

8972--C

2007-2008 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. TOWNS, WEINSTEIN, PHEFFER, V. LOPEZ,
ESPAILLAT,
BENJAMIN, PERALTA, LANCMAN, JEFFRIES, PERRY, CHRISTENSEN,
CLARK,
T. GORDON, HOYT, SPANO, ORTIZ, CAMARA, SCARBOROUGH, NOLAN,
ALFANO,
TITUS, LENTOL, COLTON -- Multi-Sponsored by -- M. of A. JOHN
-- read
once and referred to the Committee on Banks -- reported and
referred
to the Committee on Codes -- committee discharged, bill
amended,
ordered reprinted as amended and recommitted to said
committee --
recommitted to the Committee on Banks in accordance with
Assembly Rule
3, sec. 2 -- committee discharged, bill amended, ordered
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the Committee on Codes -- recommitted to the Committee on
Codes in
accordance with Assembly Rule 3, sec. 2 -- committee
discharged, bill
amended, ordered reprinted as amended and recommitted to said
commit-
tee

AN ACT to amend the banking law and the real property
actions and
proceedings law, in relation to enacting the "New York state
responsi-
ble lending act of 2008"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND
ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the
"New York
2 state responsible lending act of 2008".
3 S 2. The banking law is amended by adding a new section 6-m to
read as

4 follows:
5 S 6-M. SUBPRIME AND NONTRADITIONAL HOME LOANS. 1.
DEFINITIONS. THE
6 FOLLOWING DEFINITIONS APPLY FOR THE PURPOSES OF THIS SECTION:
7 (A) "HOME LOAN" MEANS A RESIDENTIAL HOME MORTGAGE LOAN,
INCLUDING AN
8 OPEN-END CREDIT PLAN, OTHER THAN A REVERSE MORTGAGE
TRANSACTION, IN
9 WHICH:
10 (I) THE BORROWER IS A NATURAL PERSON;
11 (II) THE DEBT IS INCURRED BY THE BORROWER PRIMARILY FOR
PERSONAL,
12 FAMILY, OR HOUSEHOLD PURPOSES;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in
brackets
{ } is old law to be omitted.

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1 (III) THE LOAN IS SECURED BY A MORTGAGE OR DEED OF TRUST
ON REAL
2 ESTATE UPON WHICH THERE IS LOCATED OR THERE IS TO BE LOCATED A
STRUCTURE
3 OR STRUCTURES INTENDED PRINCIPALLY FOR OCCUPANCY OF FROM ONE
TO FOUR
4 FAMILIES WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE
BORROWER`S
5 PRINCIPAL DWELLING; AND
6 (IV) THE PROPERTY IS LOCATED IN THIS STATE.
7 (B) "NONTRADITIONAL HOME LOAN" HAS THE SAME MEANING AS
"NONTRADITIONAL
8 MORTGAGE" AS SUCH TERM IS DESCRIBED IN THE "INTERAGENCY
GUIDANCE ON
9 NONTRADITIONAL MORTGAGE PRODUCT RISKS" ISSUED SEPTEMBER 29,
2006 AND
10 PUBLISHED IN 71 FEDERAL REGISTER, 58609 ON OCTOBER 4, 2006, AS
UPDATED.
11 (C) "LENDER" HAS THE SAME MEANING AS SET FORTH IN 24 CODE OF
FEDERAL
12 REGULATIONS, SECTION 3500.2 AND ALSO INCLUDES A MORTGAGE BROKER.
13 (D) "MORTGAGE BROKER" HAS THE SAME MEANING AS SET FORTH IN 24
CODE OF
14 FEDERAL REGULATIONS, SECTION 3500.2.
15 (E) "SUBPRIME HOME LOAN" MEANS A HOME LOAN THAT:
16 (I) FOR A FIRST LIEN LOAN, HAS AN ANNUAL PERCENTAGE RATE OF
THREE OR
17 MORE PERCENTAGE POINTS ABOVE THE YIELD ON TREASURY SECURITIES OF
COMPA-
18 RABLE MATURITY MEASURED AS OF THE FIFTEENTH DAY OF THE MONTH
IMMEDIATELY
19 PRECEDING THE MONTH IN WHICH THE APPLICATION FOR THE LOAN IS
RECEIVED BY
20 THE LENDER; AND

21 (II) FOR A SUBORDINATE LIEN LOAN, HAS AN ANNUAL PERCENTAGE
RATE OF

22 FIVE OR MORE PERCENTAGE POINTS ABOVE THE YIELD ON TREASURY
SECURITIES OF

23 COMPARABLE MATURITY MEASURED AS OF THE FIFTEENTH DAY OF THE
MONTH IMMEDIATELY

24 PRECEDING THE MONTH IN WHICH THE APPLICATION FOR THE
LOAN IS

25 RECEIVED BY THE LENDER.

26 (F) "ANNUAL PERCENTAGE RATE" MEANS THE ANNUAL PERCENTAGE RATE
FOR THE

27 LOAN CALCULATED ACCORDING TO THE PROVISIONS OF THE FEDERAL
TRUTH IN

28 LENDING ACT (15 U.S.C. SEC. 1601, ET SEQ.), AND THE REGULATIONS
PROMULGATED

29 THEREUNDER BY THE FEDERAL RESERVE BOARD, AS AMENDED.

30 (G) "FULLY INDEXED RATE" MEANS THE INTEREST RATE THAT
WOULD HAVE

31 APPLIED AT THE TIME OF THE CLOSING HAD THE INITIAL INTEREST
RATE BEEN

32 DETERMINED BY THE APPLICATION OF THE SAME INTEREST RATE
FORMULA (FOR

33 EXAMPLE, AN INTEREST RATE INDEX PLUS OR MINUS A MARGIN) THAT
APPLIES

34 UNDER THE TERMS OF THE LOAN DOCUMENTS TO SUBSEQUENT
INTEREST RATE

35 ADJUSTMENTS, DISREGARDING ANY LIMITATIONS ON THE AMOUNT BY
WHICH THE

36 INTEREST RATE MAY CHANGE AT ANY ONE TIME.

37 (H) "YIELD SPREAD PREMIUM" IS A FEE FROM A LENDER TO A BROKER
OR LENDER

38 PAID WHEN THE BROKER ARRANGES A LOAN ON WHICH THE INTEREST
RATE IS

39 INFLATED TO AN AMOUNT HIGHER THAN THE "PAR" RATE. THE PAR RATE
IS THE

40 BASE RATE AT WHICH THE LENDER WILL MAKE A LOAN TO A BORROWER ON
A GIVEN

41 DAY.

42 2. LIMITATIONS. ALL HOME LOANS SHALL BE SUBJECT TO THE
FOLLOWING LIMITATIONS:

43 (A) REASONABLE ABILITY TO REPAY HOME LOAN. NO LENDER

44 SHALL MAKE, PROVIDE OR ARRANGE FOR A HOME LOAN WITHOUT VERIFYING THE

45 BORROWER'S REASONABLE ABILITY TO REPAY THE SCHEDULED PAYMENTS OF THE

46 FOLLOWING, AS APPLICABLE: PRINCIPAL, INTEREST, REAL ESTATE TAXES,

47 HOMEOWNER'S INSURANCE, ASSESSMENTS, AND MORTGAGE PREMIUMS.

48 (I) IN EVALUATING THE ABILITY TO REPAY FOR SUBPRIME AND
NONTRADITIONAL

49 MORTGAGES, THE ABILITY TO REPAY SHALL BE DETERMINED BASED ON
THE FULLY

50 INDEXED RATE AND A FULLY AMORTIZING REPAYMENT SCHEDULE BASED ON
THE TERM

51 SET FORTH IN THE NOTE OR A FORTY YEAR TERM WHICHEVER IS LESS.

53 (II) FOR SUBPRIME AND NONTRADITIONAL HOME LOANS, THE
BORROWER'S INCOME
54 AND FINANCIAL RESOURCES SHALL BE VERIFIED. VERIFICATION SHALL
BE BASED
55 ON THE BEST AND MOST APPROPRIATE FORM OF DOCUMENTATION AVAILABLE
INCLUD-

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1 ING PAYROLL RECEIPTS, BANK RECORDS, TAX RETURNS OR OTHER
SIMILAR RELI-
2 ABLE DOCUMENTS.
3 (III) LENDERS MAKING ANY HOME LOAN SHALL BENEFIT FROM A
REBUTTABLE
4 PRESUMPTION THAT THE LOAN WAS MADE WITH DUE REGARD TO REPAYMENT
ABILITY
5 IF THE LENDER DEMONSTRATES THAT BASED ON A FULLY AMORTIZING
REPAYMENT
6 SCHEDULE WITHIN THE LOAN TERM OR BASED ON A FORTY YEAR TERM,
WHICHEVER
7 IS LESS, AND FULLY INDEXED RATE OF THE LOAN, THE RESIDENT
BORROWER OR
8 BORROWERS' TOTAL MONTHLY DEBTS, INCLUDING AMOUNTS OWED UNDER
THE LOAN
9 AND ESCROWS FOR TAXES AND INSURANCE, DO NOT EXCEED FIFTY
PERCENT OF THE
10 RESIDENT BORROWER OR BORROWERS' VERIFIED MONTHLY GROSS INCOME,
AND THE
11 LENDER FOLLOWS THE RESIDUAL INCOME GUIDELINES ESTABLISHED IN 38
C.F.R. S
12 36.4337(E) AND VA FORM 26-6393.
13 (B) MOST FAVORABLE LOAN REQUIRED. NO LENDER SHALL MAKE,
PROVIDE OR
14 ARRANGE FOR A HOME LOAN THAT IS OF A LOWER INVESTMENT GRADE OR
HAS LESS
15 FAVORABLE RATES, POINTS, FEES AND OTHER COSTS THAN THE
BORROWER COULD
16 OBTAIN USING THE THEN CURRENT UNDERWRITING GUIDELINES OF THE
LENDER OR
17 ANY AFFILIATE THEREOF.
18 (C) INVESTMENT GRADE. FOR PURPOSES OF THIS SUBDIVISION,
"INVESTMENT
19 GRADE" REFERS TO A SYSTEM OF CATEGORIZING RESIDENTIAL MORTGAGE
LOANS IN
20 WHICH THE LOANS ARE: (I) COMMONLY REFERRED TO AS "PRIME" OR
"SUBPRIME";
21 (II) COMMONLY DESIGNATED BY AN ALPHABETICAL CHARACTER WITH "A"
BEING THE
22 HIGHEST INVESTMENT GRADE; OR (III) DISTINGUISHED BY INTEREST
RATE OR
23 DISCOUNT POINTS OR BOTH CHARGED TO THE BORROWER, WHICH VARY
ACCORDING TO
24 THE DEGREE OF PERCEIVED RISK OF DEFAULT BASED ON FACTORS SUCH
AS, BUT
25 NOT LIMITED TO, THE BORROWER'S CREDIT HISTORY, INCLUDING
CREDIT SCORE

26 AND CREDIT PATTERNS, INCOME AND EMPLOYMENT HISTORY, DEBT-
TO-INCOME
27 RATIO, LOAN-TO-VALUE RATIO, AND PRIOR BANKRUPTCY OR FORECLOSURE.
28 (D) UNLAWFUL INFLUENCE OF APPRAISERS. NO LENDER SHALL
IMPROPERLY
29 INFLUENCE OR ATTEMPT TO INFLUENCE THE DEVELOPMENT, REPORTING,
RESULT OR
30 REVIEW OF A REAL ESTATE APPRAISAL RELATING TO REAL PROPERTY
SECURING A
31 HOME LOAN.
32 3. BROKER DUTY. (A) A MORTGAGE BROKER SHALL BE CONSIDERED
TO HAVE
33 CREATED AN AGENCY RELATIONSHIP WITH THE BORROWER IN ALL CASES
AND SHALL
34 COMPLY WITH THE FOLLOWING DUTIES:
35 (I) A MORTGAGE BROKER SHALL ACT IN THE BORROWER'S BEST
INTEREST AND IN
36 THE UTMOST GOOD FAITH TOWARD BORROWERS, AND SHALL NOT
COMPROMISE A
37 BORROWER'S RIGHT OR INTEREST IN FAVOR OF ANOTHER'S RIGHT OR
INTEREST,
38 INCLUDING A RIGHT OR INTEREST OF THE MORTGAGE BROKER;
39 (II) A MORTGAGE BROKER SHALL NOT ACCEPT, GIVE, OR CHARGE
ANY UNDIS-
40 CLOSED COMPENSATION OR REALIZE ANY UNDISCLOSED REMUNERATION,
EITHER
41 THROUGH DIRECT OR INDIRECT MEANS, THAT INURES TO THE
BENEFIT OF THE
42 MORTGAGE BROKER OR AS AN EXPENDITURE MADE FOR THE BORROWER;
43 (III) A MORTGAGE BROKER SHALL CARRY OUT ALL LAWFUL
INSTRUCTIONS GIVEN
44 BY BORROWERS;
45 (IV) A MORTGAGE BROKER SHALL NOT MAKE, PROVIDE OR ARRANGE
FOR A HOME
46 LOAN THAT IS OF A LOWER INVESTMENT GRADE OR HAS LESS FAVORABLE
RATES,
47 POINTS, FEES AND OTHER COSTS THAN FOR WHICH THE BORROWER WOULD
OTHERWISE
48 QUALIFY;
49 (V) A MORTGAGE BROKER SHALL DISCLOSE TO THE BORROWER ALL
MATERIAL
50 FACTS OF WHICH THE MORTGAGE BROKER HAS KNOWLEDGE THAT MIGHT
REASONABLY
51 AFFECT THE BORROWER'S RIGHTS, INTERESTS, OR ABILITY TO
RECEIVE THE
52 BORROWER'S INTENDED BENEFIT FROM THE HOME LOAN;
53 (VI) A MORTGAGE BROKER SHALL USE REASONABLE CARE IN PERFORMING
DUTIES;
54 AND
55 (VII) A MORTGAGE BROKER SHALL ACCOUNT TO A BORROWER FOR
ALL THE
56 BORROWER'S MONEY AND PROPERTY RECEIVED AS AN AGENT.

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1 (B) NO BROKER SHALL IMPROPERLY INFLUENCE OR ATTEMPT TO
INFLUENCE THE

2 DEVELOPMENT, REPORTING, RESULT OR REVIEW OF A REAL ESTATE
APPRAISAL
3 RELATING TO REAL PROPERTY SECURING A HOME LOAN.
4 (C) THE DUTIES SET FORTH IN THIS SUBDIVISION MAY NOT BE
WAIVED OR
5 MODIFIED.
6 4. LIMITATIONS AND PROHIBITED PRACTICES ON SUBPRIME AND
NONTRADITIONAL
7 HOME LOANS. ALL SUBPRIME AND NONTRADITIONAL HOME LOANS SHALL BE
SUBJECT
8 TO LIMITATIONS AS FOLLOWS:
9 (A) NO NEGATIVE AMORTIZATION. NO SUBPRIME OR NONTRADITIONAL
HOME LOAN
10 MAY CONTAIN A PAYMENT SCHEDULE WITH REGULAR PERIODIC PAYMENTS
THAT CAUSE
11 OR MAY CAUSE THE PRINCIPAL BALANCE TO INCREASE. A LOAN IS
CONSIDERED TO
12 HAVE SUCH A SCHEDULE IF THE BORROWER IS GIVEN THE OPTION TO MAKE
REGULAR
13 PERIODIC PAYMENTS THAT CAUSE THE PRINCIPAL BALANCE TO INCREASE,
EVEN IF
14 THE BORROWER IS ALSO GIVEN THE OPTION TO MAKE REGULAR PERIODIC
PAYMENTS
15 THAT DO NOT CAUSE THE PRINCIPAL BALANCE TO INCREASE.
16 (B) NO BALLOON PAYMENTS. NO SUBPRIME LOAN OR NONTRADITIONAL
HOME LOAN
17 MAY CONTAIN A SCHEDULED PAYMENT THAT IS MORE THAN THREE TIMES
AS LARGE
18 AS THE AVERAGE OF EARLIER SCHEDULED PAYMENTS. THE PROVISIONS
OF THIS
19 PARAGRAPH SHALL NOT APPLY WHEN THE PAYMENT SCHEDULE IS ADJUSTED
TO THE
20 SEASONAL OR IRREGULAR INCOME OF THE BORROWER.
21 (C) NO INCREASED INTEREST RATE AFTER DEFAULT. NO SUBPRIME OR
NONTRADI-
22 TIONAL HOME LOAN MAY CONTAIN A PROVISION WHICH INCREASES THE
INTEREST
23 RATE AFTER DEFAULT. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT
APPLY TO
24 INTEREST RATE CHANGES IN AN ADJUSTABLE-RATE MORTGAGE OR
VARIABLE RATE
25 LOAN OTHERWISE CONSISTENT WITH THE PROVISIONS OF THE LOAN
DOCUMENTS;
26 PROVIDED THAT THE CHANGE IN THE INTEREST RATE IS NOT
TRIGGERED BY THE
27 EVENT OF DEFAULT OR THE ACCELERATION OF THE INDEBTEDNESS.
28 (D) LIMITATION ON ADVANCE PAYMENTS. NO SUBPRIME OR
NONTRADITIONAL HOME
29 LOAN MAY INCLUDE TERMS UNDER WHICH MORE THAN TWO PERIODIC
PAYMENTS
30 REQUIRED UNDER THE LOAN ARE CONSOLIDATED AND PAID IN ADVANCE
FROM THE
31 LOAN PROCEEDS PROVIDED TO THE BORROWER.
32 (E) NO MODIFICATION OR DEFERRAL FEES. A LENDER MAY NOT
CHARGE A
33 BORROWER ANY FEES TO MODIFY, RENEW, EXTEND, OR AMEND A
SUBPRIME OR

34 NONTRADITIONAL HOME LOAN OR TO DEFER ANY PAYMENT DUE UNDER THE
TERMS OF
35 A SUBPRIME OR NONTRADITIONAL HOME LOAN IF, AFTER THE
MODIFICATION,
36 RENEWAL, EXTENSION OR AMENDMENT, THE LOAN IS STILL A SUBPRIME OR
NONTRA-
37 DITIONAL HOME LOAN OR, IF NO LONGER A SUBPRIME OR
NONTRADITIONAL HOME
38 LOAN, THE ANNUAL PERCENTAGE RATE HAS NOT BEEN DECREASED BY AT
LEAST TWO
39 PERCENTAGE POINTS. FOR PURPOSES OF THIS PARAGRAPH, FEES
SHALL NOT
40 INCLUDE INTEREST THAT IS OTHERWISE PAYABLE AND CONSISTENT
WITH THE
41 PROVISIONS OF THE LOAN DOCUMENTS. THE PROVISIONS OF THIS
PARAGRAPH SHALL
42 NOT PROHIBIT A LENDER FROM CHARGING POINTS AND FEES IN
CONNECTION WITH
43 ANY ADDITIONAL PROCEEDS RECEIVED BY THE BORROWER IN CONNECTION
WITH THE
44 MODIFICATION, RENEWAL, EXTENSION OR AMENDMENT (OVER AND
ABOVE THE
45 CURRENT PRINCIPAL BALANCE OF THE EXISTING SUBPRIME OR
NONTRADITIONAL
46 HOME LOAN) PROVIDED THAT THE POINTS AND FEES CHARGED ON THE
ADDITIONAL
47 SUM SHALL REFLECT THE LENDER'S TYPICAL POINT AND FEE
STRUCTURE FOR
48 SUBPRIME OR NONTRADITIONAL HOME LOANS.
49 (F) FORUM. NO SUBPRIME OR NONTRADITIONAL HOME LOAN MAY
CONTAIN A
50 PROVISION, REGARDLESS OF WHETHER A BORROWER IS ACTING
INDIVIDUALLY OR ON
51 BEHALF OF OTHERS SIMILARLY SITUATED, THAT REQUIRES A BORROWER
TO ASSERT
52 ANY CLAIM OR DEFENSE IN A FORUM THAT DOES NOT HAVE TO ADHERE
TO THE
53 RULES OF EVIDENCE, OR APPLY THE LAW AS SET FORTH IN LAWS AND
COMMON LAW,
54 OR IS LESS CONVENIENT, MORE COSTLY OR MORE DILATORY FOR THE
RESOLUTION
55 OF A DISPUTE THAN A JUDICIAL FORUM ESTABLISHED IN THIS STATE
WHERE THE

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1 BORROWER MAY OTHERWISE PROPERLY BRING A CLAIM OR DEFENSE OR
THAT LIMITS
2 IN ANY WAY ANY CLAIM OR DEFENSE THE BORROWER MAY HAVE.
3 (G) NO FINANCING OF INSURANCE OR OTHER PRODUCTS SOLD IN
CONNECTION
4 WITH THE LOAN. (I) NO SUBPRIME OR NONTRADITIONAL HOME
LOAN SHALL
5 FINANCE, DIRECTLY OR INDIRECTLY:
6 (A) ANY CREDIT LIFE, CREDIT DISABILITY, CREDIT UNEMPLOYMENT,
OR CREDIT

7 PROPERTY INSURANCE, OR ANY OTHER LIFE OR HEALTH INSURANCE
PREMIUMS,
8 (B) ANY PAYMENTS DIRECTLY OR INDIRECTLY FOR ANY DEBT
CANCELLATION OR
9 SUSPENSION AGREEMENT OR CONTRACT, OR ANY OTHER PRODUCT, OR
10 (C) ANY PRODUCT OR SERVICE THAT IS NOT NECESSARY OR RELATED
TO THE
11 LOAN CLOSING SUCH AS AUTO CLUB MEMBERSHIPS OR CREDIT REPORT
MONITORING,
12 BUT NOT INCLUDING FEES PAID TO THE LENDER, BROKER, OR CLOSING
AGENT,
13 FEES RELATED TO THE RECORDING OF THE MORTGAGE, TITLE INSURANCE,
OR OTHER
14 SETTLEMENT FEES.
15 (II) INSURANCE PREMIUMS OR DEBT CANCELLATION OR SUSPENSION
FEES, OR
16 PRODUCT PREMIUMS CALCULATED AND PAID ON A MONTHLY BASIS SHALL
NOT BE
17 CONSIDERED FINANCED.
18 (H) NO "LOAN FLIPPING". NO LENDER OR MORTGAGE BROKER MAKING OR
ARRANG-
19 ING A SUBPRIME OR NONTRADITIONAL HOME LOAN MAY ENGAGE IN THE
UNFAIR ACT
20 OR PRACTICE OF "LOAN FLIPPING". "LOAN FLIPPING" IS MAKING A
SUBPRIME OR
21 NONTRADITIONAL HOME LOAN TO A BORROWER THAT REFINANCES AN
EXISTING HOME
22 LOAN WHEN THE NEW LOAN DOES NOT HAVE A TANGIBLE NET BENEFIT
TO THE
23 BORROWER CONSIDERING ALL OF THE CIRCUMSTANCES, INCLUDING THE
TERMS OF
24 BOTH THE NEW AND REFINANCED LOANS, THE COST OF THE NEW LOAN,
AND THE
25 BORROWER'S SITUATION.
26 (I) NO REFINANCING OF SPECIAL MORTGAGES. NO LENDER MAKING A
SUBPRIME
27 OR NONTRADITIONAL HOME LOAN MAY REFINANCE AN EXISTING HOME LOAN
THAT IS
28 A SPECIAL MORTGAGE ORIGINATED, SUBSIDIZED OR GUARANTEED BY OR
THROUGH A
29 STATE, TRIBAL OR LOCAL GOVERNMENT, OR NONPROFIT
ORGANIZATION, WHICH
30 EITHER BEARS A BELOW-MARKET INTEREST RATE AT THE TIME OF
SPECIAL MORT-
31 GAGE'S ORIGINATION, OR HAS NONSTANDARD PAYMENT TERMS BENEFICIAL
TO THE
32 BORROWER, SUCH AS PAYMENTS THAT VARY WITH INCOME, ARE
LIMITED TO A
33 PERCENTAGE OF INCOME, OR WHERE NO PAYMENTS ARE REQUIRED UNDER
SPECIFIED
34 CONDITIONS, AND WHERE, AS A RESULT OF THE REFINANCING, THE
BORROWER WILL
35 LOSE ONE OR MORE OF THE BENEFITS OF THE SPECIAL MORTGAGE,
UNLESS THE
36 LENDER IS PROVIDED PRIOR TO LOAN CLOSING DOCUMENTATION BY A
UNITED

37 STATES HOUSING AND URBAN DEVELOPMENT CERTIFIED HOUSING
COUNSELOR OR THE
38 LENDER WHO ORIGINALLY MADE THE SPECIAL MORTGAGE THAT A
BORROWER HAS
39 RECEIVED HOME LOAN COUNSELING IN WHICH THE ADVANTAGES AND
DISADVANTAGES
40 OF THE REFINANCING HAS BEEN RECEIVED.
41 (J) NO LENDING WITHOUT COUNSELING DISCLOSURE AND LIST OF
COUNSELORS.
42 WITHIN THREE DAYS OF APPLICATION, A LENDER OR MORTGAGE
BROKER SHALL
43 NOTIFY THE BORROWER OF THE AVAILABILITY OF CREDIT COUNSELING IN
A MANNER
44 AND FORM PRESCRIBED BY THE DEPARTMENT.
45 (K) MANDATORY ESCROW OF TAXES AND INSURANCE. NO SUBPRIME OR
NONTRADI-
46 TIONAL HOME LOAN SHALL BE MADE UNLESS THE LENDER REQUIRES AND
COLLECTS
47 THE MONTHLY ESCROW OF PROPERTY TAXES AND HAZARD
INSURANCE. THE
48 PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO A SUBPRIME OR
NONTRADI-
49 TIONAL HOME LOAN THAT IS A SUBORDINATE LIEN WHEN THE TAXES AND
INSURANCE
50 ARE ESCROWED THROUGH ANOTHER HOME LOAN.
51 (L) MANDATORY DISCLOSURE OF TAXES AND INSURANCE PAYMENTS.
THE FIRST
52 TIME A BORROWER IS INFORMED OF THE ANTICIPATED OR ACTUAL
PERIODIC
53 PAYMENT AMOUNT FOR A FIRST-LIEN RESIDENTIAL MORTGAGE LOAN, THE
LENDER OR
54 MORTGAGE BROKER SHALL INFORM THE BORROWER THAT AN ADDITIONAL
AMOUNT WILL
55 BE DUE FOR TAXES AND INSURANCE AND, IF KNOWN, DISCLOSE TO THE
BORROWER
56 THE AMOUNT OF THE ANTICIPATED OR ACTUAL PERIODIC PAYMENT FOR
PROPERTY

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1 TAXES AND HAZARD INSURANCE. THIS SAME DISCLOSURE SHALL BE MADE
EACH TIME
2 THE BORROWER IS INFORMED, THE LENDER OR MORTGAGE BROKER, OF A
DIFFERENT
3 ANTICIPATED OR ACTUAL PAYMENT AMOUNT CHANGE FROM THE AMOUNT
PREVIOUSLY
4 DISCLOSED.
5 (M) NO ENCOURAGEMENT OF DEFAULT. IN MAKING OR ARRANGING A
SUBPRIME OR
6 NONTRADITIONAL HOME LOAN, A LENDER OR MORTGAGE BROKER SHALL NOT
RECOM-
7 MEND OR ENCOURAGE DEFAULT ON AN EXISTING LOAN OR OTHER DEBT
PRIOR TO AND
8 IN CONNECTION WITH THE CLOSING OR PLANNED CLOSING OF A
SUBPRIME OR
9 NONTRADITIONAL HOME LOAN THAT REFINANCES ALL OR ANY PORTION
OF SUCH

10 EXISTING LOAN OR DEBT.
11 (N) NO PREPAYMENT PENALTIES. NO PREPAYMENT FEES OR PENALTIES
SHALL BE
12 CHARGED OR COLLECTED ON A SUBPRIME OR NONTRADITIONAL HOME
LOAN. A
13 PREPAYMENT PENALTY IN A SUBPRIME OR NONTRADITIONAL HOME LOAN
SHALL BE
14 UNENFORCEABLE.
15 (O) NO YIELD SPREAD PREMIUMS. NO YIELD SPREAD PREMIUMS SHALL
BE PAID
16 TO A MORTGAGE BROKER OR AN EMPLOYEE OF A LENDER ON A SUBPRIME OR
NONTRA-
17 DITIONAL HOME LOAN.
18 5. REMEDIES. (A) ANY LENDER FOUND BY A PREPONDERANCE OF THE
EVIDENCE
19 TO HAVE VIOLATED THIS SECTION SHALL BE LIABLE TO THE BORROWER
FOR THE
20 FOLLOWING:
21 (I) ACTUAL DAMAGES, INCLUDING CONSEQUENTIAL AND INCIDENTAL
DAMAGES;
22 AND
23 (II) STATUTORY DAMAGES AS FOLLOWS:
24 (A) FOR VIOLATIONS, EXCEPT VIOLATIONS OF PARAGRAPH (A) OF
SUBDIVISION
25 TWO OR PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION,
STATUTORY
26 DAMAGES IN THE AMOUNT OF FIVE THOUSAND DOLLARS PER VIOLATION,
OR TWO
27 TIMES ACTUAL DAMAGES, WHICHEVER IS GREATER;
28 (B) FOR VIOLATIONS OF PARAGRAPH (A) OF SUBDIVISION TWO OR
PARAGRAPH
29 (A) OF SUBDIVISION FOUR OF THIS SECTION, STATUTORY DAMAGES EQUAL
TO TWO
30 TIMES THE FINANCE CHARGE PAID UNDER THE LOAN AT THE LOAN
ORIGINATION AND
31 FORFEITURE OF THE REMAINING INTEREST UNDER THE LOAN.
32 (B) UPON A JUDICIAL FINDING THAT A LENDER HAS VIOLATED THIS
SECTION,
33 WHETHER SUCH VIOLATION IS RAISED AS AN AFFIRMATIVE CLAIM
OR AS A
34 DEFENSE, THE LOAN TRANSACTION MAY BE RESCINDED.
35 (C) ANY MORTGAGE BROKER FOUND BY A PREPONDERANCE OF THE
EVIDENCE TO
36 HAVE VIOLATED SUBDIVISION THREE OF THIS SECTION SHALL BE LIABLE
TO THE
37 BORROWER FOR THE FOLLOWING:
38 (I) ACTUAL DAMAGES, INCLUDING CONSEQUENTIAL AND INCIDENTAL
DAMAGES;
39 AND
40 (II) STATUTORY DAMAGES IN THE AMOUNT OF TWICE THE SUM OF
ALL FEES,
41 COMPENSATION AND OTHER COSTS PAID TO THE MORTGAGE BROKER.
42 (D) A COURT SHALL ALSO AWARD COSTS AND REASONABLE ATTORNEYS`
FEES TO A
43 PREVAILING BORROWER.
44 (E) A BORROWER MAY BE GRANTED INJUNCTIVE, DECLARATORY AND
SUCH OTHER

45 EQUITABLE RELIEF AS THE COURT DEEMS APPROPRIATE IN AN ACTION TO
ENFORCE
46 COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.
47 (F) THE REMEDIES PROVIDED IN THIS SUBDIVISION ARE NOT
INTENDED TO BE
48 THE EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER OF A HOME LOAN.
49 (G) IN ANY ACTION BY AN ASSIGNEE TO ENFORCE A LOAN AGAINST A
BORROWER
50 IN DEFAULT OR IN FORECLOSURE, A BORROWER MAY ASSERT ANY CLAIMS,
WITHOUT
51 TIME LIMITATION, THAT THE BORROWER MAY ASSERT AGAINST A LENDER.
LIABIL-
52 ITY UNDER THE PROVISIONS OF THIS PARAGRAPH SHALL BE LIMITED TO
AMOUNTS
53 REQUIRED TO REDUCE OR EXTINGUISH THE BORROWER'S LIABILITY UNDER
THE LOAN
54 PLUS AMOUNTS REQUIRED TO RECOVER COSTS, INCLUDING REASONABLE
ATTORNEYS`
55 FEES.

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1 6. LIABILITY AND ENFORCEMENT. (A) THE PROVISIONS OF THIS
SECTION SHALL
2 APPLY TO ANY LENDER WHO IN BAD FAITH ATTEMPTS TO AVOID THE
APPLICATION
3 OF THIS SECTION BY ANY SUBTERFUGE, INCLUDING BUT NOT LIMITED TO
SPLIT-
4 TING OR DIVIDING ANY LOAN TRANSACTION INTO SEPARATE PARTS
FOR THE
5 PURPOSE OF EVADING THE PROVISIONS OF THIS SECTION.
6 (B) A LENDER OF A SUBPRIME OR NONTRADITIONAL HOME LOAN IS
LIABLE FOR
7 ALL ACTS, OMISSIONS, OR REPRESENTATIONS BY A MORTGAGE BROKER WHO
SOLIC-
8 ITS, SELLS, OR DELIVERS THE SUBPRIME OR NONTRADITIONAL HOME
LOAN TO OR
9 FOR THE BENEFIT OF THE LENDER.
10 (C) A LENDER OF A HOME LOAN THAT, WHEN ACTING IN GOOD FAITH,
FAILS TO
11 COMPLY WITH THE PROVISIONS OF THIS SECTION, SHALL NOT BE DEEMED
TO HAVE
12 VIOLATED THIS SECTION IF THE LENDER ESTABLISHES THAT EITHER:
13 (I) WITHIN THIRTY DAYS OF THE LOAN CLOSING AND PRIOR TO THE
INSTITU-
14 TION OF ANY ACTION UNDER THIS SECTION, THE BORROWER IS
NOTIFIED OF THE
15 COMPLIANCE FAILURE, APPROPRIATE RESTITUTION IS MADE, AND
WHATEVER
16 ADJUSTMENTS ARE NECESSARY ARE MADE TO THE LOAN TO EITHER, AT
THE CHOICE
17 OF THE BORROWER, (A) MAKE THE LOAN SATISFY THE REQUIREMENTS
OF THIS
18 SECTION, OR (B) CHANGE THE TERMS OF THE LOAN IN A MANNER
BENEFICIAL TO
19 THE BORROWER SO THAT THE LOAN IS NO LONGER A COVERED LOAN
SUBJECT TO THE

20 PROVISIONS OF THIS SECTION.

21 (II) THE COMPLIANCE FAILURE RESULTED FROM A BONA FIDE ERROR
NOTWITH-

22 STANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO
AVOID SUCH

23 ERRORS AND, WITHIN SIXTY DAYS AFTER THE DISCOVERY OF THE
COMPLIANCE

24 FAILURE AND PRIOR TO THE INSTITUTION OF ANY ACTION UNDER THIS
SECTION OR

25 THE RECEIPT OF WRITTEN NOTICE OF THE COMPLIANCE FAILURE, THE
BORROWER IS

26 NOTIFIED OF THE COMPLIANCE FAILURE, APPROPRIATE RESTITUTION IS
MADE, AND

27 WHATEVER ADJUSTMENTS ARE NECESSARY ARE MADE TO THE LOAN TO
EITHER, AT

28 THE CHOICE OF THE BORROWER, (A) MAKE THE LOAN SATISFY THE
REQUIREMENTS

29 OF THIS SECTION, OR (B) CHANGE THE TERMS OF THE LOAN IN A MANNER
BENEFI-

30 CIAL TO THE BORROWER SO THAT THE LOAN IS NO LONGER A HOME LOAN
SUBJECT

31 TO THE PROVISIONS OF THIS SECTION. EXAMPLES OF A BONA FIDE ERROR
INCLUDE

32 CLERICAL, CALCULATION, COMPUTER MALFUNCTION AND PROGRAMMING, AND
PRINT-

33 ING ERRORS. AN ERROR OF LEGAL JUDGMENT WITH RESPECT TO A
LENDER'S OBLI-

34 GATIONS UNDER THIS SECTION IS NOT A BONA FIDE ERROR.

35 (D) THE ATTORNEY GENERAL, THE SUPERINTENDENT, OR ANY PARTY TO
A HOME

36 LOAN MAY ENFORCE THE PROVISIONS OF THIS SECTION.

37 (E) A PRIVATE ACTION AGAINST THE LENDER OR MORTGAGE BROKER
PURSUANT TO

38 THIS SECTION SHALL BE COMMENCED WITHIN SIX YEARS OF
ORIGINATION OF THE

39 HOME LOAN.

40 7. THE SUPERINTENDENT SHALL REPORT TO THE LEGISLATURE ON OR
BEFORE

41 JANUARY FIRST, TWO THOUSAND TEN AND ANNUALLY THEREAFTER THE
NUMBER OF

42 FORECLOSURES COMMENCED PURSUANT TO THE REAL PROPERTY
ACTIONS AND

43 PROCEEDINGS LAW AND THE DISPOSITION OF SUCH FORECLOSURES IN
EACH CALEN-

44 DAR YEAR. EACH PROPERTY SUBJECT TO A FORECLOSURE PROCEEDING
COMMENCED IN

45 A GIVEN CALENDAR YEAR SHALL BE IDENTIFIED IN SUCH ANNUAL
REPORT BY

46 ADDRESS, ZIP CODE AND COUNTY, USING THE INFORMATION
REQUIRED TO BE

47 FORWARDED TO THE SUPERINTENDENT PURSUANT TO SECTION THIRTEEN
HUNDRED

48 FOUR OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW. THE
REPORT SHALL

49 ALSO IDENTIFY THE ORIGINATING LENDER FOR EACH SUCH LOAN ON WHICH
A FORE-

50 CLOSURE WAS COMMENCED; THE NAME AND ADDRESS OF THE PARTY
BRINGING THE
51 FORECLOSURE ACTION; AND, THE NAME AND ADDRESS OF ANY MORTGAGE
BROKER WHO
52 RECEIVED A FEE OR OTHER CONSIDERATION WITH RESPECT TO THE
ORIGINATION OF
53 THE MORTGAGE LOAN ON WHICH SUCH FORECLOSURE ACTION WAS
COMMENCED.
54 8. SEVERABILITY. THE PROVISIONS OF THIS SECTION SHALL BE
SEVERABLE,
55 AND IF ANY PHRASE, CLAUSE, SENTENCE, OR PROVISION IS DECLARED
TO BE
56 INVALID, OR IS PREEMPTED BY FEDERAL LAW OR REGULATION, THE
VALIDITY OF

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1 THE REMAINDER OF THIS SECTION SHALL NOT BE AFFECTED THEREBY.
IF ANY
2 PROVISION OF THIS SECTION IS DECLARED TO BE INAPPLICABLE TO ANY
SPECIFIC
3 CATEGORY, TYPE, OR KIND OF POINTS AND FEES WITH RESPECT TO A
HOME LOAN,
4 THE PROVISIONS OF THIS SECTION SHALL NONETHELESS CONTINUE TO
APPLY WITH
5 RESPECT TO ALL OTHER POINTS AND FEES.
6 S 3. The real property actions and proceedings law is
amended by
7 adding a new section 1304 to read as follows:
8 S 1304. FORECLOSURE DISCLOSURE FORM. PRE-FORECLOSURE
DISCLOSURE: 1.
9 ALL PERSONS OR ENTITIES THAT COMMENCE A FORECLOSURE ACTION
PURSUANT TO
10 THIS ARTICLE SHALL APPEND TO THE INITIAL PLEADINGS
COMMENCING SUCH
11 ACTION A FORECLOSURE DISCLOSURE FORM WHICH SHALL BE FILED WITH
THE COUN-
12 TY CLERK IN WHICH SUCH ACTION IS COMMENCED.
13 2. THE FILING OF THIS FORM IS TO BE CONSIDERED BY THE COURT
BEFORE
14 WHOM SUCH ACTION MAY BE ASSIGNED TO BE A CONDITION PRECEDENT
FOR THE
15 FILING OF THE ACTION. FAILURE TO SUBSTANTIALLY COMPLETE SUCH
FORM SHALL
16 RENDER THE FILING TO BE A NULLITY AND THE FORECLOSURE ACTION
SHALL BE
17 DISMISSED BY THE COURT WITHOUT PREJUDICE.
18 3. THE COUNTY CLERK SHALL FORWARD ALL SUCH FORMS TO THE
BANKING
19 DEPARTMENT WHICH, IN CONSULTATION WITH THE OFFICE OF COURT
ADMINIS-
20 TRATION, SHALL PROMULGATE RULES AND REGULATIONS SPECIFYING THE
INFORMA-
21 TION TO BE INCLUDED WHICH MUST INCLUDE, WITHOUT LIMITATION:
22 (A) THE NAME OF THE PERSON OR ENTITY WHO OWNS THE REAL ESTATE
SUBJECT
23 TO FORECLOSURE, AND

24 (B) THE ADDRESS OF THE REAL ESTATE SUBJECT TO
FORECLOSURE. SUCH
25 ADDRESS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE STREET,
LOCALITY, ZIP
26 CODE AND LOCAL TAX MAP, AND
27 (C) THE NAME AND ADDRESS OF ALL PERSONS OR ENTITIES INVOLVED
IN THE
28 ORIGINATION OF THE MORTGAGE LOAN THAT IS THE SUBJECT OF THE
FORECLOSURE
29 PROCEEDING, INCLUDING, BUT NOT LIMITED TO, THE LOAN
ORIGINATOR, THE
30 MORTGAGE BROKER, THE LOAN SERVICING COMPANY, AND ALL PARTIES
WHO OWN OR
31 OWNED THE PROMISSORY NOTE OR INSTRUMENT ASSOCIATED WITH THE
MORTGAGE.
32 (D) A COPY OF THE MORTGAGE CONTRACT, AND
33 (E) A COPY OF THE NOTE OR INSTRUMENT ASSOCIATED WITH THE
MORTGAGE.
34 4. UPON THE FILING OF THE PRE-FORECLOSURE DISCLOSURE FORM, THE
COUNTY
35 CLERK SHALL COLLECT A ONE HUNDRED DOLLAR FEE. SUCH FEE SHALL BE
PAID TO
36 THE COMPTROLLER AND DEPOSITED IN THE LEGAL SERVICES ASSISTANCE
FUND AS
37 ESTABLISHED IN SECTION NINETY-EIGHT-C OF THE STATE FINANCE LAW
AND USED
38 FOR PROVIDING CIVIL LEGAL SERVICES TO REPRESENT HOMEOWNERS
WHO ARE
39 DEFENDANTS IN FORECLOSURE ACTIONS COMMENCED PURSUANT TO THIS
ARTICLE. IT
40 IS AGAINST PUBLIC POLICY TO PASS ON THE COST OF SUCH FEE TO
ANY OTHER
41 PARTY.
42 5. IT IS AGAINST PUBLIC POLICY TO APPLY A CONFIDENTIALITY
AGREEMENT OR
43 CLAUSE TO ANY INFORMATION OR DOCUMENTATION REQUIRED TO BE
DISCLOSED
44 PURSUANT TO THIS SECTION.
45 S 4. The banking law is amended by adding a new section 37-b
to read
46 as follows:
47 S 37-B. FORECLOSURE DISCLOSURE FORM. POST-FORECLOSURE
DISCLOSURE:
48 1. ALL PERSONS OR ENTITIES THAT COMMENCE A FORECLOSURE ACTION
PURSUANT
49 TO ARTICLE THIRTEEN OF THE REAL PROPERTY ACTIONS AND
PROCEEDINGS LAW
50 SHALL FILE A POST-FORECLOSURE DISCLOSURE FORM WITH THE COUNTY
CLERK IN
51 THE COUNTY IN WHICH SUCH ACTION IS COMMENCED UPON THE CONCLUSION
OF SUCH
52 FORECLOSURE PROCEEDING.
53 2. THE COUNTY CLERK SHALL FORWARD ALL SUCH FORMS TO THE
BANKING
54 DEPARTMENT WHICH, IN CONSULTATION WITH THE OFFICE OF COURT
ADMINIS-

55 TRATION, SHALL PROMULGATE RULES AND REGULATIONS SPECIFYING THE
INFORMA-

56 TION TO BE INCLUDED WHICH MUST INCLUDE, WITHOUT LIMITATION:

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1 (A) A COPY OF ANY SETTLEMENT AGREEMENT, AND
2 (B) A COPY OF A FINAL COURT ORDER OR FINAL STIPULATION OF
DISCONTIN-

3 UANCE.

4 3. THE FILING OF SUCH FORM IS REQUIRED BY THE
SUPERINTENDENT. THE

5 FAILURE TO SUBSTANTIALLY COMPLETE AND FILE SUCH POST-
DISCLOSURE FORM

6 WITH THE COUNTY CLERK SHALL CONSTITUTE A FAILURE TO FILE A
REPORT UNDER

7 SECTION FORTY-FOUR-A OF THIS ARTICLE AND EXPOSE THE PARTY
OBLIGATED TO

8 FILE SUCH FORM TO THE PENALTIES PROVIDED THEREIN.

9 4. UPON THE FILING OF THE POST-FORECLOSURE DISCLOSURE FORM,
THE COUNTY

10 CLERK SHALL COLLECT A ONE HUNDRED DOLLAR FEE. SUCH FEE SHALL BE
PAID TO

11 THE COMPTROLLER AND DEPOSITED IN THE LEGAL SERVICES ASSISTANCE
FUND AS

12 ESTABLISHED IN SECTION NINETY-EIGHT-C OF THE STATE FINANCE LAW
AND USED

13 FOR PROVIDING CIVIL LEGAL SERVICES TO REPRESENT HOMEOWNERS
WHO ARE

14 DEFENDANTS IN FORECLOSURE ACTIONS COMMENCED PURSUANT TO THIS
ARTICLE. IT

15 IS AGAINST PUBLIC POLICY TO PASS ON THE COST OF SUCH FEE TO
ANY OTHER

16 PARTY.

17 5. IT IS AGAINST PUBLIC POLICY TO APPLY A CONFIDENTIALITY
AGREEMENT OR

18 CLAUSE TO ANY INFORMATION OR DOCUMENTATION REQUIRED TO BE
DISCLOSED

19 PURSUANT TO THIS SECTION.

20 S 5. This act shall take effect on the one hundred eightieth
day after

21 it shall have become a law and shall apply only to loans
for which

22 application is made on or after such effective date; provided
that the

23 superintendent of banks is authorized to promulgate any and
all rules

24 and regulations and take any other measures necessary to
implement this

25 act on its effective date on or before such date.