

STATUS:**A11856** Rules (Greene)

Banking Law

TITLE....Regulates the making and foreclosure of high-cost home loans, imposing various prohibitions and limitations

06/21/02 referred to banks
 06/25/02 reported referred to codes
 06/25/02 reported referred to ways and means
 06/25/02 reported referred to rules
 06/25/02 rules report cal.1387
 06/25/02 ordered to third reading rules cal.1387
 06/25/02 passed assembly
 06/25/02 delivered to senate
 06/25/02 REFERRED TO RULES
 07/02/02 ORDERED TO THIRD READING CAL.1718
 07/02/02 PASSED SENATE
 07/02/02 RETURNED TO ASSEMBLY
 10/03/02 delivered to governor

SUMMARY:

RULES COM (Request of Greene, Silver, Clark, Englebright, Jacobs, Norman, Gantt, Klein, Eve, Gordon, Weisenberg, Koon, Heastie, Weinstein, Abbate, Boyland, Brodsky, Canestrari, Carrozza, Christensen, Add S6-l, Bank L; add S771-a, Gen Bus L; add S1302, RPAP L

Regulates the making and foreclosure of high-cost home loans, imposing various prohibitions and limitations; imposes responsibilities in connection therewith on home improvement contractors; requires a certain notice in foreclosure actions and requires certain proofs by the party plaintiff; establishes affirmative defenses and permits recovery of attorneys' fees and closing costs.

BILL TEXT:

STATE OF NEW YORK

11856

IN ASSEMBLY

June 21, 2002

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Greene, Silver, Clark, Englebright, Jacobs, Norman, Gantt, Klein, Eve, Gordon, Weisenberg, Koon, Heastie, Weinstein, Abbate, Boyland, Brodsky, Canestrari, Destito, DiNapoli, Eddington, Galef, Glick, Green, Hooper, Kaufman, Lafayette, Lopez, Mayersohn, McEneny, McLaughlin, Nolan, Ortiz, Perry, Pheffer, Seddio, Stringer, Towns, Wright) -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to high-cost home loans; to amend the general business law, in relation to the responsibilities of home improvement contractors; and to amend the real property actions and proceedings law, in relation to notice to the mortgagor or owner in a foreclosure action and the foreclosure of high-cost home loans

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

1 Section 1. The banking law is amended by adding a new section 6-1 to
2 read as follows:

3 § 6-1. High-cost home loans. 1. Definitions. The following defini-
4 itions apply for the purposes of this section:

5 (a) "Affiliate" means any company that controls, is controlled by, or
6 is under common control with another company, as set forth in the Bank
7 Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from
8 time to time.

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

14 (c) "Bona fide loan discount points" means loan discount points know-
15 ingly paid by the borrower funded through any source, for the purpose of
16 reducing, and which in fact result in a bona fide reduction of, the
17 interest rate or time-price differential applicable to the loan,
18 provided that the amount of the interest rate reduction purchased by the
19 discount points is reasonably consistent with established industry norms
20 and practices for secondary mortgage market transactions. For purposes

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

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1 of this section, it shall be presumed that a point is a bona fide loan
2 discount point if it reduces the interest rate by a minimum of twenty-
3 five basis points provided all other terms of the loan remain the same.

4 (d) A "High-cost home loan" means a home loan in which the terms of
5 the loan exceed one or more of the thresholds as defined in paragraph
6 (g) of this subdivision.

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

9 (i) The principal amount of the loan does not exceed the lesser of:
10 (A) conforming loan size limit for a comparable dwelling as established
11 from time to time by the federal national mortgage association; or (B)
12 three hundred thousand dollars;

13 (ii) The borrower is a natural person;

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

16 (iv) The loan is secured by a mortgage or deed of trust on real estate
17 upon which there is located or there is to be located a structure or
18 structures intended principally for occupancy of from one to four fami-
19 lies which is or will be occupied by the borrower as the borrower's
20 principal dwelling; and

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

22 (f) "Points and fees" means:

23 (i) All items listed in 15 U.S.C. § 1605(a)(1) through (4), except
24 interest or the time-price differential;

25 (ii) All charges for items listed under § 226.4(c)(7) of title 12 of
26 the code of federal regulations, as amended from time to time, but only
27 if the lender receives direct or indirect compensation in connection
28 with the charge or the charge is paid to an affiliate of the lender;
29 otherwise, the charges are not included within the meaning of the phrase
30 "points and fees";

31 (iii) All compensation paid directly or indirectly to a mortgage
32 broker, including a broker that originates a loan in its own name in a
33 table-funded transaction, not otherwise included in subparagraphs (i)
34 and (ii) of this paragraph;

35 (iv) The cost of all premiums financed by the lender, directly or
36 indirectly, for any credit life, credit disability, credit unemployment,
37 or credit property insurance, or any other life or health insurance, or
38 any payments financed by the lender directly or indirectly for any debt
39 cancellation or suspension agreement or contract, except that insurance
40 premiums calculated and paid on a monthly basis shall not be considered
41 financed by the lender.

42 (g) "Thresholds" means:

43 (i) For a first lien mortgage loan, the annual percentage rate of the
44 home loan at consummation of the transaction exceeds eight percentage
45 points over the yield on treasury securities having comparable periods
46 of maturity to the loan maturity measured as of the fifteenth day of the
47 month immediately preceding the month in which the application for the
48 extension of credit is received by the lender; or for a subordinate
49 mortgage lien, the annual percentage rate of the home loan at consum-
50 mation of the transaction equals or exceeds nine percentage points over
51 the yield on treasury securities having comparable periods of maturity
52 on the fifteenth day of the month immediately preceding the month in
53 which the application for extension of credit is received by the lender;
54 as determined by the following rules: if the terms of the home loan
55 offer any initial or introductory period, and the annual percentage rate
56 is less than that which will apply after the end of such initial or

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1 introductory period, then the annual percentage rate that shall be taken
2 into account for purposes of this section shall be the rate which
3 applies after the initial or introductory period; or

4 (ii) The total points and fees exceed: five percent of the total loan
5 amount if the total loan amount is fifty thousand dollars or more; or
6 six percent of the total loan amount if the total loan amount is fifty
7 thousand dollars or more and the loan is a purchase money loan guaran-
8 teed by the federal housing administration or the veterans adminis-
9 tration; or the greater of six percent of the total loan amount or
10 fifteen hundred dollars, if the total loan amount is less than fifty
11 thousand dollars; provided, the following discount points shall be
12 excluded from the calculation of the total points and fees payable by
13 the borrower:

14 (1) Up to and including two bona fide loan discount points payable by
15 the borrower in connection with the loan transaction, but only if the
16 interest rate from which the loan's interest rate will be discounted
17 does not exceed by more than one percentage point the yield on United
18 States treasury securities having comparable periods of maturity to the
19 loan maturity measured as of the fifteenth day of the month immediately
20 preceding the month in which the application is received;

21 (2) Any and all bona fide loan discount points funded directly or
22 indirectly through a grant from a federal, state or local government
23 agency or 501(c)(3) organization.

24 (h) "Total loan amount" means the principal of the loan minus those
25 points and fees as defined in paragraph (f) of this subdivision that are
26 included in the principal amount.

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

31 2. Limitations and prohibited practices for high-cost home loans. A
32 high-cost home loan shall be subject to the following limitations:

33 (a) No call provisions. No high-cost home loan may contain a provision
34 that permits the lender, in its sole discretion, to accelerate the
35 indebtedness. This provision does not prohibit acceleration of the loan
36 in good faith due to the borrower's failure to abide by the material
37 terms of the loan.

38 (b) No balloon payments. No high-cost home loan may contain a sched-
39 uled payment that is more than twice as large as the average of earlier
40 scheduled payments, unless such balloon payment becomes due and payable
41 at least fifteen years after the loan's origination. This provision does
42 not apply when the payment schedule is adjusted to the seasonal or
43 irregular income of the borrower.

44 (c) No negative amortization. No high-cost home loan may contain a
45 payment schedule with regular periodic payments that cause the principal
46 balance to increase.

47 (d) No increased interest rate. No high-cost home loan may contain a
48 provision which increases the interest rate after default. This
49 provision does not apply to interest rate changes in a variable rate
50 loan otherwise consistent with the provisions of the loan documents;
51 provided that the change in the interest rate is not triggered by the
52 event of default or the acceleration of the indebtedness.

53 (e) Limitation on advance payments. No high-cost home loan may include
54 terms under which more than two periodic payments required under the
55 loan are consolidated and paid in advance from the loan proceeds
56 provided to the borrower.

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1 (f) No modification or deferral fees. A lender may not charge a
2 borrower any fees to modify, renew, extend, or amend a high-cost home
3 loan or to defer any payment due under the terms of a high-cost home
4 loan if, after the modification, renewal, extension or amendment, the
5 loan is still a high-cost loan or, if no longer a high-cost home loan,
6 the annual percentage rate has not been decreased by at least two
7 percentage points. For purposes of this paragraph, fees shall not
8 include interest that is otherwise payable and consistent with the
9 provisions of the loan documents. This paragraph shall not prohibit a
10 lender from charging points and fees in connection with any additional
11 proceeds received by the borrower in connection with the modification,
12 renewal, extension or amendment (over and above the current principal
13 balance of the existing high-cost home loan) provided that the points
14 and fees charged on the additional sum must reflect the lender's typical
15 point and fee structure for high-cost home loans.

16 (g) No oppressive mandatory arbitration clauses. No high-cost home
17 loan may be subject to a mandatory arbitration clause that is oppres-
18 sive, unfair, unconscionable, or substantially in derogation of the
19 rights of consumers.

20 (h) No financing of insurance. No high-cost home loan shall finance,
21 directly or indirectly, any credit life, credit disability, credit unem-
22 ployment, or credit property insurance, or any other life or health
23 insurance premiums, or any payments directly or indirectly for any debt
24 cancellation or suspension agreement or contract, except that insurance
25 premiums or debt cancellation or suspension fees calculated and paid on
26 a monthly basis shall not be considered financed.

27 (i) No "loan flipping". No lender or mortgage broker making or arrang-
28 ing a high-cost home loan may engage in the unfair act or practice of
29 "loan flipping". "Loan flipping" is making a home loan to a borrower
30 that refinances an existing home loan when the new loan does not have a
31 tangible net benefit to the borrower considering all of the circum-
32 stances, including the terms of both the new and refinanced loans, the
33 cost of the new loan, and the borrower's situation.

34 (j) No refinancing of special mortgages. No lender making a high-cost
35 home loan may refinance an existing home loan that is a special mortgage
36 originated, subsidized or guaranteed by or through a state, tribal or
37 local government, or nonprofit organization, which either bears a
38 below-market interest rate at the time of origination, or has nonstand-
39 ard payment terms beneficial to the borrower, such as payments that vary
40 with income, are limited to a percentage of income, or where no payments
41 are required under specified conditions, and where, as a result of the
42 refinancing, the borrower will lose one or more of the benefits of the
43 special mortgage, unless the lender is provided prior to loan closing
44 documentation by a HUD certified housing counselor or the lender who
45 originally made the special mortgage that a borrower has received home
46 loan counseling in which the advantages and disadvantages of the refi-
47 nancing has been received.

48 (k) No lending without due regard to repayment ability. A lender or
49 mortgage broker shall not make or arrange a high-cost home loan without
50 due regard to repayment ability, based upon consideration of the resi-
51 dent borrower or borrowers' current and expected income, current obli-
52 gations, employment status, and other financial resources (other than
53 the borrower's equity in the dwelling which secures repayment of the
54 loan), as verified by detailed documentation of all sources of income
55 and corroborated by independent verification. However, a lender making
56 a high-cost home loan shall benefit from a rebuttable presumption that

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1 the loan was made with due regard to repayment ability if the lender
2 demonstrates that at the time the loan is consummated, the resident
3 borrower or borrowers' total monthly debts, including amounts owed under
4 the loan, do not exceed fifty percent of the resident borrower or
5 borrowers' monthly gross income; and the lender follows the residual
6 income guidelines established in 38 C.F.R. § 36.4337(e) and VA Form
7 26-6393.

8 (1) (i) No lending without counseling disclosure and list of counse-
9 lors. A lender or mortgage broker must deliver, place in the mail, fax
10 or electronically transmit the following notice in at least twelve point
11 type to the borrower at the time of application: "You should consider
12 financial counseling prior to executing loan documents. The enclosed
13 list of counselors is provided by the New York State Banking Depart-
14 ment". In the event of a telephone application, the disclosures must be
15 made immediately after receipt of the application by telephone. Such
16 disclosure shall be on a separate form. In order to utilize an electron-
17 ic transmission, the lender or broker must first obtain either written
18 or electronically transmitted permission from the borrower. A list of
19 approved counselors, available from the New York state banking depart-
20 ment, shall be provided to the borrower by the lender or the mortgage
21 broker at the time that this disclosure is given.

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

27 "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

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

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

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

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

52 Property taxes and homeowner's insurance are your responsibility. Not
53 all lenders provide escrow services for these payments. You should ask
54 your lender about these services.

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1 Your payments on existing debts contribute to your credit ratings. You
2 should not accept any advice to ignore your regular payments to your
3 existing creditors. Accordingly, it is important that you make regular
4 payments to your existing creditors."

5 (m) Financing of points and fees. In making a high-cost home loan, a
6 lender shall not, directly or indirectly, finance any points and fees as
7 defined in paragraph (f) of subdivision one of this section, in an
8 amount that exceeds three percent of the principal amount of the loan.

9 (n) Restrictions on home improvement contracts. A lender shall not pay
10 a contractor under a home improvement contract from the proceeds of a
11 high-cost home loan other than: by an instrument payable to the borrower
12 or jointly to the borrower and the contractor; or at the election of the
13 borrower, through a third-party escrow agent in accordance with terms
14 established in a written agreement signed by the borrower, the lender,
15 and the contractor prior to the disbursement.

16 (o) No encouragement of default. In making or arranging a high-cost
17 home loan, a lender or mortgage broker shall not recommend or encourage
18 default on an existing loan or other debt prior to and in connection
19 with the closing or planned closing of a high-cost home loan that refi-
20 nances all or any portion of such existing loan or debt.

21 (p) Prohibited payments to mortgage brokers. In making or arranging a
22 high-cost home loan, no lender or mortgage broker shall accept or give
23 any fee, kickback, thing of value, portion, split or percentage of
24 charges, other than as payment for goods or facilities that were actual-
25 ly furnished or services that were actually performed. Such payment must
26 be reasonably related to the value of the goods or facilities that were
27 actually furnished or services that were actually performed.

28 (q) No points and fees when a lender refinances its own high-cost home
29 loan with a new high-cost home loan. A lender shall not charge a borrow-
30 er points and fees in connection with a high-cost home loan if the
31 proceeds of the high-cost home loan are used to refinance an existing
32 high-cost home loan held by the lender or an affiliate of the lender.

33 2-a. (a) High-cost home loan mortgages shall include a legend on top
34 of the mortgage in twelve-point type stating that the mortgage is a
35 high-cost home loan subject to this section.

36 (b) The lender shall report both the favorable and unfavorable payment
37 history of the borrower to a nationally recognized consumer credit
38 bureau at least annually during such period as the lender holds or
39 services the high-cost home loan.

40 3. The provisions of this section shall apply to any person who in bad
41 faith attempts to avoid the application of this section by any subter-
42 fuge, including but not limited to splitting or dividing any loan trans-
43 action into separate parts for the purpose of evading the provisions of
44 this section.

45 4. A lender of a high-cost home loan that, when acting in good faith,
46 fails to comply with the provisions of this section, will not be deemed
47 to have violated this section if the lender establishes that either:

48 (a) Within thirty days of the loan closing and prior to the institu-
49 tion of any action under this section, the borrower is notified of the
50 compliance failure, appropriate restitution is made, and whatever
51 adjustments are necessary are made to the loan to either, at the choice
52 of the borrower, (i) make the high-cost home loan satisfy the require-
53 ments of this section, or (ii) change the terms of the loan in a manner
54 beneficial to the borrower so that the loan is no longer a high-cost
55 home loan subject to the provisions of this section; or

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1 (b) The compliance failure resulted from a bona fide error notwith-
2 standing the maintenance of procedures reasonably adapted to avoid such
3 errors and, within sixty days after the discovery of the compliance
4 failure and prior to the institution of any action under this section or
5 the receipt of written notice of the compliance failure, the borrower is
6 notified of the compliance failure, appropriate restitution is made, and
7 whatever adjustments are necessary are made to the loan to either, at
8 the choice of the borrower, (i) make the high-cost home loan satisfy the
9 requirements of this section, or (ii) change the terms of the loan in a
10 manner beneficial to the borrower so that the loan is no longer a high-
11 cost home loan subject to the provisions of this section. Examples of a
12 bona fide error include clerical, calculation, computer malfunction and
13 programming, and printing errors. An error of legal judgment with
14 respect to a person's obligations under this section is not a bona fide
15 error.

16 5. The attorney general, the superintendent, or any party to a high-
17 cost home loan may enforce the provisions of this section.

18 6. A private action against the lender or mortgage broker pursuant to
19 this section must be commenced within six years of origination of the
20 high-cost home loan.

21 7. Any person found by a preponderance of the evidence to have
22 violated this section shall be liable to the borrower for the following:

23 (a) actual damages, including consequential and incidental damages;
24 and

25 (b) statutory damages as follows (i) all of the interest, earned or
26 unearned, points and fees, and closing costs charged on the loan shall
27 be forfeited and any amounts paid shall be refunded; except that this
28 element of statutory damages shall not be awarded for violations of:

29 (1) paragraph (i) of subdivision two of this section regarding loan
30 flipping; and

31 (2) paragraph (k) of subdivision two of this section regarding ensur-
32 ing the borrower's ability to repay the loan, so long as the lender
33 demonstrates that at the time of the loan, it verified by detailed
34 documentation all sources of the borrower's income and corroborated it
35 with independent verification; or

36 (ii) five thousand dollars per violation or twice the amount of points
37 and fees and closing costs as defined in this section, whichever is
38 greater, for violations of:

39 (1) paragraph (i) of subdivision two of this section regarding loan
40 flipping; and

41 (2) paragraph (k) of subdivision two of this section regarding ensur-
42 ing the borrower's ability to repay the loan, where the borrower is not
43 entitled to relief under subparagraph (i) of this paragraph.

44 8. A court may also award reasonable attorneys' fees to a prevailing
45 borrower.

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

49 10. Upon a finding by the court of an intentional violation by the
50 lender of this section, or regulation thereunder, the home loan agree-
51 ment shall be rendered void, and the lender shall have no right to
52 collect, receive or retain any principal, interest, or other charges
53 whatsoever with respect to the loan, and the borrower may recover any
54 payments made under the agreement.

55 11. Upon a judicial finding that a high-cost home loan violates any
56 provision of this section, whether such violation is raised as an affir-

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1 mative claim or as a defense, the loan transaction may be rescinded.
2 Such remedy of rescission shall be available as a defense without time
3 limitation.

4 12. The remedies provided in this section are not intended to be the
5 exclusive remedies available to a borrower of a high-cost home loan.

6 13. In any action by an assignee to enforce a loan against a borrower
7 in default more than sixty days or in foreclosure, a borrower may assert
8 any claims in recoupment and defenses to payment under the provisions of
9 this section and with respect to the loan, without time limitations,
10 that the borrower could assert against the original lender of the loan.

11 14. The provisions of this section shall be severable, and if any
12 phrase, clause, sentence, or provision is declared to be invalid, or is
13 preempted by federal law or regulation, the validity of the remainder of
14 this section shall not be affected thereby. If any provision of this
15 section is declared to be inapplicable to any specific category, type,
16 or kind of points and fees, the provisions of this section shall none-
17 theless continue to apply with respect to all other points and fees.

18 § 2. The general business law is amended by adding a new section 771-a
19 to read as follows:

20 § 771-a. Responsibilities of home improvement contractors. No home
21 improvement contractor shall engage in any activity, transaction, or
22 course of business or pay or receive any fee, payment, money, or other
23 thing of value in connection with the financing of a home improvement
24 contract without fully disclosing such activity, transaction, or course
25 of business and any fees, payment, or other thing of value paid or to be
26 paid in connection therewith, and without having obtained the agreement
27 in writing from all parties to the transaction to such activity and the
28 payment therefor.

29 § 3. The real property actions and proceedings law is amended by
30 adding a new section 1302 to read as follows:

31 § 1302. Foreclosure of high-cost home loans. 1. Any complaint served
32 in a proceeding initiated pursuant to this article relating to a high-
33 cost home loan, as defined in section six-1 of the banking law, must
34 contain an affirmative allegation, which allegation must be proven to
35 the satisfaction of the court before entry of judgment by default or
36 otherwise, that the plaintiff mortgage banker or exempt organization has
37 complied with all of the provisions of section five hundred
38 ninety-five-a and section six-1 of the banking law.

39 2. It shall be a defense to an action to foreclose a mortgage that
40 the home loan violates any provision of section six-1 of the banking
41 law.

42 § 4. This act shall take effect on the one hundred eightieth day after
43 it shall have become a law and shall apply only to loans for which
44 application is made on or after such effective date; provided that the
45 superintendent of banks is authorized to promulgate any and all rules
46 and regulations and take any other measures necessary to implement this
47 act on its effective date on or before such date.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A11856

SPONSOR: Rules (Greene)

TITLE OF BILL: An act to amend the banking law, in relation to high-cost home loans; to amend the general business law, in relation to the responsibilities of home improvement contractors; and to amend the real property actions and proceedings law, in relation to notice to the mortgagor or owner in a foreclosure action and the foreclosure of high-cost home loans

PURPOSE OR GENERAL IDEA OF BILL:

The intent of this bill is to protect consumers against abuses in the sub-prime lending market.

SUMMARY OF SPECIFIC PROVISIONS:

Section 6-1(1) of the banking law would provide definitions.

Section 6-1(2) would prohibit certain practices with respect to high-cost home loans.

Section 6-1(2-a) would require all high cost-home loans to have a legend on the top of the mortgage indicating that it is a high cost-home loan.

Section 6-1(3) would provide that 2 1-) would apply to any person who acting in bad faith attempts to avoid said provisions by splitting or dividing a high cost-home loan transaction.

Section 6-1(4) would provide that if a lender acting in good faith fails to comply with 2 1-) he would not be deemed in violation of the section if he: (a) notifies the borrower of the compliance failure within 30 days of the loan closing and appropriate restitution is made or (b) compliance failure resulted from a bona fide error.

Section 6-1(5) would provide enforcement powers to the Attorney General, the Superintendent, or any party to a high-cost home loan.

Section 6-1(6) would allow for a private right of action against the lender or mortgage broker within 6 years of the origination of the loan.

Section 6-1(7) would require persons deemed to have violated this section to be liable to the borrower for actual damages and statutory damages.

Section 6-1(8) would allow a court to award reasonable attorney fees to a borrower.

Section 6-1(9) would provide for injunctive, declaratory and other equitable relief for borrowers as the court sees fit.

Section 6-1(10) would deem a home loan agreement void if intentional violation by the lender of this section were found upon the findings of a court. This section would also allow the borrower to recover any payments made under the agreement.

Section 6-1(11) would grant the borrower the right to rescind upon a judicial finding that the high-cost home loan violates any provision of this section whether such violation is raised as an affirmative claim or defense.