



NEW YORKERS FOR RESPONSIBLE LENDING

NYS 2008 RESPONSIBLE LENDING ACT

MODEL BILL SUMMARY

New York State is in the midst of a foreclosure crisis. Subprime and exotic mortgage lending has increased markedly in New York, with an estimated 1 in 5 subprime loans ending in foreclosure.¹ Members of New Yorkers for Responsible Lending (NYRL), a coalition of more than 130 community and civic organizations, see first-hand the harm the foreclosure crisis is causing for New York homeowners and communities.

In response, NYRL has created model legislation that updates the New York State Responsible Lending Act, Banking Law 6-l. At its core, NYRL's model bill includes an ability to repay standard, and addresses specific abuses in the subprime and nontraditional mortgage lending markets. Passage of the model bill will go a long way toward preventing predatory and unsuitable lending, and promoting the responsible and beneficial extension of credit.

Key provisions of the model bill are as follows:

I. FOR ALL LOANS

- All lenders and loan officers shall be required to demonstrate the borrower's ability to repay the loan.
 - Repayment ability for subprime and nontraditional home loans shall be determined both at the introductory rate and at the reset rate, and be based on a repayment schedule that achieves full amortization over the life of the loan.
 - Monthly payments for determining affordability shall include principal, interest, real estate taxes, homeowner's insurance, assessments, and mortgage premiums.
 - Lenders shall benefit from a rebuttable presumption that the loan was made with due regard to repayment ability, if the lender demonstrates that at the time the loan was made the borrower's total monthly debts, including amounts owed under the loan, did not exceed 50% of the borrower's monthly gross income, and the lender followed residual income guidelines established by the Veterans Administration. For adjustable rate mortgages, the law takes into account the fully indexed rate for the loan.
- Mortgage brokers shall be considered to be acting as the agent for the borrower, with specified duties to the borrower.
- Lenders and brokers shall be prohibited from steering the borrower toward a home loan that is less favorable than a home loan for which the borrower is qualified.

II. FOR ALL SUBPRIME & NONTRADITIONAL MORTGAGES

- The law prohibits the following terms for all subprime and nontraditional mortgages:²
 - Balloon payments;
 - Negative amortization;
 - Prepayment penalties;
 - Default interest;
 - Provisions mandating adjudication in a disadvantageous forum;
 - Modification and deferral fees;
 - Financing of credit insurance or other unnecessary products;
 - Loan flipping;
 - Refinancing of special mortgages; and
 - Yield spread premiums
- Lenders and brokers shall be required to disclose taxes and insurance payments, with each disclosure of monthly payments. Lenders shall also provide borrowers with disclosures that encourage them to obtain qualified mortgage counseling and compare loan rates and fees.
- Lenders shall be required to escrow property taxes and insurance.

III. REMEDIES

- The law is enforceable by the NYS Attorney General, Banking Superintendent, or any party to a loan covered by the law.
- Actual and statutory damages may be awarded; statutory damages shall be \$5,000 per violation or twice actual damages (whichever is greater). Injunctive relief to stop unlawful practices, as well as declaratory and other equitable relief as the court deems appropriate, may be granted. The court may award reasonable attorneys' fees to a prevailing borrower.
- The loan transaction may be rescinded if the lender is found to have violated prohibitions against making unaffordable and/or negative amortization loans. A violation of either of these provisions also entitles the borrower to damages equal to two times the finance charge paid under the loan at the loan origination and forfeiture of remaining interest under the loan.
- A broker found to have violated its duty to the borrower is liable for actual damages and twice the sum of all amounts paid to the broker.
- Borrowers may assert defenses against loan purchasers (“assignees”) that they could assert against the original lender. A purchaser’s liability is limited to offset of borrower’s liability plus amounts required to recover costs, including reasonable attorneys’ fees.
- No lender shall be found to have violated the law’s provisions, if the lender’s actions meet good faith exceptions set forth in the law.

For more information, contact NYRL at nyrl@nedap.org.

¹ Center for Responsible Lending.

² For a glossary of terms, go to www.responsiblelending.org/glossary.html/