

NEW YORK PREVAILING INTEREST RATE COMMITMENT

THE USE OF THIS FORM IS OPTIONAL. If you use this form properly without alteration, you may assume that you are in compliance with New York State Department of Financial Services disclosure requirements as set forth in Part 38.5(a) of the General Regulations of the Banking Board as in effect on April 1, 2003. However, use of this form does not constitute a guarantee against civil or criminal liability.

Each page must contain the Company Name, the title of the form and be numbered. **Each page must contain either the initials or signature of the applicant(s).**

Instructions are enclosed in brackets, are preceded by the word "**INSTRUCTION**", and are in italics. The instructions are for your benefit and should not be included in your New York Prevailing Interest Rate Commitment.

4. **COMMITMENT FEE:** The commitment fee is \$ _____ (_____ % of the loan amount). This fee _____ is _____ is not included in the Origination Fee or Discount Points or the Points stated above.

5. **INTEREST RATE:**

[INSTRUCTION: If a commitment fee, origination fee, points or other discounts are collected prior to the fixing of the interest rate, an Index and Margin or Base Rate and Deviation must be disclosed in accordance with part 38.5 of the General Regulations of the Banking Board.]

Your interest rate will be determined as checked below:

FOR FIXED INTEREST RATE MORTGAGES ONLY:

[INSTRUCTION: You must choose one of the following to set the interest rate of the mortgage loan.]

_____ Your rate will be based on an index rate plus a margin. They are as follows:

Margin: _____ Index: _____ Index Source: _____

_____ Your rate will be based on an interest rate of _____ with a maximum deviation of _____. Therefore, the maximum interest rate at closing can not be more than _____%. (**INSTRUCTION:** The deviation cannot be more than 1%.)

FOR ADJUSTABLE INTEREST RATE MORTGAGES ONLY:

Adjustment period: _____ Caps - per adjustment: _____ Lifetime _____
Negative Amortization: _____ Yes _____ No

Margin: _____ Index: _____ Index Source: _____

[INSTRUCTION: If a commitment fee, origination fee, points or other discounts are not collected prior to the fixing of the interest rate, an Index and Margin or Base Rate and Deviation need not be disclosed in accordance with part 38.5 of the General Regulations of the Banking Board.]

Your interest rate will be determined at or prior to the closing date.

6. **MAXIMUM RATE:** Should the rate of interest at the time closing is scheduled exceed the rate for which you qualify, this commitment shall be null and void.

The maximum rate of interest for which you qualify is ____%.

7. **EXPIRATION DATE:** The expiration date of this commitment is _____.

If your loan does not close by this date, we have no obligation to honor the terms of this agreement.

[INSTRUCTION: See the additional information on the Expiration Date in the commentary immediately following this form.]

8. **MORTGAGE BROKER FEE:**

As compensation for its services, your Mortgage Broker will be paid as checked below:

____ We will pay your mortgage broker a fee of ____% of the loan amount or \$ _____. The compensation your mortgage broker will receive from us for its services is included in the rate, points, fees and terms of the loan as quoted by us in this commitment. The maximum points paid, including any premium pricing payable by us to your mortgage broker shall not exceed ____ () points. The basis for the premium pricing payment, if any, is _____.

____ You will pay to your mortgage broker, upon your signed acceptance of this commitment ____ or at closing ____, a fee of ____% of the loan amount or \$ _____.

[INSTRUCTION: If you offer a bonus to the mortgage broker, you must give the borrower a description of this bonus as soon as you know what it will be. Do not confuse this bonus with premium pricing. Check only as applicable.]

____ Your mortgage broker ____ is ____ may be eligible to receive a lender-paid bonus (cash or non-cash). The basis for such lender-paid bonus, if any, is _____.

() This bonus consists of _____.

() You will be notified if this occurs.

9. **MORTGAGE BROKER FEE ACKNOWLEDGEMENT:**

You acknowledge that a mortgage broker fee will be paid to your mortgage broker. You further acknowledge that there is no other fee agreement between you and your mortgage broker.

10. HAZARD INSURANCE: Prior to closing you shall furnish this office with an original hazard insurance policy or a Binder Agreement, satisfactory to the lender. Hazard Insurance coverage must be for \$ _____ or contain a "Guaranteed Home Replacement Cost Endorsement", whichever is lower. We cannot require you to obtain a policy which exceeds the guaranteed replacement cost of the improvements securing the loan.

11. FLOOD INSURANCE: [INSTRUCTION: *Check only if applicable.*]

_____ Flood insurance will be required as a condition of this loan.

12. PRIVATE MORTGAGE INSURANCE ("PMI"): PMI _____ Is _____ Is Not required as a condition of making this loan.

[INSTRUCTION: *If Private Mortgage Insurance is required, state the condition(s) under which such insurance would no longer be required.*]

13. REAL ESTATE TAX AND HAZARD INSURANCE ESCROWS:

[INSTRUCTION: *Check only if applicable.*]

_____ At closing, an escrow impound account will be established and an initial escrow deposit will be required in accordance with RESPA.

14. ASSUMPTION: Someone buying your house:

_____ MAY NOT ASSUME YOUR LOAN.
_____ MAY ASSUME YOUR LOAN UNDER CERTAIN
CONDITIONS:

15. NO ORAL MODIFICATION: This agreement cannot be changed orally.

16. REFUNDABILITY:

Your Commitment Fee and/or points are non-refundable, except for the following conditions:

A) If this commitment is conditioned on the approval of a third-party investor or mortgage insurance company and that party rejects the loan.

- B) If this commitment is conditioned upon the property appraisal report and said report is not favorable for the loan for which the commitment was issued.
- C) If this commitment is conditioned upon an initial credit report and said report is not favorable for the loan for which the commitment was issued.
- D) If the interest rate exceeds the rate for which you qualify and therefore, this commitment becomes null and void.

17. DOCUMENTATION:

The following is a list of information and conditions that we may require you to produce and/or satisfy prior to closing your loan, if applicable:

[INSTRUCTION: *If the mortgage loan is related to a one to four owner occupied dwelling or a condominium you must use this paragraph.*]

Title report and insurance, property survey, copy of Certificate of Occupancy for use, satisfactory final inspection (if new construction), evidence of appropriate hazard insurance, evidence of flood insurance as appropriate, master policy insurance certificate (if applicable in the case of condominiums), termite inspection report, radon test, well water test report and septic inspection report.

[INSTRUCTION - *If the mortgage loan is related to a cooperative housing unit, you must use this paragraph.*]

Proprietary lease, recognition agreement, pledge of shares of stock, warranty and representation that no outstanding claims against the proprietary lease or stock will exist at closing and a copy of certificate of occupancy and title policy for the entire building if conversion has occurred within the last six (6) months.

18. OTHER CONDITIONS:

[INSTRUCTION: *If there are other conditions to the commitment they can be included in the body of the commitment or on an attached rider.*]

19. PREPAYMENT PENALTY:

[INSTRUCTION: *Complete this item only if the mortgage product contains a prepayment penalty.*]

This mortgage contains a prepayment penalty. The amount of, or the formula for calculating, the prepayment penalty is _____. The terms of the prepayment penalty are _____.

20. ACCEPTANCE OF COMMITMENT:

[INSTRUCTION: *The Commitment must be irrevocable for at least seven calendar days from the date of commitment or the date of mailing, whichever is later.*]

Please indicate your acceptance of this Commitment by signing it and returning it to us with the Commitment Fee of \$_____ by _____ (date).

BY _____ **DATE:** _____
(Lender's Signature)

If you sign this commitment, and you do not close this loan in accordance with the described terms, you may lose some or all of the fees or charges you have paid.

I/We hereby accept this Commitment and all conditions set forth therein and agree to proceed with the closing of the loan. I/We have received a duplicate original of this document.

_____ Date	_____ Borrower

COMMENTARY ON NEW YORK PREVAILING INTEREST RATE COMMITMENT

EXPIRATION DATE - RIGHT OF RESCISSION

While transactions subject to the right of rescission may result in timing differences between the closing date of a mortgage loan and the funding date (i.e. disbursement of funds) of a mortgage loan, most lenders honor the prevailing rate commitment if the loan closes by the expiration date. The Department believes that consumers benefit most from this approach since consumers usually do not draw a distinction between the closing and the funding of a loan. However, the Department recognizes that some lenders have a policy of requiring the actual funding to occur prior to the expiration date in order to cover the rescission period. Lenders that have such a policy must ensure that consumers are aware of this distinction by providing a clearly worded explanation in the prevailing rate commitment agreement. In the absence of such an explanation, the Department will expect lenders to honor the prevailing rate commitment if the loan closes by the expiration date.

[INSTRUCTION - *If you are a lender that will only honor the prevailing rate commitment agreement if the loan closes and is funded prior to the expiration date, you must delete the standard expiration clause contained in the model form and insert the following clause.*]

"If this loan is for the refinance of the mortgage on your primary residence, you will not receive the loan proceeds on the date of your closing. Therefore, your loan must close at least (3) three business days prior to the expiration date stated above or the lender has no obligation to honor the terms of this agreement and this may result in a higher rate or more points being charged on your loan."