

SENATE, No. 456

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Makes residential mortgage fraud a separate crime.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning residential mortgage fraud and supplementing
2 chapter 21 of Title 2C of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. Residential mortgage fraud is rampant in the United States
9 and in New Jersey, costing businesses and borrowers large financial
10 losses. Among other things, homeowners witness the deterioration
11 of their neighborhoods, fraudulently inflated property values
12 substantially increase property taxes, struggling low-income
13 families are lured into mortgages they cannot afford and legitimate
14 lenders are saddled with over-inflated mortgages.

15 b. There is a need to protect the general public, particularly
16 borrowers, homeowners, lending institutions and title insurance
17 companies, as well as the integrity of the mortgage lending process
18 generally.

19

20 2. As used in this act:

21 "Mortgage lending process" means the process through which a
22 person seeks or obtains a residential mortgage loan including, but
23 not limited to, solicitation, application or origination, negotiation of
24 terms, third-party provider services, underwriting, signing and
25 closing and funding of the loan. Documents involved in the
26 mortgage lending process include, but are not limited to, uniform
27 residential loan applications or other loan applications, appraisal
28 reports, HUD-1 settlement statements, supporting personal
29 documentation for loan applications such as W-2 forms,
30 verifications of income and employment, bank statements, tax
31 returns, and payroll stubs, and any required disclosures.

32 "Pattern of residential mortgage fraud" means one or more
33 knowing misstatements, misrepresentations, or omissions made
34 during the mortgage lending process that involve two or more
35 residential properties, if they involve either the same victim, or the
36 same or similar actions on the part of the person charged with
37 violating this act.

38 "Residential mortgage loan" means any loan, including the
39 renewal or refinancing of any such loan, secured by a first mortgage
40 on real property located in this State on a one to six family
41 dwelling, which is or will be occupied by the borrower as the
42 borrower's principal dwelling, a portion of which may be used for
43 nonresidential purposes.

44

45 3. A person is guilty of the crime of residential mortgage fraud
46 when, with the intent to defraud, that person:

47 a. Knowingly makes, or causes to be made, any false,
48 fictitious, fraudulent or misleading statement of material fact in, or

1 omits a material fact from, or causes a material fact to be omitted
2 from, any record or other document, in writing, electronically,
3 orally or in any other form, during the mortgage lending process
4 with the intention that it be relied on by a mortgage lender,
5 borrower or any other party to the mortgage lending process;

6 b. Knowingly uses or facilitates the use of any misleading
7 statement or omission described in paragraph a. of this section,
8 knowing the same to contain a misstatement, misrepresentation or
9 omission, during the mortgage lending process with the intention
10 that it be relied on by the mortgage lender, borrower or any other
11 party to the mortgage lending process;

12 c. Receives any proceeds or any other funds in connection with
13 the mortgage lending process knowing that the funds resulted from
14 a violation of paragraph a. or b. of this section;

15 d. Conspires to violate any of the provisions of paragraphs a.,
16 b., or c. of this section; or

17 e. Records or causes to be recorded with the county recording
18 officer of deeds and mortgages of any county of this State any
19 document which the person knows to contain a misleading
20 statement of material fact or omission of a material fact described in
21 paragraph a. of this section.

22 An offense of residential mortgage fraud shall not be predicated
23 solely upon information lawfully disclosed under federal disclosure
24 laws, regulations and interpretations related to the mortgage lending
25 process.

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27 4. Nothing in this act shall preclude an indictment and
28 conviction for any other offense defined by the laws of this State;
29 and nothing in this act shall preclude an assignment judge from
30 dismissing a prosecution of mortgage fraud if the assignment judge
31 determines, pursuant to N.J.S.2C:2-11, the conduct charged to be a
32 de minimus infraction.

33
34 5. For the purpose of venue under this article, any violation of
35 this section shall be considered to have been committed:

36 a. In the county in which the residential property for which a
37 mortgage loan is being sought is located;

38 b. In any county in which any act was performed in furtherance
39 of the violation;

40 c. In any county in which any person alleged to have violated
41 this act had control or possession of any proceeds of the violation;

42 d. If a closing occurred, in any county in which the closing
43 occurred; or

44 e. In any county in which a document containing a
45 misstatement, misrepresentation or omission is filed with the county
46 recording officer of deeds and mortgages.

47
48 6. In order to promote the uniform enforcement of this act, the

1 Attorney General shall develop mortgage fraud prosecution
2 guidelines and disseminate them to each of the county prosecutors
3 within 180 days of the effective date of this act.

4

5 7. a. A person who violates this act is guilty of a crime of the
6 third degree.

7 b. A person who violates any provision of this act in
8 connection with a pattern of residential mortgage fraud or a
9 conspiracy or endeavor to engage or participate in a pattern of
10 residential mortgage fraud is guilty of a crime of the second degree.

11 Each residential property transaction subject to a violation of
12 this section shall constitute a separate offense and shall not merge
13 with any other crimes set forth in this or any other title.

14

15 8. All real and personal property of every kind used or intended
16 for use in the course of, derived from, or realized through a
17 violation of P.L. , c. , (C.) (pending before the Legislature as
18 this bill) shall be subject to forfeiture pursuant to the provisions of
19 N.J.S. 2C:64-1 et seq.

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21 9. This act shall take effect immediately.

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STATEMENT

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26 This bill creates the crime of residential mortgage fraud. The
27 Internal Revenue Service advises that in recent years, the booming
28 real estate market has provided a climate for increased mortgage
29 fraud. The perpetrators of these schemes range from mortgage
30 brokers to drug dealers laundering their illegally obtained gains.
31 Every year these fraudulent schemes victimize individuals and
32 businesses from many walks of life, including poor families duped
33 into home loans they cannot afford, legitimate lenders saddled with
34 over-inflated mortgages based on fraudulently over-inflated
35 appraisals, and honest real estate investors swindled out of their
36 investment dollars.

37 This bill provides that a person who commits the offense of
38 residential mortgage fraud is guilty of a crime of the third degree
39 and subject to imprisonment for a term of three to five years and to
40 a fine not to exceed \$15,000, or both. The bill also provides that a
41 person who engages in a pattern of mortgage fraud is guilty of a
42 crime of the second degree and subject to imprisonment for a term
43 of five to 10 years and to a fine not to exceed \$150,000, or both.
44 Each residential property transaction subject to the act shall
45 constitute a separate offense and shall not merge with other crimes.
46 In addition, where an assignment judge determines that the
47 infraction is de minimus, the assignment judge may dismiss the
48 prosecution of mortgage fraud.

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1 In order to facilitate uniform enforcement, the bill directs the
2 Attorney General to develop prosecution guidelines for
3 dissemination to each of the county prosecutors within 180 days of
4 the effective date of the act.