



NEW YORK MORTGAGE BROKER GUIDE BOOK
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SECTION I: INTRODUCTION

What is a Mortgage Broker?

A mortgage broker is an individual or entity engaged in the business of brokering mortgage loans. Generally, mortgage brokers function as intermediaries between borrowers and lenders for the purpose of loan origination. They originate loans by providing loan processing and arrange funding from a lender. Generally, mortgage brokers have the ability to shop around among various lenders to obtain the best rate and product for a prospective borrower. The loans are closed in the names of the funding lender.

An important point to remember is that New York regulated brokers cannot make loans or extend credit directly to borrowers, or originate loans in a table-funded transaction.

In New York State, mortgage brokers must register with the New York State Department of Financial Services (the “Department”) to conduct business. Registered mortgage brokers are required to comply with federal disclosure and fair lending laws, in addition to New York-specific statutes and regulations.

Mortgage bankers licensed by the Department also have the authority to function as mortgage brokers. Mortgage bankers that broker loans must comply with prohibitions and disclosure requirements associated with such brokered transactions.

Who is Required to be Registered?

An individual or entity (i.e., sole proprietors and companies) that engages in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offers to solicit, process, place or negotiate mortgage loans for others on 1- 4 family owner-occupied residential property in New York State.

Note: Even if you intend to broker only one loan, you must be registered.

Under certain circumstances lead providers may also be required to be registered as a mortgage broker.

A registration is required regardless of the mortgage broker’s physical location. Individuals and entities located in other states are required to obtain a registration regardless of laws in their home state.

Who is Not Required to be Registered?

Article 12-D of the New York Banking Law (the “Banking Law”) exempts the following individuals and entities from the mortgage broker registration requirements:

- Employees of mortgage brokers or mortgage bankers registered or licensed in New York State do not need to obtain a mortgage broker registration as long as they engage in

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mortgage loan origination on behalf of their employer. However, these individuals must obtain a Mortgage Loan Originator License pursuant to Article 12-E of the New York Banking Law. See “Mortgage Loan Originators” in section III of this guidebook for further details.

- Organizations, including insurance companies, banking organizations, foreign banking corporations licensed by the Superintendent or the Comptroller of the Currency to transact business in New York State, national banks, federal savings banks, federal savings and loan associations, federal credit unions, or any banks, trust companies, savings banks, savings and loan associations, or credit unions organized under the laws of any other state, or any instrumentalities created by the United States or any state with the power to make mortgage loans, are considered exempt and do not require registration with the Department.
- Individuals employed by an exempt organization as detailed above, as long as such individuals are acting within the scope of the exempt entity’s charter, license or registration. However, these individuals must comply with the federal registration requirements under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the “SAFE Act”) and Article 12-E of the Banking Law.

What are the Pre-Requisites for Registering?

The following are some – but not all – of the requirements for registering as mortgage broker in New York State:

Surety Bond Amount: \$10,000 - \$100,000, depending on the number of loan applications. (See Part 410.14 of the Superintendent’s Regulations)

Credit Check: A credit report with score, and explanatory documents for any derogatory information contained in the credit report. For delinquent debts, such documents must demonstrate that the applicant is repaying the debt pursuant to an agreed-upon payment plan, or that the debt is being actively contested.

Note: Each control person must submit a credit report, including directors, the three most senior executive officers and, if different, the qualifier.

Experience: Each applicant must have, or employ, a qualifier, an individual who has a minimum of two years of credit analysis or underwriting experience with an exempt organization, mortgage banker, mortgage broker or licensed lender.

Note: The Department must be able to independently verify the work experience, as evidenced by a letter from an employer describing the actual responsibilities of the applicant or employee. Employment verification is not sufficient verification of work experience.

The complete mortgage broker application checklist is on the Nationwide Mortgage Licensing System at <http://mortgage.nationwidelicensingsystem.org/slr/PublishedStateDocuments/NY-Mortgage-Broker-New-Application-Checklist.pdf>

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SECTION II: APPLICATION PROCESS

How to Apply for a Mortgage Broker Registration

The Department accepts mortgage broker applications electronically through the Nationwide Mortgage Licensing System (“NMLS”). All new applications for registration must be submitted through the online application process.

Note: Certain jurisdiction-specific documents, such as originals, must be mailed to the Department.

Access to NMLS:

To gain access to NMLS, you must submit a “Company Account Request Form” requesting an NMLS account. The “Company Account Request Form is accessed on the NMLS website at www.nationwidelicensingsystem.org. Select “Company” under the heading “Getting Started,” and follow the instructions provided in Step 1 – “Request an Account.”

Note: If your company already has NMLS access, you do not need to submit this form.

Prior to submitting an application, we strongly urge you to familiarize yourself with the tutorials and guides located on the NMLS website under Step 2 – “Get Prepared.” Further, we encourage you to familiarize yourself with the jurisdiction-specific information relating to New York State by selecting the “State Licensing Requirements” link under Step 3 – “What Does My State Require?”

Fees:

Applicants for a mortgage broker registration are required to pay the following non-refundable fees:

- **Investigation Fee:** \$1,500
- **Fingerprint Processing Fee:** \$105
- **Branch Office:** \$500 for each additional branch requested

The Department uses MorphoTrust USA to provide fingerprint processing services. Under this arrangement, all individuals required to submit fingerprints for a criminal background check will be able to utilize Live Scan technology sites physically located in New York State to have their fingerprints taken electronically. For individuals that cannot access a New York MorphoTrust site, a hard copy fingerprint card must be submitted to the Department.

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Refer to the Department's fingerprinting procedure, available on the Department's website at <http://www.dfs.ny.gov/banking/iafpplmbb.htm>, for complete details on the fingerprinting process.

What happens after I submit my application?

1. *Initial Screening*

Department staff screens your application to ensure that all required documents have been submitted. If your application is complete, it will be accepted for processing. Applications deemed complete are published online in the Department's Weekly Bulletin every Friday. Additionally, the NMLS application file will be updated to reflect a "Pending Review" status.

If an application is determined to be incomplete, you will receive a written notice identifying the items and matters that must be addressed for the Department to continue the application review process. Incomplete applications are generally held for 30 days following notification of deficiencies to applicants. If an applicant fails to submit the required items or request an extension of time to submit required information, the application will be deemed withdrawn and the application fee forfeited. Application packages will be returned upon applicants request and at their expense.

Note: Any applicant seeking a license following withdrawal must submit a new application that must include all required information, documents, and fees.

2. *Processing*

Once your application is assigned, a Department examiner will conduct third-party verifications of other state licenses, employment history and civil litigation history, if any. Fingerprint cards will also be forwarded to MorphoTrust USA for processing.

Note: Pursuant to section 592-a of the Banking Law, the Department requires applicants to demonstrate financial responsibility and general fitness. As such, the Department reviews the credit history of applicants to determine whether such applicants demonstrate financial responsibility and general fitness for registration. Poor credit score or negative credit history is not an automatic bar to registration. However, applicants must provide the Department with explanatory documents addressing how derogatory information is or will be remedied.

3. *Application Approval or Denial*

After the application has been processed, the Department will notify you in writing whether the application was approved or denied. If approved, the letter will inform you about the next scheduled registration conferral meeting, and detail any outstanding documents and requirements that must be addressed by the date of conferral meeting (e.g., submission of original copy of surety bond; evidence of a line of credit, etc.).

Note: Applicants are not authorized to engage in any mortgage origination activities until the registration certificate is issued at the conferral.

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4. *Conferral Meetings*

Conferral meetings are conducted every other month, and are generally scheduled on the second Tuesday of the month. Meetings start at 1:00 pm and last approximately three hours. During these meetings, the Department provides registrants with an overview of banking laws and regulations, license maintenance, regulatory requirements and supervisory oversight, including available penalties, assessment fees and enforcement actions. Additionally, the Department may address topical issues affecting the mortgage industry, including, but not limited to, the trends and patterns identified in recent examinations and complaints received by the Department. Registrants are required to bring a valid driver's licenses or passports as proof of identification.

Note: Conferral meetings may be attended in person or via video conference, depending on the Department's capacity.

Note: Individuals arriving more than 30 minutes late will not be admitted to the conferral meeting. Individuals who leave the meeting prior to 3:30 pm will be required to attend the next conferral to receive the registration certificate.

If you submitted all outstanding items detailed in your approval letter, a registration certificate will be issued to you at the end of the conferral meeting.

SECTION III: MAINTAINING YOUR LICENSE

Mortgage brokers can negotiate mortgage loans according to the provisions of federal and state statutes and regulations governing mortgage origination and real estate settlement activities. Brokers are reminded of their responsibility to ensure that origination activities are conducted in honestly, fairly and free from deceptive and anti-competitive practices, and in compliance with applicable laws and regulations.

Surety Bond

All mortgage brokers registered by the Department must maintain a corporate surety bond with the Department during the period registration is active. The principal amount of such bond is based on the volume of applications as reported on the annual Volume of Operations Report (VOOR) each calendar year. Mortgage broker surety bonds range from \$10,000 to \$100,000. See the chart below for required bond based on annual volume.

<u>Number of New York applications</u>	<u>Required amount of surety bond</u>
0-24	\$10,000
25-99	\$25,000
100-299	\$50,000
300-599	\$75,000
600+	\$100,000

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If the Superintendent determines, in his or her sole discretion, that a registrant has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such registrant to post a surety bond, or keep on deposit, twice the amount of such bond or deposit as is required.

The surety bond must be for the exclusive use of the Superintendent for any of the following: the reimbursement of consumer fees or other charges determined by the Superintendent to be improperly charged or collected; past-due Department examination costs and assessments charged to the registrant; unpaid penalties, or other obligations of the principal in the event of the insolvency, liquidation, or bankruptcy of the registrant or possession by the Superintendent of such registrant, or the surrender, expiration or revocation of a registration.

Please refer to Parts 410.14, 410.15, and 410.16 of the Superintendent's Regulations for more details on surety bond requirements and procedures.

Note: Mortgage brokers that have been placed on inactive status under Part 410.16 of the Superintendent's Regulations do not need to maintain a surety bond. Inactive status is only provided if the broker has applied for, and received, Departmental approval.

Regulatory Reports Overview

The Department requires registrants to submit regulatory reports. You should establish proper internal controls over the preparation and filing of these regulatory reports. Management must ensure that any documentation supporting the information contained on the report are orderly maintained and available for review. Registrants must clearly identify the source documents and the sections of the report associated with each document. Internal procedures should require verification of raw data used to complete regulatory reports, as well as independent review of such reports by a manager or officer of the registrant.

The submission of inaccurate or misleading regulatory reports could result in a monetary penalty or an enforcement action. Additionally, registrants that file reports late may be penalized for failing to submit reports within the established timeframe.

1. *Mortgage Call Report*

Section 599-h of the Banking Law requires all "originating entities" in New York State, including any registered mortgage broker, to complete and submit a mortgage call report ("MCR").

The standard MCR contains two components:

- Residential Mortgage Loan Activity ("RMLA"), which collects application, closed loan, individual mortgage loan originator, line of credit and repurchase information by state; and
- Financial Condition ("FC"), which collects financial information at the company level; it does not have to be completed by state.

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The RMLA is due quarterly, within 45 days of the end of the calendar quarter. The FC is due annually, within 90 days of your company's fiscal year end.

Failure to submit the MCR may result in a deficiency being placed on your license status in NMLS, and failure to timely cure the deficiency may result in disciplinary action by the Department.

Instructions for the MCR may be obtained online from the NMLS Resource Center at <http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx>.

2. Annual Volume of Operations Report (VOOR)

Each registrant is required to file an annual VOOR detailing the registrant's volume of mortgage origination activity for the prior calendar year.

Note: Even if you have not brokered loans or taken applications on New York property, you are required to file the annual VOOR.

An owner or authorized officer of the registrant must sign the VOOR. The Department utilizes information collected on the annual VOOR to assess the level of resources needed in its overall regulation and oversight of mortgage-related entities.

Certain components of the VOOR consist of information prepopulated from the Department's records. As such, it is important that registrants promptly notify the Department of any changes. Refer to "Updating Registration Information" in section III of this guidebook for details on how to notify the Department. Generally, the Department collects information including, but not limited to, litigation, bankruptcy and regulatory actions, closed loans, applications taken, loans serviced, and gross revenues.

Detailed VOOR instructions for mortgage brokers are available on the Department's website at <http://www.dfs.ny.gov/banking/voor.htm>.

3. Other Regulatory Reports

Registrants must submit certain other regulatory reports, including, but not limited to, the quarterly mortgage loan originator certification of origination volume, and the immediate notification to the Department of any felons employed by the entity.

Additionally, on a quarterly basis, registrants must notify the Department of the termination or new employment of any mortgage loan originator employed or affiliated with the registrant.

General Assessment

The general assessment process is used to bill regulated entities for the Department's operating funds. The statutory authority for the general assessment is found in section 206 of the New York Financial Services Law.

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General assessment charges for mortgage brokers are calculated based on gross revenue information collected on the most recent annual VOOR. The general assessment fees are collected in four equal quarterly installments during the fiscal year, which begins April 1 and ends March 31 of the following year. See <http://www.dfs.ny.gov/banking/billassess.htm> for additional details on billing cycle and general assessment calculations.

A final general assessment bill is sent to each registrant in August of the following calendar year to close out the previous fiscal year. This bill is calculated based on the actual expenses of the Department for the respective fiscal year. Once the final assessment is calculated, any overpayment will be applied to the next estimated quarterly assessment.

Note: Refunds are issued to registrants only if there is an excess after the next quarterly fees are satisfied.

Failure to Pay General Assessment

Registrants that fail to pay the assessment bill by the due date will be assessed a late fee of \$100 plus an additional interest penalty. Additionally, failure to pay a quarterly assessment within 30 days of the due date will result in the temporary expiration of the mortgage broker registration. If the payment is not made within 60 days of the temporary expiration, the Department will permanently expire the mortgage broker registration, and the individual or entity will be required to reapply for a registration (i.e., submit new application and pay all applicable fees) to conduct regulated mortgage origination activities.

Note: Mortgage brokers are prohibited from accepting applications and soliciting loans during any period when the registration is expired.

Books and Records

Part 410.7 of the Superintendent's Regulations require registrants to maintain books and records for a minimum period of three years. However, under federal laws and regulations, certain documents relating to registrant business activities must be maintained for up to five years. Additionally, Article 12-E requires sponsoring entities to maintain evidence of any mortgage loan originator employees' compliance with continuing education requirements for a period of six years.

Management must maintain evidence of policies and procedures used in their decision-making process, and record financial documents to support the receipt and disbursement of funds, including, but not limited to, cancelled checks and bank statements. Tax return and financial statements filed with government agencies and regulators must also be maintained as part of the registrant's books and records.

Display of Registration

As required by section 593 of the Banking Law, all mortgage brokers must prominently display a copy of the registration certificate issued at each business office.

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Additional Branch Locations

Mortgage brokers are prohibited from conducting business at locations that have not been approved by the Department.

For information on how to register an additional branch office, see the Department's website at <http://www.dfs.ny.gov/mortgagecomp.htm>.

Applications for branch offices are published in the Department's Weekly Bulletin. If the application is not denied within 30 days of publication, the mortgage broker can begin operating the branch office.

Please be advised that filing an application on the NMLS is not considered acceptance by the Department. Applications are not published in the Weekly Bulletin until such applications are deemed complete by the Department. See "Application Approval or Denial" in section II of this guidebook for details on the application process.

Updating Registration Information

1. *Change of Address*

Pursuant to section 593-A of the Banking Law, mortgage brokers must notify the Department of changes in the address of authorized locations. Upon approval, the Department will issue a new registration certificate with the address of the authorized location.

For details on how to apply for a change of address, refer to the Department's website at <http://www.dfs.ny.gov/banking/iambcmoa.htm>.

2. *Change in Executive Officers and Directors*

Any changes in executive officers and directors must be communicated to the Department within ten days of such change. See Part 410.6(b) of the Superintendent's Regulations.

New executive officers and directors must submit fingerprints for a criminal background check, credit report and must provide all items listed in our application checklist for a new executive officer, director or qualifier, which is available on the Department's website at <http://www.dfs.ny.gov/banking/iambnewdir.htm>.

3. *Change of Qualifier*

Any changes in qualifier must be communicated to the Department within ten days of such change, and a new qualifier must be approved by the Department. See Part 410.6(b) of the Superintendent's Regulations.

A qualifier must have two years verifiable experience in the business of credit analysis or underwriting of residential mortgage loans or similar lending and credit evaluation experience and

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be actively engaged in the operations of the broker. New York State licensed attorneys and real estate brokers in good standing are exempt from the two year experience requirement.

Verification of employment does not constitute sufficient verification of experience. Professional references can be provided from entities engaged in mortgage loan origination activities, servicing, or warehouse providers. Such references must specifically address the qualifier's experience and the number of years such individual engaged in underwriting or credit analysis. A minimum of two professional references must be submitted.

Detailed instructions for notifying the Department of changes in qualifier are available on the Department's website at <http://www.dfs.ny.gov/banking/iambnewdir.htm>.

4. *Change in Control*

It is unlawful for anyone to acquire or assume control of a registered mortgage broker without the prior approval of the Superintendent.

A control person is defined as any individual or entity that directly or indirectly has the power to direct or cause the direction of the management and policies of the registrant, whether through the ownership of voting stock or equivalent interest of the registrant, the ownership of voting stock or equivalent interest of any person or entity that possesses such power or otherwise.

Detailed instructions for notifying the Department of changes in control are available on the Department's website at <http://www.dfs.ny.gov/banking/iamborca.htm>.

Mortgage Loan Originators ("MLO")

Article 12-E requires individuals engaging in mortgage loan origination activity to obtain an MLO license. Mortgage brokers are also required to ensure that MLOs do not operate from unauthorized locations.

Detailed instructions for licensing MLOs are available on the Department website at http://www.dfs.ny.gov/banking/mortgage_originators.htm

Registrants are required to verify the license status of all MLO employees, regardless of whether the individual functions as a W-2 employee or 1099 independent contractor. Additionally, registrants must ensure that employed or affiliated MLOs have satisfied annual renewal requirements, such as taking the requisite amount of continuing education courses.

Each originating entity shall promptly notify the Department of any change in the status of an MLO associated with such entity. Additionally, on a quarterly basis, originating entities must notify the Department of the termination or new employment of any MLO employed or affiliated with the originating entity, and also inform the Department of the dismissal for cause of any employed or affiliated MLO.

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Mortgage brokers are prohibited from using unlicensed mortgage loan originators to engage in origination activities on 1- 4 family owner-occupied residential property in New York. Mortgage brokers are required to ensure that MLOs are covered by a MLO surety bond, as required under Part 420.15 of the Superintendent's Regulations.

For additional information on MLO surety bond requirements, refer to the Department's website at <http://www.dfs.ny.gov/banking/mbmlosb.htm>.

Internet

1. *Overview*

An increasing number of mortgage brokers are using the internet to solicit potential borrowers and accept loan applications. While the internet offers mortgage brokers the opportunity to market products and services more globally, it also presents significant risks. Management and owners of mortgage brokers should implement appropriate controls to mitigate the additional risk associated with internet-based activity.

Regardless of whether a broker outsources website hosting and maintenance, management is ultimately responsible for protecting the mortgage broker's technology system and borrower data. Registrants are also reminded of their responsibility to ensure that weblink relationships accessed through their websites do not result in noncompliant activity or additional legal risks.

Note: Weblink is a word or image in a computer document that contains coding that users can click on in order to access a different part of the website or a completely different website.

Legal and compliance risks increase when the linked third party engages in activity that results in violations of federal and state laws and regulations, irrespective of whether such laws and regulations solely govern mortgage loan origination activity.

For additional information on privacy and security issues, refer to the Federal Trade Commission's website at <http://www.business.ftc.gov/privacy-and-security>.

2. *Website Authorization*

Mortgage brokers are required to obtain the prior approval of the Department to use a website to conduct mortgage origination activities.

Detailed instructions for authorizing your website is available on the Department's website at http://www.dfs.ny.gov/banking/mortgage_web_auth_instruct.htm

3. *Subsites*

Mortgage brokers who wish to maintain subsites for individual MLOs must ensure that such subsites are accessible only through the mortgage broker's main website previously authorized by

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the Department. Additionally, the subsite cannot contain information that may result in direct solicitation from such subsite.

MLO webpages must clearly indicate that the individual engages in mortgage loan origination activities on behalf of the mortgage broker and does not function independently as a mortgage broker in New York State.

While the Department does not object to the inclusion of testimonials, content on the subsites should be limited to a summary of the MLO's experience in the industry and education regarding the loan origination process or mortgage industry.

Note: The use of an unauthorized website is equivalent to operating an unregistered or unauthorized location.

4. *Prohibited Website*

MLOs are prohibited from establishing websites and advertising on such sites in a manner that implies that the MLO is a registered mortgage broker or licensed mortgage banker.

The Department will not authorize the use of a website that is owned by an individual other than the mortgage broker. The Department also does not authorize the use of domain names that contain the names of individual MLOs or websites containing the following words: "National," "Federal," "FHA," "HUD," or "SONYMA."

5. *Social Media*

The Department does not prohibit mortgage brokers or their employees from utilizing social media sites. However, direct solicitation or advertisement from such site may violate federal and state laws and regulations.

Mortgage brokers must establish policies and procedures governing the use of social media sites by employees. At a minimum, such policies should provide direction on the information that may be posted, examples of postings that could trigger violations, and penalties or disciplinary actions for failure to comply with the social media policy. Mortgage brokers are responsible for monitoring the solicitation, origination and advertising activities of its sponsored MLOs to ensure compliance.

For additional information, refer to "Social Media: Consumer Compliance Risk Management Guidance," available on the Consumer Financial Protection Bureau's website at http://files.consumerfinance.gov/f/201309_cfpb_social_media_guidance.pdf.

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SECTION IV: SUPERVISORY OVERSIGHT

The Department continually monitors registrants for compliance with registration requirements and applicable laws and regulations. As part of its overall supervisory process, the Department conducts periodic onsite and offsite examinations of registered brokers.

Examinations are scheduled based on several factors, including the overall rating assigned to the registrant at the prior examination. In general, registrants rated fair, marginal, or unsatisfactory are examined semi-annually or annually. Satisfactory-rated registrants are examined once every two years, and those rated as strong are examined once every three years. Additionally, registrants assigned a less than fair rating in management, internal controls, or legal and regulatory compliance will be subjected to a follow-up review at the Department's discretion. Such reviews are generally conducted within nine months of the Department's transmittal of the examination findings (i.e., the examination report).

With the exception of offsite reviews, examinations are conducted onsite at the principal offices of the registrant, regardless of whether the office is a commercial or residential location. The duration of the onsite examination could be anywhere from three days to four weeks depending on the volume of applications taken, loans closed, and the operating infrastructure of the broker. Examinations also include branch visitations and employee interviews, including, but not limited to, MLOs and loan processors.

Note: The Superintendent reserves the right to conduct unannounced examinations in his or her sole discretion.

Examination Format

The primary objective of an examination is to determine whether the mortgage broker is operating fairly, honestly and efficiently, and free from deceptive and anti-competitive practices. Examinations also assist the Department in determining whether registrants conduct business in a safe and sound manner, and comply with applicable laws and regulations. The Department utilizes four examination formats in evaluating registered brokers: (1) safety and soundness; (2) compliance reviews; (3) special targeted reviews; and (4) fair lending.

1. *Safety and Soundness*

Safety and soundness examinations are the most comprehensive type of examination. During a safety and soundness examination, Department staff analyze the soundness of the registrant's financial condition and operating environment, compliance with internal policies and procedures, compliance with applicable laws, regulations, and regulatory guidelines, the integrity of management information systems and information technology, as well as management's ability to effectively identify, monitor, and control legal, credit, financial, and reputational risk associated with the registrant's origination activity.

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2. *Compliance Reviews*

Compliance reviews focus on the registrant's overall compliance structure. Examiners assess the broker's compliance with New York-specific registration laws and regulations, federal and other state consumer disclosure requirements, and guidelines addressing loan origination activities. These reviews also include an assessment of the registrant's compliance with regulatory enforcement actions and its ability to safeguard confidential information. Further, examiners evaluate the registrant's compliance training program, including frequency of origination staff training and whether such training adequately covers state-specific and federal mortgage origination requirements.

Registrants cannot substitute MLO continuing education requirements to fulfill the registrant's obligation to ensure its MLOs, loan processors, or managers are knowledgeable about changes in law and regulations governing mortgage origination activities.

Examiners also analyze the registrant's quality control and compliance reviews to determine the level of independent oversight regarding its loan processing function and whether such reviews are sufficiently comprehensive to facilitate the detection of violations, operating deficiencies and fraud prior to any loan closing.

3. *Special Targeted Reviews*

Generally, the Department conducts special targeted reviews in response to consumer complaints, reports of malfeasance or whistleblower notification of potential fraudulent activities. The scope of these reviews is normally focused on identifying the existence of specific behavior considered harmful to consumers and the overall mortgage industry. If warranted, information derived from such targeted reviews could lead to an expanded safety and soundness examination or an additional investigation.

4. *Fair Lending*

A fair lending examination assesses compliance with section 296-a of New York State Executive Law and federal fair lending laws and regulations to ensure that the registrant does not practice unlawful discrimination in relation to credit.

In addition to a review of the registrant's fair lending plan, examiners assess the effectiveness of its fair lending compliance program, including, but not limited to, the training of personnel, second level review of denied applications, product selection, third-party agreements, audit and compliance monitoring, complaint processing, and marketing. This assessment considers the independence, frequency, scope, and adequacy of the fair lending compliance program relative to the size and risk profile of the registrant.

Evaluation of the registrant's fee structure and pricing are conducted to determine the existence of disparate treatment. Registrants must clearly demonstrate that monitoring mechanisms are in place to assess pricing disparity by MLO, branch office, or lending channel.

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The registrant's fair lending risk level is assessed and an overall assessment is made whether the procedures used to identify, monitor, and control fair lending risks are adequate.

For detailed information on the fair lending requirements, refer to the Department's industry letters from July 19, 1999 and September 13, 2006. The letters are available on the Department's website at http://www.dfs.ny.gov/legal/industry_circular/banking/mb060913.htm and http://www.dfs.ny.gov/legal/industry_circular/banking/i1990719.htm, respectively.

Notification of Examinations

Generally, the Department notifies registrants at least three weeks prior to the proposed start date of the examination by sending a First Day Letter ("FDL"). The FDL specifies the onsite start date, the length of the examination period, and the name of the examiner in charge of the examination. The FDL requires registrants to submit certain responses to the Department no less than one week prior to the onsite start date.

Although the Department takes considerable steps to notify registrants within the time frame outlined above, there are certain circumstances where prior notification is not feasible or appropriate. For example, the Department does not provide prior notification for special targeted and compliance reviews. The Department also periodically conducts unannounced safety and soundness examinations.

Rescheduling Examinations

To effectively manage resources and ensure that periodic examinations are conducted in a timely manner, registrants must take appropriate steps to notify the Department of any situation that requires rescheduling of an examination.

The Department will reschedule the examination only once, based upon the inability of certain individuals to participate in the examination process, including, but not limited to, any qualifiers, owners, or regulatory contacts. However, requests to reschedule must be provided at least five business days prior to the onsite start date. Failure to provide five days' notice will result in a charge for the first day of the examination. Each request must provide a specific reason for rescheduling and the projected date of availability.

Requests to reschedule are not automatically granted. Requests to reschedule examination for a period exceeding three weeks require documentation of extenuating circumstances.

Ratings

The Department assigns all registrants an examination rating using the "FILMS" rating system. This system evaluates and rates registrants in the following categories: "Financial Conditions (F)," "Internal Controls and Auditing (I)," "Legal and Regulatory Compliance (L)," "Management (M)," and "Systems and Technology (S)."

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Individual components are rated using a numerical scale, which ranges from 1-5, where “1” is the strongest rating and “5” is reflective of unsatisfactory operations. In addition to component ratings, registrants are assigned a composite rating utilizing the same 1-5 scale. Composite ratings generally represent an average of the individual component ratings rounded to the nearest whole number. For example, a FILMS ratings of 2, 3, 4, 3, 2, divided by 5, equals a 2.8 average, but the final composite rating for the registrant will be a 3.

Institutions rated less than satisfactory (i.e., 4 or 5) in Internal Controls and/or Legal and Regulatory Compliance will generally receive a less than satisfactory composite rating.

Registrants rated less than satisfactory are subject to increased supervisory oversight, including enforcement actions, more frequent examinations, and monitoring of any corrective actions.

Evaluations of Rating Components

1. *Financial Condition*

The Department evaluates the financial condition of mortgage brokers based on the registrant’s ability to meet short and long-term obligations and contingent liabilities. Such obligations include, but are not limited to, the ability of the registrant to fund operating expenses associated with rental charges, salaries and commissions, payroll and franchise taxes, insurance premiums, general assessment fees and equipment leases. Additionally, registrants must demonstrate the existence of sufficient financial capacity to cover liens and judgments, potential repurchase claims, contingent liabilities associated with pending lawsuits, and consumer restitutions resulting from violations of laws and regulations. In addition to application logs, brokers are required to provide examiners with copies of bank statements, federal and state tax returns and accounting records including but not limited to balance sheet, income statement, and general ledgers.

2. *Internal Controls*

Strong internal controls are essential to a registrant’s risk management. Policies and procedures are an integral part of a sound internal control environment. Registered brokers should ensure that policies provide personnel with a consistent message regarding unauthorized activity, malfeasance, loan documentation standards and overall conduct with consumers. Furthermore, management should establish appropriate control systems and monitoring functions to ensure compliance with internal policies and procedures.

The internal control system should employ controls that are both preventative and detective. Preventative controls are designed to discourage noncompliant and fraudulent behavior whereas detective controls facilitate the identification of noncompliant and fraudulent behavior after they have occurred.

Registrants should maintain internal controls appropriate to the size, complexity and associated risk of their origination activities. Such internal controls should employ front-end policies and procedures to prevent unauthorized activity, fraud and financial loss, and back-end detective measures to identify errors, unauthorized activity and fraud. Such detective measures include, but

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are not limited to, quality control reviews, management information systems reports, internal or external audit and information technology reviews.

3. *Legal and Regulatory Compliance*

Registrants must have a strong compliance infrastructure capable of assessing overall level of compliance with applicable laws and regulations. A robust compliance program includes, but is not limited to, employee training, designation of an individual responsible for oversight of the compliance program, and mandatory periodic reviews.

A registrant's compliance program must include a written compliance manual that supports the broker's operations and provides guidance on registration laws for each respective market in which the broker operates, as well as credit restrictions and disclosure requirements. The manual should also address staff training requirements for MLOs and mechanisms employed by management to ensure compliance.

The registrant's compliance training programs should provide MLOs, loan processors, and senior management with knowledge relating, but not limited, to unfair, deceptive and abusive acts and practices, fraud detection and red flags, identify theft, fair and responsible lending, and New York-specific registration requirements. Such training should be in addition to any required MLO training and must include periodic updates to address any changes in applicable laws and regulations.

Registrants are required to demonstrate compliance with federal and state laws governing mortgage origination activities, and laws and regulations governing corporate enterprise, limited liability companies and partnerships. Furthermore, registrants must ensure that proper protocols are implemented to comply with regulatory enforcement actions, settlement agreements, and examination directives.

4. *Management*

Overall, management is responsible for ensuring that the registrant is financially sound, maintains the appropriate technology systems, and has implemented a robust compliance structure. Therefore, management must demonstrate its ability to effectively monitor, detect and manage risk associated with the registrant's origination activities.

Additionally, senior management must demonstrate formal oversight of the registrant, including, but not limited to, periodic meetings, management information reports, and written business plans outlining loan origination objectives. Management must also document any actions employed to identify and deter fraud and noncompliant behavior.

5. *Systems and Technology*

Rapid changes in information technology, use of electronic means to transmit personal confidential data, and the general mobility of such data has increased risk. Registrants that employ internet-based applications and utilize websites must take proper precaution to safeguard confidential data

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moving through such portals. In addition, data transmitted via the internet should be encrypted and appropriate security access and firewall software should be installed on portable computers and desktops. Independent information technology (“IT”) audits should be conducted to detect weakness in any IT platforms and operating software, including periodic penetration testing.

Access rights to the system should be controlled to ensure that only authorized individuals can affect business records and retrieve confidential data. Furthermore, the level of system access should be limited to the minimum necessary for the employee or user to perform his or her assigned task and job responsibilities. To ensure that access is adequately controlled, all users should have an alpha-numeric password that expires no more than 90 days from date of creation. The system should contain a time-out feature designed to log users out after a selected number of minutes of inactivity. Employees or system users should be educated about the importance of securing passwords to prevent unauthorized use. All servers and mainframes should be stored in a locked room.

A. Data and Program Files

Data and program files should be backed up and stored in a secure, offsite location to facilitate a swift restoration of systems, applications, and associated data in the event normal processing is disrupted by a disaster or other disruptive event. All backups should be tested periodically to ensure that data is recoverable. Security protocols should address the transportation of backup data to the offsite location, and permissible access to such data at the offsite location.

If files are imaged, quality of the scanned documents is critical. Imaged files should be captured with the highest level of resolution that ensures clarity and provides reprinted documents equivalent to originals. In addition, imaged files should be indexed and allocated to specific storage capacity within the system. Further, the use of traditional formats such as “PDF,” “doc,” “jpeg,” and “tiff” ensures the retrieval of the image on a variety of systems. The registrant should provide ample oversight of the imaged documents to deter alteration or counterfeiting of images, and loss or compromise of confidential customer information. Controls should exist at the point of image capture to certify that the images are usable, retrievable and reflective of the paper document. In addition, certain devices (e.g., tape, disk, image, etc.) containing sensitive information should be disposed of properly to protect against reputational exposure and to ensure compliance with the Gramm-Leach-Bliley Act of 1999, which governs the safeguarding of customer information. Registrants are reminded that electronic record retention processes should comply with federal and state laws governing record retention.

B. Mobile Devices

Registrants should implement measures to establish control and security over mobile devices (e.g., laptops, tablets) utilized remotely in conducting mortgage origination activities. Such measures include, but are not limited to, a system security utility program that facilitates user access control, including time-out and lock-out functionality. Application software installed on mobile devices should also have a password security function. As stated above, passwords should expire no more than 90 days from creation. Confidential data on external drives, including thumb drives, should be encrypted, and the physical drive should be password protected. Registrants should establish

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written procedures to address the type of information maintained on mobile devices (e.g., laptop hard drives) and the length of time such information is stored on the mobile device. Registrants should establish policies and procedures governing the placement of confidential customer information on employees' personal mobile devices or home computers. Such procedures must address the level of security and access to data as outlined in this section.

The policies should also address what happens to customer confidential information stored on an employee's mobile device once the loan application is closed, denied or withdrawn, and when a registrant no longer employs the employee. Additionally, there should be a process in place to ensure that the established policies and procedures are being properly implemented.

SECTION V: ANTI-MONEY LAUNDERING PROGRAM

On February 7, 2012, the Financial Crimes Enforcement Network ("FinCEN") of the U.S. Department of Treasury finalized federal regulations that require non-bank residential mortgage lenders and originators to establish anti-money laundering ("AML") programs and file suspicious activity reports ("SARs"). The mandatory deadline for compliance with these regulations was on August 13, 2012.

The AML and SAR requirements apply to all registered mortgage brokers, regardless of size. Below is a partial summary of the FinCEN regulations. You should review the full text of the regulations, as well as the supplementary information, available on FinCEN's website at www.fincen.gov or on the Electronic Code of Federal Regulations at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title31/31cfr1010_main_02.tpl

Establishing a Written Anti-Money Laundering Program

The federal regulations require each covered entity, including registered mortgage brokers, to develop and implement a written AML program that is reasonably designed to prevent the entity from being used to facilitate money laundering or the financing of terrorist activities.

At a minimum, the AML program must:

- Incorporate risk-based policies, procedures, and internal controls;
- Designate a compliance officer;
- Provide for ongoing training of employees and others; and
- Provide for independent testing to monitor and maintain the program.

Policies, Procedures, and Internal Controls

The federal regulations require that policies, procedures, and internal controls must be based upon the registrant's assessment of the money laundering and terrorist financing risks associated with

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its products and services. In addition, such policies, procedures, and internal controls must include provisions for complying with applicable laws and regulations.

Policies, procedures, and internal controls must also contain provisions for integrating the registrant's staff into its AML program and for obtaining all relevant customer-related information necessary for an effective AML program. Additionally, a registrant is required to ensure that its agents and third-party brokers are integrated into its AML program.

Compliance Officer

The AML-designated compliance officer is responsible for ensuring that:

- The AML program is implemented effectively, including monitoring compliance by the registrant's employees, brokers, and agents with their obligations under the program;
- The AML program is updated as necessary; and
- Appropriate persons are properly educated and trained with respect to AML-related issues.

To facilitate independence and mitigate potential conflicts of interest, the Department directs registrants to ensure that the compliance officer is not involved in mortgage loan origination activities and does not manage any operational areas. The compliance officer should also be assigned ongoing responsibility for ensuring compliance with the Bank Secrecy Act of 1970 and have the authority, budget, and training necessary to perform his or her compliance duties at a level commensurate to the level of risk for the registrant's business.

Training

Registrants are responsible for providing on-going training of appropriate persons concerning their responsibilities under the AML program. The registrant may satisfy this requirement with respect to its employees, agents, and co-brokers by directly training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the registrant.

The amount and type of training must be appropriate for the risk faced by the registrant and must be documented. Documentation should include the name of the company that conducted the training, the date of the training, the topics discussed, and a list of attendees.

Independent Testing

Each registrant must provide independent testing to monitor and maintain its AML program, including testing to determine compliance by the registrant's agents and co-brokers with their obligations under the program. The scope and frequency of testing must be commensurate with the risks posed by the registrant's products and services. Such testing may be conducted by a third

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party or by any qualified officer or employee of the registrant, other than the person designated as the compliance officer.

Required Reports

Section 1029 of Title 31 of the Code of Federal Regulations (“CFR”) contains the rules setting forth the obligation of registrants to report suspicious transactions. The registrant may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by the regulation.

Pursuant to Section 1029.320 of CFR Title 31, a registrant must report a transaction if it is conducted or attempted by, at, or through the registrant, it involves or aggregates funds or other assets of at least \$5,000, and the registrant knows, suspects, or has reason to suspect that the transactions (or a pattern of transactions of which the transaction is a part) is suspicious. A transaction is considered suspicious if it:

- Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- Is designed, whether through structuring or other means, to evade any requirements under the Bank Secrecy Act;
- Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the entity knows of no reasonable explanation for the transaction after examining the available facts; or
- Involves the use of the registrant to facilitate criminal activity.

Examinations for Compliance

The AML program must be approved by the registrant’s senior management and, if applicable, reviewed by its board of directors. Each registrant must make a copy of its AML program available to FinCEN or its designee upon request.

In addition to review by FinCEN, the Department will review compliance with the AML and SAR requirements during examinations. Failure to comply with the AML and SAR requirements may constitute a violation of the Bank Secrecy Act, and may result in a revocation of your registration.

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SECTION VI: PROHIBITED ACTIVITIES

As noted above, mortgage brokers are required to comply with all applicable federal and state laws and regulations governing mortgage origination activities and business conduct. The following list sets out some of the prohibitions contained in New York laws and regulations.

Mortgage Brokers shall not:

- Fund mortgage loans on 1-4 family residential property located in New York;
- Conduct business with an unregistered mortgage broker or an unlicensed mortgage banker;
- Conduct business with an unlicensed mortgage loan originator;
- Misrepresent or conceal material loan terms, conditions or charges or make false promises to induce an applicant to apply for a mortgage loan;
- Fail to provide disclosures in the manner and at the times required by law or regulation;
- Include any provision in the mortgage brokerage agreement that is intended to limit or prevent a consumer from submitting an application(s) to obtain a mortgage loan through another mortgage broker(s) or mortgage banker(s) or exempt organization(s) or impose a fee on the applicant should he/she do so;
- Engage in deceptive acts or practices or advertise or solicit business in a deceptive manner;
- Accept any fees at closing that were not disclosed in accordance with laws and regulations;
- Accept a good-faith deposit or any other deposit to induce the lender to process the loan, whether or not the deposit is refundable;
- Collect more than one application or processing fee or collect application or processing fees when it knows that the lender or co-broker charges and collects such fees;
- Accept attorney's fees at closing in excess of the fees that have been or will be remitted to its attorneys;
- Fail to refund excess third party fees collected by the broker; and
- Collect interest rate lock fees and fail to pay such monies to the lender.

Please refer to federal and state laws and regulations regarding prohibited conduct, including, but not limited to, Section 590-b and 595-a of the Banking Law; Part 38.7 of the General Regulations of the Superintendent; and Part 420.20 of the Superintendent's Regulations.

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SECTION VII: ENFORCEMENT ACTIONS

Penalty for Violations

Pursuant to section 44 of the Banking Law, the Superintendent may levy a penalty for violations of the Banking Law and applicable regulations. The penalty is \$2,500 per day for every day such violation continues.

In addition, the Superintendent may increase the penalty amount to \$15,000 per day for every day such violation continues if the Superintendent determines that such violation(s) or practices are part of a pattern of misconduct, results or is likely to result in more than minimal loss to such registrant; or results in pecuniary gain or other benefit to such registrant.

Furthermore, if the Superintendent determines that a registrant has knowingly and willfully committed any violation or has knowingly and willfully engaged in any unsafe and unsound practice, or has knowingly committed any violation that substantially undermines public confidence in such registrant and, that such registrant has knowingly or recklessly incurred so substantial a loss as a result of such violation or practice as to threaten its safety and soundness of such registrant, the penalty can be increased to up to \$75,000 for each day the violation continues.

Penalty for Failure to Make Reports

Pursuant to section 44-a of the Banking Law, the Superintendent may levy a penalty against a registrant that inadvertently or unintentionally fails to make any required report, fails to include within such report any required information, or submits false or misleading information as part of such report.

The penalty is a maximum \$2,000 for each day during which such report or omitted matter is delayed or withheld, or false or misleading information is not corrected. Furthermore, where the Department determines that the failure was not inadvertent or unintentional, the penalty may increase to a maximum of \$250,000 a day. When assessing the penalty, the Superintendent will take into account factors, including, without limitation:

- Net worth and annual business volume;
- The extent, if any, to which senior management or board directors or trustees participated;
- extent to which the entity has cooperated with the Superintendent in the investigation of such conduct;
- Any sanction imposed by any other regulatory agency;
- The financial resources and good faith of the entity;
- The gravity of the violation;

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- Any history of prior violations; and
- Any other matters as justice and the public interest may require.

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APPENDIX I: CONTACT LIST

Broker Applications	Mortgage.Broker@dfs.ny.gov
Banker Applications	Mortgage.Banker@dfs.ny.gov
Mortgage Loan Originators	MLO@dfs.ny.gov
Mortgage Loan Servicers	MLS@dfs.ny.gov
Exempt Organizations	Mortgage.Exempt@dfs.ny.gov

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APPENDIX II: LAWS AND REGULATIONS TO BE FAMILIAR WITH WHEN ENGAGING IN MORTGAGE BROKER OPERATIONS

Note: The complete text of New York laws are available on the New York State Legislature's website at [http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:](http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO;), and the complete text of New York regulations and supervisory procedures are available on Westlaw's website at [https://govt.westlaw.com/nycrr/index?_lrguid=i74b1082498c2442983721dde2062dc86&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/index?_lrguid=i74b1082498c2442983721dde2062dc86&transitionType=Default&contextData=(sc.Default))

Legend

G.R.S. - General Regulations of the Superintendent
S.R. - Superintendent's Regulations
S.P. - Supervisory Procedures General
S.P.MB - Supervisory Procedures Mortgage Banking

New York Codes Rules and Regulations (NYCRR) Title 3: Banking Department

G.R.S. Part 38	Mortgage Banking/Brokering
G.R.S. Part 39	Exempt Organizations, Subsidiaries, and Products
G.R.S. Part 41	Restrictions and Limitations on High Cost Home Loans
G.R.S. Part 42	Subprime Home Loans – Thresholds
G.R.S. Part 43	Subprime Home Loans – Meaning of Terms
G.R.S. Part 79	Reverse Mortgage Loans
G.R.S. Part 80	Investment in Junior Lien Mortgage Loans
G.R.S. Part 82	Alternative Mortgage Instruments
S.R. Part 300	Reporting of Crimes
S.R. Part 334	Indices used in connection with variable rate products
S.R. Part 408	Extension of Credit on Non-Discriminatory Basis
S.R. Part 410	Mortgage Bankers and Brokers: Licensing/Registration Requirements; Branch Applications; Notification Provisions; Books and Records; Annual Reports; Surety Bonds; Consultants
S.R. Part 420	Mortgage Loan Originators. Licensing; Education Requirements

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S.P. G 101	Automated Data Right to Examine
S.P. G 111	Administration Adjudication Policy and Plan; Procedural Requirements
S.P. MB 102	Application for Registration as a Mortgage Broker
S.P. MB 104	Application for a Change in Control of a Mortgage Broker
S.P. MB 105	Application by a Mortgage Broker for Inactive Status
S.P. MB 107	Application for Initial Authorization as a Mortgage Loan Originator; Request for Renewal of Authorization

Laws of New York State

Banking Law

Section 6-E	Graduated payment mortgages authorized
Section 6-H	Reverse mortgage loans authorized
Section 6-I	Mortgage loans
Section 6-J	Proof of insurance
Section 6-K	Real property insurance escrow accounts
Section 6-L	High-cost home loans
Section 6-M	Subprime home loans
Section 9-S	Preauthorized electronic fund transfers
Section 18-A	Application fees
Section 22	Fingerprints
Section 36	Examinations; right of inspection; penalties for refusing to permit examination
Section 37	Reports to superintendent
Section 38	Power of subpoena

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Section 39	Orders of superintendent
Section 44	Violations; penalties
Section 44-A Article 12-D	Violations and penalties; failure to make reports Licensed Mortgage Bankers and Registered Mortgage Brokers
Article 12-E	Licensed Mortgage Loan Originators
<u>Business Corporation Law</u>	
Section 202(a)(16), (b)	General Corporate Powers
Section 301(a)(5)(B)	Corporate name; general
Section 1005	Procedure after dissolution
<u>Executive Law</u>	
Section 296-a	Unlawful discriminatory practices
<u>Financial Services Law</u>	
Section 206	Assessment to defray operating expenses of the Department
<u>General Business Law</u>	
Section 130	Filing of certificates by persons conducting business under assumed name or as partners
Section 133	Use of name or address with intent to deceive
Section 143	False identification documents
Section 349	Deceptive Acts and Procedures
Section 350	False Advertising
Article 25	Fair Credit Reporting Act
<u>General Obligations Law</u>	
Title 3 5-328	Processing fee by holder of dishonored check
Title 5 5-501 – 5-531	Interest and usury; brokerage on loans

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Limited Liability Company Law

Section 202(q) General LLC Powers

Section 204(f) LLC name

Real Property Law

Section 254 Construction of clauses and covenants in mortgages and bonds or notes

Section 254-A Right of election of mortgagee in certain cases

Section 254-B Limitation on late charges

Section 254-C Right to a copy of real property appraisals and consumer reports in certain cases

Section 265 Fraudulent intent, question of fact

Section 265-A Home equity theft prevention

Section 265-B Distressed property consulting contracts

Section 274 Transfers and mortgages of interest in decedents' estates

Section 274-A Certificate of principal amount unpaid on mortgages of real property

Section 275 Certificate of discharge of mortgage required

Section 280 Reverse mortgage loans for persons sixty years of age or older

Section 280-A Reverse mortgage loans for persons seventy years of age or older

Section 281 Credit line mortgage

Real Property Tax

Title 3A Real Property Tax Escrow Accounts

Federal Laws & Regulations

Regulation B Equal Credit Opportunity Act (ECOA)

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Regulation C	Home Mortgage Disclosure Act
Regulation X	Real Estate Settlement Procedures Act (RESPA)
Regulation Z	Truth in Lending Act
Gramm-Leach Bliley Act	Privacy Provisions
Federal Trade Commission	Safeguard Provisions
Regulation V	Fair Credit Reporting Act (Red Flag Rules)
18 U.S.C Section 709	False advertising or misuse of names
31 CFR Parts 1010 and 1029	Anti-Money Laundering Act
USA Patriot Act	