to achieve a resol-
14 ution. The longer you wait, the fewer options you may have.

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

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

21 2. Such notice shall be sent by [the] such lender, assignee or mort-
22 gage loan servicer to the borrower, by registered or certified mail and
23 also by first-class mail to the last known address of the borrower, and
24 if different, to the residence [which] that is the subject of the mort-
25 gage. Such notice shall be sent by the lender, assignee or mortgage
26 loan servicer in a separate envelope from any other mailing or notice.

27 Notice is considered given as of the date it is mailed. The notice shall
28 contain a list of at least five [United States department of housing and

1 urban development approved housing counseling agencies, or other] hous-
2 ing counseling agencies as designated by the division of housing and
3 community renewal, that serve the region where the borrower resides. The
4 list shall include the counseling agencies' last known addresses and
5 telephone numbers. The banking department [and/or] and the division of
6 housing and community renewal shall make available on their respective
7 websites a listing, by region, of such agencies [which the]. The
8 lender, assignee or mortgage loan servicer [may] shall use either of
9 these lists to meet the requirements of this section.

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

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

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

21 (ii)] The borrower is a natural person;

22 [(iii)] (ii) The debt is incurred by the borrower primarily for
23 personal, family, or household purposes;

24 [(iv)] (iii) The loan is secured by a mortgage or deed of trust on
25 real estate [upon which there is located or there is to be located a
26 structure or structures intended principally for occupancy of from one
27 to four families which is or will be occupied by the borrower as the
28 borrower's principal dwelling] improved by a one to four family dwell-

1 ing, or a condominium unit, in either case, used or occupied, or
2 intended to be used or occupied wholly or partly, as the home or resi-
3 dence of one or more persons and which is or will be occupied by the
4 borrower as the borrower's principal dwelling; and

5 [(v)] (iv) The property is located in this state.

6 [(c) "Subprime home loan" for the purposes of this section, means a
7 home loan consummated between January first, two thousand three and
8 September first, two thousand eight in which the terms of the loan
9 exceed the threshold as defined in paragraph (d) of this subdivision. A
10 subprime home loan excludes a transaction to finance the initial
11 construction of a dwelling, a temporary or "bridge" loan with a term of
12 twelve months or less, such as a loan to purchase a new dwelling where
13 the borrower plans to sell a current dwelling within twelve months, or a
14 home equity line of credit.

15 (d) "Threshold" means, for a first lien mortgage loan, the annual
16 percentage rate of the home loan at consummation of the transaction
17 exceeds three percentage points over the yield on treasury securities
18 having comparable periods of maturity to the loan maturity measured as
19 of the fifteenth day of the month in which the loan was consummated; or
20 for a subordinate mortgage lien, the annual percentage rate of the home
21 loan at consummation of the transaction equals or exceeds five percent-
22 age points over the yield on treasury securities having comparable peri-
23 ods of maturity on the fifteenth day of the month in which the loan was
24 consummated; as determined by the following rules: if the terms of the
25 home loan offer any initial or introductory period, and the annual
26 percentage rate is less than that which will apply after the end of such
27 initial or introductory period, then the annual percentage rate that

1 shall be taken into account for purposes of this section shall be the
2 rate which applies after the initial or introductory period.

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

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

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

18 § 2. Section 9-611 of the uniform commercial code is amended by adding
19 a new subsection (f) to read as follows:

20 (f) Additional pre-disposition notice for cooperative interests.

21 (1) In addition to such other notification as may be required pursuant
22 to subsection (b) of this section and section 9-613 of this article, a
23 secured party whose collateral consists of a residential cooperative
24 interest used by the debtor and whose security interest in such collat-
25 eral secures an obligation incurred in connection with financing or
26 refinancing of the acquisition of such cooperative interest and who
27 proposes to dispose of such collateral after a default with respect to
28 such obligation, shall send to the debtor, not less than ninety days

1 prior to the date of the disposition of the cooperative interest, an
2 additional pre-disposition notice as provided herein.

3 (2) The notice required by this subsection shall be in bold, four-
4 teen-point type and shall be printed on colored paper that is other than
5 the color of the notice required by subsection (b) of this section, and
6 the title of the notice shall be in bold, twenty-point type. The notice
7 shall be on its own page.

8 (3) The notice required by this subsection shall appear as follows:

9 Help for Homeowners at Risk of Foreclosure

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

12 Notice

13 You are in danger of losing your home. You are in default of your
14 obligations under the loan secured by your rights to your cooperative
15 apartment. It is important that you take action, if you wish to avoid
16 losing your home.

17 Sources of Information and Assistance

18 The State encourages you to become informed about your options, by
19 seeking assistance from an attorney, a legal aid office, or a government
20 agency or non-profit organization that provides counseling with respect
21 to home foreclosures.

22 To locate a housing counselor near you, you may call the toll-free
23 helpline maintained by the New York State Banking Department at
24 _____ (enter number) or visit the Department's website
25 at _____ (enter web address).

26 One of these persons or organizations may be able to help you, including
27 trying to work with your lender to modify the loan to make it more
28 affordable.

1 Foreclosure rescue scams

2 Be careful of people who approach you with offers to "save" your home.

3 There are individuals who watch for notices of foreclosure actions or
4 collateral sales in order to unfairly profit from a homeowner's
5 distress. You should be extremely careful about any such promises and
6 any suggestions that you pay them a fee or sign any papers that transfer
7 rights of any kind to your cooperative apartment. State law requires
8 anyone offering such services for profit to enter into a contract which
9 fully describes the services they will perform and fees they will
10 charge, and which prohibits them from taking any money from you until
11 they have completed all such promised services.

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

14 (5) The banking department shall post on its website or otherwise make
15 readily available the name and contact information of government agen-
16 cies or non-profit organizations that may be contacted for information
17 about the foreclosure process, including maintaining a toll-free help-
18 line to disseminate the information required by this subsection.

19 § 3. The opening paragraph of subsection (a) of section 9-620 of the
20 uniform commercial code, as added by chapter 84 of the laws of 2001, is
21 amended and a new subsection (h) is added to read as follows:

22 Except as otherwise provided in [subsection] subsections (g) and (h),
23 a secured party may accept collateral in full or partial satisfaction of
24 the obligation it secures only if:

25 (h) Special provisions for cooperative interests. A secured party
26 whose collateral consists of a residential cooperative interest used by
27 the debtor and whose security interest in such collateral secures an
28 obligation incurred in connection with financing or refinancing of the

1 acquisition of such cooperative interest and who chooses to accept that
2 cooperative interest in full satisfaction of the debtor's obligation may
3 do so.

4 (1) If the secured party sends a proposal to take the cooperative
5 interest in full satisfaction of the debtor's obligation, the proposal
6 shall be accompanied by a notice in the form and manner prescribed in
7 subsection (f) of section 9-611 of this subpart, unless the secured
8 party has previously sent the debtor such notice. A debtor consents to
9 an acceptance of a cooperative interest in full satisfaction of the
10 obligation it secures only if the debtor agrees to the terms of the
11 proposal in a record authenticated after default.

12 (2) A debtor may propose to the secured party that it take the cooper-
13 ative interest in full satisfaction of the obligation it secures. The
14 proposal shall be ineffective unless the secured party consents to the
15 proposal in an authenticated record.

16 § 4. The real property actions and proceedings law is amended by
17 adding a new section 1305 to read as follows:

18 § 1305. Notice to tenants. 1. Definitions. For the purposes of this
19 section, the following definitions shall apply:

20 (a) "Residential real property" shall mean real property located in
21 this state improved by any building or structure that is or may be used,
22 in whole or in part, as the home or residence of one or more persons,
23 and shall include any building or structure used for both residential
24 and commercial purposes.

25 (b) "Successor in interest" shall mean any person or entity who or
26 which acquires title in a residential real property as a result of a
27 judgment of foreclosure and sale, or other disposition during the
28 pendency of the foreclosure proceeding, or at any time thereafter but

1 prior to the expiration of the time period as provided for in subdivi-
2 sion two of this section.

3 (c) "Tenant" shall mean any person who at the time the notice required
4 by subdivision four of section thirteen hundred three of this article
5 appears as a lessee on a lease of one or more dwelling units of a resi-
6 dential real property that is subordinate to the mortgage on such resi-
7 dential real property; or who at such time is a party to an oral or
8 implied rental agreement with the mortgagor and obligated to pay rent to
9 the mortgagor or such mortgagor's representative, for the use or occu-
10 pancy of one or more dwelling units of a residential real property.

11 2. Notwithstanding any other provision of law, a tenant of a unit not
12 subject to rent control or rent stabilization shall have the right to
13 remain in occupancy of the unit of the subject residential real property
14 where he or she resides on the date of mailing of the notice required by
15 subdivision three of this section for the greater of: (a) a period of
16 ninety days from the date of the mailing of such notice; or (b) for the
17 remainder of the lease term; provided that if a successor in interest
18 who acquires title to such residential real property intends to occupy a
19 single unit as his or her primary residence and the unit is not subject
20 to a federal or state statutory system of subsidy or other federal or
21 state statutory scheme, the successor may limit for one unit only, the
22 tenant's right of occupancy to ninety days. For a lease to qualify
23 under this subdivision, the tenant under such lease may not be the owner
24 of the residential real property, and such lease must require the
25 payment of rent for such unit that is not substantially less than the
26 fair market rent for the unit, unless the unit is subject to federal or
27 state statutory system of subsidy or other federal or state statutory
28 scheme. A tenant under paragraph (a) or (b) of this subdivision shall

1 continue such tenancy under the same terms and conditions as were in
2 effect at the time of entry of the judgment of foreclosure and sale, or
3 if no such judgment was entered, upon the terms and conditions that were
4 in effect at the time of the transfer of ownership of such property. For
5 purposes of this section, "fair market rent" shall mean rent for a unit
6 of residential real property of similar size, location and condition.

7 3. Notwithstanding any other provision of law, and consistent with
8 subdivision two of this section, a successor in interest of residential
9 real property shall provide written notice to all tenants: (a) that they
10 are entitled to remain in occupancy of such property for the remainder
11 of the lease term, or a period of ninety days from the date of mailing
12 of such notice, whichever is greater, on the same terms and conditions
13 as were in effect at the time of entry of the judgment of foreclosure
14 and sale, or if no such judgment was entered, upon the terms and condi-
15 tions as were in effect at the time of transfer of ownership of such
16 property; and (b) of the name and address of the new owner. Any person
17 or entity who or which becomes a successor in interest after the issu-
18 ance of the ninety-day notice provided for in this subdivision, shall
19 notify all tenants of its name and address and shall assume such inter-
20 est subject to the right of the tenant to maintain possession as
21 provided in this subdivision.

22 4. Acceptance of rental payments by any successor in interest on terms
23 provided in subdivision three of this section shall not affect the right
24 of the successor in interest to evict such tenant, as provided by law,
25 upon the expiration of the time period as provided in subdivision two of
26 this section or earlier if the tenant does not pay rent pursuant to any
27 lease or oral or implied rental agreement in effect at the time of issu-
28 ance of the judgment of foreclosure, or if no such judgment was issued,

1 upon the terms and conditions as were in effect at the time of transfer
2 of ownership of such property.

3 5. The rights conferred upon a tenant by subdivision two of this
4 section shall be in addition to any other rights of such tenant, under
5 law, including those rights conferred upon: (a) any tenant not named in
6 the foreclosure action; or (b) any tenant whose tenancy is subsidized by
7 the federal government, this state or any political subdivision of this
8 state; or (c) any tenant whose tenancy is subject to rent control, rent
9 stabilization, or federal statutory schemes.

10 § 5. The real property actions and proceedings law is amended by
11 adding a new section 1306 to read as follows:

12 § 1306. Filing with superintendent. 1. Each lender, assignee or
13 mortgage loan servicer shall file with the superintendent of banks
14 (superintendent) within three business days of the mailing of the notice
15 required by subdivision one of section thirteen hundred four of this
16 article or subsection (f) of section 9-611 of the uniform commercial
17 code the information required by subdivision two of this section.
18 Notwithstanding any other provision of the laws of this state, this
19 filing shall be made electronically as provided for in subdivision three
20 of this section. Any complaint served in a proceeding initiated pursu-
21 ant to this article shall contain, as a condition precedent to such
22 proceeding, an affirmative allegation that at the time the proceeding is
23 commenced, the plaintiff has complied with the provisions of this
24 section.

25 2. Each filing delivered to the superintendent shall be on such form
26 as the superintendent shall prescribe, and shall include at a minimum,
27 the name, address, last known telephone number of the borrower, and the
28 amount claimed as due and owing on the mortgage, and such other informa-

1 tion as will enable the superintendent to ascertain the type of loan at
2 issue. The superintendent may subsequently request such readily avail-
3 able information as may be reasonably necessary to facilitate a review
4 of whether the borrower might benefit from counseling or other foreclo-
5 sure prevention services.

6 3. Within one hundred eighty days of the effective date of this subdi-
7 vision, or such later time as the superintendent may determine, the
8 superintendent shall develop with the assistance of the commissioner of
9 the division of housing and community renewal, an electronic database
10 that shall be capable of receiving all filings required by this section.

11 4. The information provided to the superintendent pursuant to this
12 subdivision shall not be subject to article six of the public officers
13 law or paragraphs (a), (c) and (d) of subdivision one or subdivision six
14 of section ninety-four of the public officers law. All such information
15 shall be used by the superintendent exclusively for the purposes of
16 monitoring on a statewide basis the extent of foreclosure filings within
17 this state, to perform an analysis of loan types which were the subject
18 of a pre-foreclosure notice and directing as appropriate available
19 public and private foreclosure prevention and counseling services to
20 borrowers at risk of foreclosure. The superintendent may share informa-
21 tion contained in the database with housing counseling agencies desig-
22 nated by the division of housing and community renewal as well as with
23 other state agencies with jurisdiction over housing, for the purpose of
24 coordinating or securing help for borrowers at risk of foreclosure.

25 5. The superintendent is hereby authorized to promulgate such rules
26 and regulations as shall be necessary to implement the purposes of this
27 section.

1 § 6. The real property actions and proceedings law is amended by
2 adding a new section 1307 to read as follows:

3 § 1307. Duty to maintain foreclosed property. 1. A plaintiff in a
4 mortgage foreclosure action who obtains a judgment of foreclosure and
5 sale pursuant to section thirteen hundred fifty-one of this article,
6 involving residential real property, as defined in section thirteen
7 hundred five of this article, that is vacant, or becomes vacant after
8 the issuance of such judgment, or is abandoned by the mortgagor but
9 occupied by a tenant, as defined under section thirteen hundred five of
10 this article, shall maintain such property until such time as ownership
11 has been transferred through the closing of title in foreclosure, or
12 other disposition, and the deed for such property has been duly
13 recorded; provided, however, that if a municipality or governmental
14 entity holds a mortgage subordinate to one or more mortgages on the
15 residential real property, the municipality or governmental entity shall
16 not be subject to the requirements of this section.

17 2. Such plaintiff shall have the right to peaceably enter upon such
18 property, or to cause others to peaceably enter upon the property for
19 the limited purpose of inspections, repairs and maintenance as required
20 by this section, or as otherwise ordered by court; provided, however,
21 that if the property is occupied by a tenant, at least seven days notice
22 must be given to such tenant, unless emergency repairs are required in
23 which case reasonable notice shall be provided to the tenant.

24 3. The municipality in which such residential real property is
25 located, any tenant lawfully in possession, and a board of managers of a
26 condominium in which the premises are located or a homeowners associ-
27 ation if said premises are subject to the rules and regulations of such
28 an association, shall have the right to enforce the obligations

1 described in this section in any court of competent jurisdiction after
2 at least seven days notice to the plaintiff in the foreclosure action
3 unless emergency repairs are required. Any entity acting pursuant to
4 this subdivision shall have a cause of action in any court of competent
5 jurisdiction against the plaintiff in the foreclosure action to recover
6 costs incurred as a result of maintaining the property. The authority
7 provided by this subdivision shall be in addition to, and shall not be
8 deemed to diminish or reduce, any rights of the parties described in
9 this section under existing law against the mortgagor of such property
10 for failure to maintain such property.

11 4. In the event the mortgagor of the property commences a proceeding
12 in bankruptcy court prior to the completion of the public auction
13 ordered in the judgment of sale, the duties created by this section
14 shall be suspended during the pendency of the bankruptcy proceeding or
15 until such time as an order has been entered in that proceeding lifting
16 or removing the automatic stay of the foreclosure sale.

17 5. For the purposes of this section "maintain" shall mean keeping the
18 subject property in a manner that is consistent with the standards set
19 forth in the New York property maintenance code chapter 3 sections 301,
20 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10,
21 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1; provided, however,
22 that if the property is occupied by a tenant, then such property must
23 also be maintained in a safe and habitable condition.

24 6. A plaintiff shall be relieved of its responsibilities to maintain
25 the residential real property that is the subject of a foreclosure
26 action for the period that a receiver of such property is serving.

27 7. Nothing contained in this section shall diminish in any way the
28 obligations pursuant to any state or local law of the mortgagor of the

1 property or a receiver of rents and profits appointed in an action to
2 foreclose a mortgage to maintain the property prior to the closing of
3 title pursuant to a foreclosure sale.

4 8. This section shall not preempt, reduce or limit any rights or obli-
5 gations imposed by any local laws with respect to property maintenance
6 and the locality's ability to enforce those laws.

7 § 7. Section 221 of the real property actions and proceedings law, as
8 added by chapter 312 of the laws of 1962, is amended to read as follows:

9 § 221. Compelling delivery of possession of real property. Where a
10 judgment affecting the title to, or the possession, enjoyment or use of,
11 real property allots to any person a distinct parcel of real property,
12 or contains a direction for the sale of real property, or confirms such
13 an allotment or sale, it also may direct the delivery of the possession
14 of the property to the person entitled thereto, subject to the rights
15 and obligations set forth in section thirteen hundred five of this chap-
16 ter.

17 If a party, or his representative or successor, who is bound by the
18 judgment, withholds possession from the person thus declared to be enti-
19 tled thereto, the court, by order, in its discretion, besides punishing
20 the disobedience as a contempt, may require the sheriff to put that
21 person into possession. Such an order shall be executed as if it were
22 an execution for the delivery of the possession of the property.

23 § 8. Subdivision 5 of section 713 of the real property actions and
24 proceedings law, as amended by chapter 642 of the laws of 1976, is
25 amended to read as follows:

26 5. [The] Subject to the rights and obligations set forth in section
27 thirteen hundred five of this chapter, the property has been sold in
28 foreclosure and either the deed delivered pursuant to such sale, or a

1 copy of such deed, certified as provided in the civil practice law and
2 rules, has been exhibited to him.

3 § 9. Subdivision (a) of rule 3408 of the civil practice law and rules,
4 as added by chapter 472 of the laws of 2008, is amended and five new
5 subdivisions (d), (e), (f), (g) and (h) are added to read as follows:

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

24 (d) Upon the filing of a request for judicial intervention in any
25 action pursuant to this section, the court shall send either a copy of
26 such request or the defendant's name, address and telephone number (if
27 available) to a housing counseling agency or agencies on a list desig-
28 nated by the division of housing and community renewal for the judicial

1 district in which the defendant resides. Such information shall be used
2 by the designated housing counseling agency or agencies exclusively for
3 the purpose of making the homeowner aware of housing counseling and
4 foreclosure prevention services and options available to them.

5 (e) The court shall promptly send a notice to parties advising them of
6 the time and place of the settlement conference, the purpose of the
7 conference and the requirements of this section. The notice shall be in
8 a form prescribed by the office of court administration, or, at the
9 discretion of the office of court administration, the administrative
10 judge of the judicial district in which the action is pending, and shall
11 advise the parties of the documents that they should bring to the
12 conference. For the plaintiff, such documents should include, but are
13 not limited to, the payment history, an itemization of the amounts need-
14 ed to cure and pay off the loan, and the mortgage and note. If the
15 plaintiff is not the owner of the mortgage and note, the plaintiff shall
16 provide the name, address and telephone number of the legal owner of the
17 mortgage and note. For the defendant, such documents should include,
18 but are not limited to, proof of current income such as the two most
19 recent pay stubs, most recent tax return and most recent property tax
20 statements.

21 (f) Both the plaintiff and defendant shall negotiate in good faith to
22 reach a mutually agreeable resolution, including a loan modification, if
23 possible.

24 (g) The plaintiff must file a notice of discontinuance and vacatur of
25 the lis pendens within one hundred fifty days after any settlement
26 agreement or loan modification is fully executed.

27 (h) A party to a foreclosure action may not charge, impose, or other-
28 wise require payment from the other party for any cost, including but

1 not limited to attorneys' fees, for appearance at or participation in
2 the settlement conference.

3 § 10. Section 3-a of chapter 472 of the laws of 2008, amending the
4 real property actions and proceedings law and other laws relating to
5 foreclosure actions on home mortgage loans, is amended to read as
6 follows:

7 § 3-a. For any foreclosure action on a [residential mortgage] home
8 loan as defined by section 1304 of the real property actions and
9 proceedings law, in which the action was initiated prior to September 1,
10 2008 but where the final order of judgment has not [yet] been issued,
11 the court shall request each plaintiff to identify whether the loan in
12 foreclosure is a subprime home loan as defined in section 1304 of the
13 real property actions and proceedings law as in effect on the effective
14 date of this section or is a high-cost home loan as defined in section
15 6-1 of the banking law.

16 If the loan is a subprime home loan as that term is used in the
17 preceding paragraph or high-cost home loan, the court shall notify [the
18 defendant] any defendant who is the borrower under the loan that if he
19 or she is a resident of such property, he or she may request a settle-
20 ment conference.

21 For any foreclosure action on a home loan that is not a subprime home
22 loan or a high-cost home loan (as those terms are used in the preceding
23 paragraphs), in which the foreclosure action was initiated prior to the
24 date that such foreclosure action became subject to the provisions of
25 rule 3408 of the civil practice law and rules but where the final order
26 of judgment has not been issued, the court shall notify the defendant
27 who is a borrower under the home loan that if he or she is a resident of
28 such property, he or she may request a settlement conference.

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

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

18 § 10-a. 1. The chief administrator of the courts shall, within 90 days
19 of the enactment of this chapter, promulgate such additional rules as
20 may be necessary to ensure the just and expeditious processing of all
21 settlement conferences authorized hereunder. Such court rules shall
22 ensure, among other things, that each judge, judicial hearing officer or
23 referee who is overseeing a settlement conference as authorized herein,
24 shall have the necessary authority and power to fulfill the mandates of
25 this act. This shall include, but not be limited to, ensuring that each
26 party fulfils its legal obligation to negotiate in good faith and seeing
27 that conferences not be unduly delayed or subject to willful dilatory
28 tactics so that the rights of both parties may be adjudicated in a time-

1 ly manner. Such rules may include granting additional authority to sanc-
2 tion the egregious behavior of a counsel or party.

3 2. The chief administrator of the courts shall submit a report no
4 later than the first of November of each year to the governor, temporary
5 president of the senate, the speaker of the assembly, the chair of the
6 senate judiciary committee, the chair of the senate banks committee, the
7 chair of the senate housing committee, the chair of the assembly judi-
8 cary committee, the chair of the assembly banks committee and the chair
9 of the assembly housing committee on the adequacy and effectiveness of
10 the settlement conferences authorized hereunder which shall include, but
11 not be limited to the number of adjournments, defaults, discontinuances,
12 dismissals, conferences held, and the number of defendants appearing
13 with and without counsel.

14 § 11. Subdivision 1 of section 6-f of the banking law, as amended by
15 chapter 1 of the laws of 1983, is amended to read as follows:

16 1. Notwithstanding any inconsistent provision of this chapter or any
17 other law of this state, the banking board is authorized to adopt such
18 rules or regulations as shall permit banks, trust companies, foreign
19 banking corporations licensed to maintain a branch or agency in this
20 state, savings banks, savings and loan associations, credit unions and
21 persons and entities engaging in the business described in section five
22 hundred ninety of [article twelve-d of] this chapter to make residential
23 mortgage loans and cooperative apartment unit loans which provide for
24 (a) periodic readjustments of the rate of interest charged for the loan
25 or successive terms of the loan or (b) terms of loan which are shorter
26 than the term of the mortgage or (c) repayment of the principal amount
27 of the loan by regular payments which are not equal in amount throughout
28 the term of the mortgage or (d) the lender thereof to receive a share in

1 the future appreciation of the property serving as security for the loan
2 under the circumstances set forth in the following sentence or (e) any
3 combination of paragraphs (a), (b) [and], (c) [above] and (d) of this
4 subdivision, subject to the provisions of subdivision two of this
5 section. Where the lender or holder of a residential mortgage loan or
6 cooperative apartment unit loan enters into a written agreement with the
7 borrower under which the lender or holder conditionally reduces an
8 amount of principal of such loan in order to assist a borrower at risk
9 of foreclosure to avoid such foreclosure, the lender or holder may enter
10 into a written agreement (a "shared appreciation agreement") with the
11 borrower under which the lender shall be entitled to share in the appre-
12 ciation of the market value of the real property or cooperative shares
13 and proprietary lease securing such loan between the effective date of
14 such reduction in principal amount until the date when the property is
15 sold, provided that the amount the lender is entitled to receive under
16 such shared appreciation agreement shall be the lesser of (i) the amount
17 of such reduction in principal, plus interest on such amount from the
18 date of such reduction to the date of payment at the same rate of inter-
19 est as applies to the remaining principal amount of the residential
20 mortgage loan, and (ii) fifty percent of the amount of such appreci-
21 ation. Such amounts shall be payable when the mortgagor sells the resi-
22 dential real property or cooperative shares and proprietary lease that
23 secure the loan. Such shared appreciation agreement shall expressly and
24 conspicuously bear a legend at the top of the agreement in at least
25 fourteen-point type which shall include the following: "In this agree-
26 ment, you are giving away some of any future increase in value of your
27 home. Please read carefully." For purposes of this subdivision, the
28 appreciation of the property shall be measured as the difference, if

1 positive, between the gross sales proceeds (net of any reasonable real
2 estate commission) of the sale of the property and the value of the
3 property at the time of the closing of the shared appreciation mortgage,
4 as determined by an appraisal by an independent New York state licensed
5 real estate appraiser. Recovery of such reduction in the principal
6 amount shall not be deemed to be interest for any purpose of the laws of
7 this state.

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

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

25 (2) a statement advising the borrower to seek independent counseling
26 from a lawyer, a HUD-certified mortgage counselor or a tax advisor
27 regarding (A) the trade-off between a current reduction in the size of
28 the mortgage, versus the promise to give up part of the future appreci-

1 ation of the home, and (B) the tax consequences of the principal
2 forgiveness and shared appreciation agreement, and providing a list of
3 the names and contact information of five HUD-certified mortgage counse-
4 lors in the county where the mortgaged property is located or, if there
5 are fewer than five such counselors in that county, the list may include
6 counselors in one or more neighboring counties;

7 (3) a statement on the potential effect of the shared appreciation
8 agreement on any future refinancing of the mortgage and the potential
9 effect of any prepayment or refinancing of the mortgage on the appreci-
10 ation sharing agreement; and

11 (4) such other disclosures as the banking board may require.

12 § 12. Paragraph (e) of subdivision 1 of section 6-1 of the banking
13 law, as added by chapter 626 of the laws of 2002 and subparagraph (i) as
14 amended by chapter 552 of the laws of 2007, is amended to read as
15 follows:

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

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

24 (ii) The borrower is a natural person;

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

27 (iv) The loan is secured by a mortgage or deed of trust on real estate
28 [upon which there is located or there is to be located a structure or

1 structures intended principally for occupancy of from one to four fami-
2 lies which is or will be occupied by the borrower as the borrower's
3 principal dwelling] improved by a one to four family dwelling, or by a
4 condominium unit, or by any certificate of stock or other evidence of
5 ownership in, and a proprietary lease from, a corporation, partnership
6 or other entity formed for the purpose of cooperative ownership of real
7 estate, in either case used or occupied or intended to be used or occu-
8 pied, wholly or partly, as the home or residence of one or more persons
9 and which is or will be occupied by the borrower as the borrower's prin-
10 cipal dwelling; and

11 (v) The property is located in this state.

12 § 13. Paragraphs (r) and (s) of subdivision 2 of section 6-1 of the
13 banking law, as added by chapter 472 of the laws of 2008, are amended to
14 read as follows:

15 (r) No prepayment penalties. [No] Notwithstanding paragraph b of
16 subdivision three of section 5-501 of the general obligations law, no
17 prepayment penalties or fees shall be charged or collected on a high-
18 cost home loan. A prepayment penalty in a high-cost home loan shall be
19 unenforceable.

20 (s) No abusive yield spread premiums. In arranging a high-cost home
21 loan, the mortgage broker shall, [at the time of application] within
22 three days after receipt of an application, disclose the exact amount
23 and methodology of total compensation that the broker will receive. Such
24 amount may be paid as direct compensation from the lender, direct
25 compensation from the borrower, or a combination of the two if permitted
26 by applicable law. The provisions of this paragraph shall not restrict
27 the ability of a borrower to utilize a yield spread premium in order to
28 offset any up front costs by accepting a higher interest rate if permit-

1 ted by applicable law. If the borrower chooses this option, any compen-
2 sation from the lender [which] that exceeds the [exact] amount of total
3 compensation owed to the broker must be credited to the borrower. The
4 superintendent shall prescribe the form that such disclosure shall take.
5 This provision shall not restrict a broker from accepting a lesser
6 amount of compensation.

7 § 14. Paragraphs (b), (c) and (d) of subdivision 1, paragraphs (j),
8 (l) and (n) of subdivision 2 and paragraph (c) of subdivision 4 of
9 section 6-m of the banking law, as added by chapter 472 of the laws of
10 2008, are amended to read as follows:

11 (b) "Fully indexed rate" means: (i) for an adjustable rate loan based
12 on an index, the [index rate that would have applied at the time of the
13 closing had the initial interest rate been determined by the application
14 of the same interest rate formula, (for example, an interest rate index
15 plus or minus a margin) that applies under the terms of the loan docu-
16 ments to subsequent interest rate adjustments, disregarding any limita-
17 tions on the amount by which the interest rate may change at any one
18 time] annual percentage rate calculated using the index rate on the loan
19 on the date the lender provides the "good faith estimate" required under
20 12 USC §2601 et seq. plus the margin to be added to it after the expi-
21 ration of any introductory period or periods; or (ii) for a fixed rate
22 loan, the annual percentage rate on the loan disregarding any introduc-
23 tory rate or rates and any interest rate caps that limit how quickly the
24 contractual interest rate may be reached calculated at the time the
25 lender issues its commitment.

26 (c) [A] "Subprime home loan" means a home loan in which [the fully
27 indexed annual percentage rate] the initial interest rate or the fully-
28 indexed rate, whichever is higher, exceeds by more than one and three-

1 quarters percentage points for a first-lien loan, or by more than three
2 and three-quarters percentage points for a subordinate-lien loan, the
3 average commitment rate for loans in the northeast region with a compa-
4 rable duration to the duration of such home loan, as published by the
5 Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its
6 weekly Primary Mortgage Market Survey (PMMS) [as] posted in the week
7 prior to the week [when] in which the lender [receives a completed
8 application. A] provides the "good faith estimate" required under 12 USC
9 §2601 et seq. The term "subprime home loan" excludes a transaction to
10 finance the initial construction of a dwelling, i.e., a construction
11 only loan, a temporary or "bridge" loan with a term of twelve months or
12 less, such as a loan to purchase a new dwelling where the borrower plans
13 to sell a current dwelling within twelve months, or a home equity line
14 of credit but shall include any loan, however structured, that thereaft-
15 er is converted into a permanent loan.

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

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

13 (d) "Home loan" means a [home] loan, including an open-end credit
14 plan, other than a reverse mortgage transaction or a loan made or fully
15 or partially guaranteed by the state of New York mortgage agency, in
16 which:

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

21 (ii) The borrower is a natural person;

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

24 (iv) The loan is secured by a mortgage or deed of trust on real estate
25 [upon which there is located or there is to be located a structure or
26 structures intended principally for occupancy of from one to four fami-
27 lies which is or will be occupied by the borrower as the borrower's
28 principal dwelling] improved by a one to four family dwelling, or by a

1 condominium unit, or by any certificate of stock or other evidence of
2 ownership in, and a proprietary lease from, a corporation, partnership
3 or other entity formed for the purpose of cooperative ownership of real
4 estate, in either case, used or occupied or intended to be used or occu-
5 pied, wholly or partly, as the home or residence of one or more persons
6 and which is or will be occupied by the borrower as the borrower's prin-
7 cipal dwelling; and

8 (v) The property is located in this state.

9 (j) No lending without [counseling disclosure and list of counselors]
10 providing information on the availability of counseling. A lender or
11 mortgage broker must deliver, place in the mail, fax or electronically
12 transmit the following notice in at least twelve point type to the
13 borrower of a subprime home loan at the time of application: "You
14 should consider financial counseling prior to executing loan documents.
15 The enclosed list of counselors is provided by the New York State Bank-
16 ing Department." In the event of a telephone application, the disclo-
17 sures must be made immediately after receipt of the application by tele-
18 phone. Such disclosure shall be on a separate form. In order to utilize
19 an electronic transmission, the lender or broker must first obtain
20 either written or electronically transmitted permission from the borrow-
21 er. A list of approved counselors, available from the New York state
22 banking department, shall be provided to the borrower by the lender or
23 the mortgage broker at the time that this disclosure is given.

24 (l) Prohibited payments to mortgage bankers and brokers. In making or
25 arranging a subprime home loan, no lender, mortgage banker or mortgage
26 broker shall accept or give any fee, kickback, thing of value, portion,
27 split or percentage of charges, other than as payment for goods or
28 facilities that were actually furnished or services that were actually

1 performed. Such payment must be reasonably related to the value of the
2 goods or facilities that were actually furnished or services that were
3 actually performed.

4 (n) No abusive yield spread premiums. In arranging a subprime home
5 loan, the mortgage broker shall, [at the time of application] within
6 three days after receipt of an application, disclose the exact amount
7 and methodology for determining the total compensation that the broker
8 will receive. Such amount may be paid as direct compensation from the
9 lender, direct compensation from the borrower, or a combination of the
10 two if permitted by applicable law. The provisions of this paragraph
11 shall not restrict the ability of a borrower to utilize a yield spread
12 premium in order to offset any upfront costs by accepting a higher
13 interest rate if permitted by applicable law. If the borrower chooses
14 this option, any compensation from the lender [which] that exceeds the
15 exact amount of total compensation owed to the broker must be credited
16 to the borrower. The superintendent shall prescribe the form that such
17 disclosure shall take. This paragraph shall not restrict a broker from
18 accepting a lesser amount of compensation.

19 (c) In determining a borrower's ability to repay a subprime home loan
20 according to its terms when the loan has an adjustable rate feature, the
21 lender or mortgage broker shall calculate the monthly payment amount for
22 principal and interest by assuming (i) the loan proceeds are fully
23 disbursed on the date of the loan closing, (ii) the loan is to be repaid
24 in substantially equal monthly amortizing payments of principal and
25 interest over the entire term of the loan, with no balloon payment, and
26 (iii) the interest rate over the entire term of the loan is a fixed rate
27 equal to the higher of the initial interest rate or the fully indexed

1 rate at the time of the loan closing, without considering any initial
2 discounted rate.

3 § 15. Subdivisions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of
4 section 6-m of the banking law, as added by chapter 472 of the laws of
5 2008, are amended to read as follows:

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

9 4. [No arrangement of certain subprime loans] Ability to repay. No
10 lender or mortgage broker shall make or arrange a subprime home loan
11 unless the lender or mortgage broker reasonably and in good faith
12 believes at the time [the loan is consummated] of the loan closing that
13 one or more of the borrowers, when considered individually or collec-
14 tively, has the ability to repay the loan according to its terms and to
15 pay applicable real estate taxes and hazard insurance premiums. If a
16 lender or mortgage broker making or arranging a subprime home loan knows
17 that one or more home loans secured by the same real property will be
18 made contemporaneously to the same borrower with the subprime home loan
19 being made or arranged by that lender or mortgage broker, the lender or
20 mortgage broker making or arranging the subprime home loan must document
21 the borrower's ability to repay the combined payments of all loans on
22 the same real property.

23 (a) A lender or mortgage broker's analysis of a borrower's ability to
24 repay a subprime home loan according to the loan terms and to pay
25 related real estate taxes and insurance premiums shall be based on a
26 consideration of the borrower's credit history, current and expected
27 income, current obligations, employment status, and other financial

1 resources other than the borrower's equity in the real property that
2 secures repayment of the subprime home loan.

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

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

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

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

26 6. Evasion of statutory requirements. The provisions of this section
27 shall apply to any person who [in bad faith] attempts to avoid the
28 application of this section by any subterfuge, including but not limited

1 to, splitting or dividing any loan transaction into separate parts for
2 the purpose of evading the provisions of this section.

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

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

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

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

18 11. Equitable relief. A borrower may be granted injunctive, declarato-
19 ry and such other equitable relief as the court deems appropriate in an
20 action to enforce compliance with this section.

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

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

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

9 § 16. Paragraph (a) of subdivision 1 of section 590 of the banking
10 law, as added by chapter 571 of the laws of 1986, is amended to read as
11 follows:

12 (a) "Mortgage loan" shall mean a loan to a natural person made prima-
13 rily for personal, family or household use, [primarily] secured by
14 either a mortgage or deed of trust on residential real property [or
15 certificates], any certificate of stock or other evidence of ownership
16 [interests] in, and proprietary [leases] lease from, [corporations or
17 partnerships] a corporation or partnership formed for the purpose of
18 cooperative ownership of residential real property or, if determined by
19 the banking board by regulation, shall include such a loan secured by a
20 security interest on a manufactured home;

21 § 17. Paragraphs (c) and (d) of subdivision 3 of section 590 of the
22 banking law are relettered paragraphs (d) and (e) and a new paragraph
23 (c) is added to read as follows:

24 (c) Such rules and regulations under this article regarding the origi-
25 nation, sale or servicing of manufactured home loans as may be necessary
26 and appropriate for the protection of consumers;

1 § 18. Paragraphs (b) and (b-1) of subdivision 2 of section 590 of the
2 banking law, paragraph (b) as amended and paragraph (b-1) as added by
3 chapter 472 of the laws of 2008, are amended to read as follows:

4 (b) No person, partnership, association, corporation or other entity
5 shall engage in the business of soliciting, processing, placing or nego-
6 tiating a mortgage loan or offering to solicit, process, place or nego-
7 tiate a mortgage loan in this state without first being registered with
8 the superintendent as a mortgage broker in accordance with the registra-
9 tion procedure provided in this article and by such regulations as may
10 be promulgated by the banking board or prescribed by the superintendent.
11 The registration provisions of this subdivision shall not apply to any
12 exempt organization [or], mortgage banker or mortgage loan servicer. No
13 real estate broker or salesman, as defined in section four hundred forty
14 of the real property law, shall be deemed to be engaged in the business
15 of a mortgage broker if he does not accept a fee, directly or indirect-
16 ly, for services rendered in connection with the solicitation, process-
17 ing, placement or negotiation of a mortgage loan. No attorney-at-law who
18 solicits, processes, places or negotiates a mortgage loan incidental to
19 his legal practice shall be deemed to be engaged in the business of a
20 mortgage broker. The registration provisions of this subdivision shall
21 not apply to any person or entity which shall be exempted in accordance
22 with regulations promulgated by the banking board hereunder.

23 (b-1) No person, partnership, association, corporation or other entity
24 shall engage in the business of servicing mortgage loans with respect to
25 any property located in this state without first being registered with
26 the superintendent as a mortgage loan servicer in accordance with the
27 registration procedure provided by such regulations as may be prescribed
28 by the superintendent. The superintendent may refuse to register a mort-

1 gage loan servicer on the same grounds that he or she may refuse to
2 issue a registration certificate to a mortgage broker pursuant to subdi-
3 vision two of section five hundred ninety-two-a of this article. The
4 registration provisions of this subdivision shall not apply to any
5 exempt organization, mortgage banker, or mortgage broker or any person
6 or entity which shall be exempted in accordance with regulations
7 prescribed by the superintendent hereunder; provided that such exempt
8 organization, mortgage banker, mortgage broker, or exempted person noti-
9 fies the superintendent that it is acting as a mortgage loan servicer in
10 this state and complies with any regulation applicable to mortgage loan
11 servicers, promulgated by the banking board or prescribed by the super-
12 intendent with respect to mortgage loan servicers. The superintendent
13 may require all registrations and notifications to be made through the
14 Nationwide Mortgage Licensing System and Registry. An application to
15 become a registered mortgage loan servicer or any application with
16 respect to a mortgage loan servicer shall be accompanied by a fee as
17 prescribed pursuant to section eighteen-a of this chapter. Any fee
18 established pursuant to this subdivision may be collected by and include
19 a processing fee charged by the Nationwide Mortgage Licensing System and
20 Registry. Any such processing fees shall not be remitted to the super-
21 intendent and shall not be deemed revenue pursuant to this chapter or
22 the state finance law.

23 § 19. Section 595-a of the banking law is amended by adding a new
24 subdivision 5 to read as follows:

25 5. No licensee or registrant engaging in any activities constituting
26 the business of a distressed property consultant, as described in
27 section two hundred sixty-five-b of the real property law, shall charge

1 for or accept payment for real property consulting services as defined
2 in such section before the full completion of such services.

3 § 20. Section 187.00 of the penal law, as added by chapter 472 of the
4 laws of 2008, is amended to read as follows:

5 § 187.00 Definitions.

6 As used in this article:

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

12 2. "Residential mortgage loan" means a loan or agreement to extend
13 credit, including the renewal [or], refinancing or modification of any
14 such loan, made to a person, which loan is primarily secured by either a
15 mortgage, deed of trust, or other lien upon any interest in residential
16 real property or any certificate of stock or other evidence of ownership
17 in, and a proprietary lease from, a corporation or partnership formed
18 for the purpose of cooperative ownership of residential real property.

19 3. "Residential real property" means real property improved by a
20 one-to-four family dwelling, or a residential unit in a building includ-
21 ing units owned as condominiums or on a cooperative basis, used or occu-
22 pied, or intended to be used or occupied, wholly or partly, as the home
23 or residence of one or more persons, but shall not refer to unimproved
24 real property upon which such dwellings are to be constructed.

25 4. "Residential mortgage fraud" is committed by [any] a person who,
26 knowingly and with intent to defraud, presents, causes to be presented,
27 or prepares with knowledge or belief that it will be used in soliciting
28 an applicant for [a residential mortgage loan], [or in] applying for,

1 [the] underwriting [of,] or closing [of] a residential mortgage loan, or
2 [in documents filed] filing with a county clerk of any county in the
3 state arising out of and related to the closing of a residential mort-
4 gage loan, any written statement which [he or she knows to]:

5 (a) [contain] contains materially false information concerning any
6 fact material thereto; or

7 (b) [conceal] conceals, for the purpose of misleading, information
8 concerning any fact material thereto.

9 § 21. The penal law is amended by adding a new section 187.01 to read
10 as follows:

11 § 187.01 Limitation on prosecution.

12 No individual who applies for a residential mortgage loan and intends
13 to occupy such residential property which such mortgage secures shall be
14 held liable under this article provided, however, any such individual
15 who acts as an accessory to an individual or entity in committing any
16 crime defined in this article may be charged as an accessory to such
17 crime.

18 § 22. Subparagraphs (i) and (vii) of paragraph (e) of subdivision 1
19 and paragraph (b) of subdivision 2 of section 265-b of the real property
20 law, as added by chapter 472 of the laws of 2008, are amended to read as
21 follows:

22 (i) an attorney admitted to practice in the state of New York when the
23 attorney is directly providing consulting services to a homeowner in the
24 course of his or her regular legal practice;

25 (vii) a person licensed as a mortgage banker or registered as a mort-
26 gage broker or registered as a mortgage loan servicer as defined in
27 article twelve-D of the banking law, provided that no such person shall

1 take any upfront fee in conjunction with activities constituting the
2 business of a distressed property consultant;

3 (b) charging for or accepting any payment for consulting services
4 before the full completion of all such services, including a payment to
5 be placed in escrow pending the completion of such services;

6 § 23. Nothing in this act shall be construed as restricting any rights
7 or causes of action the parties to a mortgage, lease or other agreement
8 concerning real property may otherwise have under New York law.

9 § 24. Severability clause. If any clause, sentence, paragraph, section
10 or part of this act shall be adjudged by any court of competent juris-
11 diction to be invalid, such judgment shall not affect, impair or invali-
12 date the remainder thereof, but shall be confined in its operation to
13 the clause, sentence, paragraph, section or part thereof directly
14 involved in the controversy in which such judgment shall have been
15 rendered.

16 § 25. This act shall take effect immediately; provided, however, that:

17 a. Sections one, one-a, two and three of this act shall take effect on
18 the thirtieth day after this act shall have become a law and shall apply
19 to notices required on or after such date; provided, however, that
20 section one-a of this act shall expire and be deemed repealed 5 years
21 after such effective date;

22 b. Sections four, seven and eight of this act shall take effect on the
23 thirtieth day after this act shall have become a law and shall apply to
24 actions where a judgment of foreclosure and sale is issued on or after
25 such date;

26 c. Section five of this act shall take effect on the sixtieth day
27 after this act shall have become a law and shall apply to notices

1 required by section 1304 of the real property actions and proceedings
2 law mailed on or after such date;

3 d. Section six of this act shall take effect on the one hundred twen-
4 tieth day after it shall have become a law;

5 e. Section nine of this act shall take effect on the sixtieth day
6 after this act shall have become a law and shall apply to legal actions
7 filed on or after such date; provided, however that the amendments to
8 subdivision (a) of rule 3408 of the civil practice law and rules made by
9 such section shall expire and be deemed repealed 5 years after such
10 effective date;

11 f. Section fourteen of this act shall take effect on the sixtieth day
12 after this act shall have become a law; and

13 g. Section sixteen of this act shall take effect on the sixtieth day
14 after this act shall have become a law.