

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH80149-LT-64 (3/2)

Short Title: Residential Mortgage Fraud Act. (Public)

Sponsors: Representative Blue.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA RESIDENTIAL MORTGAGE  
FRAUD ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 14 of the General Statutes is amended by adding a  
new Article to read:

"Article 20A.

"Residential Mortgage Fraud Act.

**"§ 14-118.10. Title.**

This Article shall be known and cited as the "Residential Mortgage Fraud Act".

**"§ 14-118.11. Definitions.**

(a) Unless otherwise provided in this Article, or when the context clearly  
indicates that a different meaning is intended, the following definitions apply in this  
Article:

- (1) Mortgage loan. – A loan made to a natural person or persons primarily  
for personal, family, or household use, primarily secured by either a  
mortgage or a deed of trust on residential real property located in  
North Carolina.
- (2) Mortgage lending process. – The process through which a person seeks  
or obtains a mortgage loan including, solicitation, application,  
origination, negotiation of terms, underwriting, signing, closing, and  
funding of a mortgage loan and services provided incident to a  
mortgage loan, including the appraisal of the residential real property.  
Documents involved in the mortgage lending process include (i)  
uniform residential loan applications or other loan applications, (ii)  
appraisal reports, (iii) settlement statements, (iv) supporting personal  
documentation for loan applications, including W-2 or other earnings

1 or income statements, verifications of rent, income, and employment,  
2 bank statements, tax returns, and payroll stubs, (v) and any required  
3 disclosures.

4 (3) Pattern of residential mortgage fraud. – Residential mortgage fraud  
5 that involves two or more mortgage loans, which have the same or  
6 similar intents, results, accomplices, victims, or methods of  
7 commission or otherwise are interrelated by distinguishing  
8 characteristics.

9 (4) Person. – An individual, partnership, limited liability company, limited  
10 partnership, corporation, association, or other entity engaged in  
11 business activities, however organized.

12 (5) Residential real property. – Real property located in the State of North  
13 Carolina upon which there is located or is to be located one or more  
14 single-family dwellings or dwelling units.

15 **§ 14-118.12. Residential mortgage fraud.**

16 (a) A person is guilty of residential mortgage fraud when, with the intent to  
17 defraud, that person does any of the following:

18 (1) Knowingly makes or attempts to make any deliberate misstatement,  
19 misrepresentation, or omission during the mortgage lending process  
20 with the intention that a mortgage lender, mortgage broker, borrower,  
21 or any other person or entity that is involved in the mortgage lending  
22 process relies on it.

23 (2) Knowingly uses or facilitates or attempts to use or facilitate the use of  
24 any deliberate misstatement, misrepresentation, or omission during the  
25 mortgage lending process with the intention that a mortgage lender,  
26 borrower, or any other person or entity that is involved in the mortgage  
27 lending process relies on it.

28 (3) Receives or attempts to receive proceeds or any other funds in  
29 connection with a residential mortgage closing that the person knew  
30 resulted from a violation of subdivision (1) or (2) of this subsection.

31 (4) Conspires or endeavors to violate any of the provisions of subdivision  
32 (1), (2), or (3) of this subsection.

33 (b) It shall be sufficient in any prosecution under this Article for residential  
34 mortgage fraud to show that the party accused did the act with the intent to deceive or  
35 defraud. It shall be unnecessary to show that any particular person or entity was harmed  
36 in the transaction or that the person or entity to whom the deliberate misstatement,  
37 misrepresentation, or omission was made relied upon the misstatement,  
38 misrepresentation, or omission.

39 **§ 14-118.13. Venue.**

40 For purposes of venue under this Article, any violation of this Article shall be  
41 construed to have been committed:

42 (1) In the county in which the residential real property for which a  
43 mortgage loan is being sought is located; or

- 1           (2) In any county in which any act was performed in furtherance of the  
2           violation; or  
3           (3) In any county in which any person alleged to have violated this Article  
4           had control or possession of any proceeds of the violation; or  
5           (4) If a closing occurred, in any county in which the closing occurred; or  
6           (5) In any county in which a document containing a deliberate  
7           misstatement, misrepresentation, or omission is filed with the official  
8           registrar of deeds.

9    **"§ 14-118.14. Authority to investigate and prosecute.**

10    Upon its own investigation or upon referral by the Office of the Commissioner of  
11    Banks, the North Carolina Real Estate Commission, the Attorney General, or other  
12    parties, of available evidence concerning violations of this Article, the proper district  
13    attorney may institute the appropriate criminal proceedings under this Article.

14    **"§ 14-118.15. Penalty for violation of Article.**

15    (a) A violation of this Article involving a single mortgage loan is a Class H  
16    felony.

17    (b) A violation of this Article involving a pattern of residential mortgage fraud is  
18    a Class C felony.

19    (c) Each residential loan and property transaction subject to a violation of this  
20    Article shall constitute a separate offense and shall not merge with any other crimes set  
21    forth in this Chapter.

22    **"§ 14-118.16. Forfeiture.**

23    (a) All real and personal property of every kind used or intended for use in the  
24    course of, derived from, or realized through a violation of this Article shall be subject to  
25    forfeiture to the State as set forth in G.S. 14-2.3 and G.S. 14-7.20. However, the  
26    forfeiture of any real or personal property shall be subordinate to any security interest in  
27    the property taken by a lender in good faith as collateral for the extension of credit and  
28    recorded as provided by law, and no real or personal property shall be forfeited under  
29    this section against an owner who made a bona fide purchase of the property without  
30    knowledge of a violation of this Article.

31    (b) In addition to the provisions of subsection (a) of this section, courts may  
32    order restitution to any person that has suffered a financial loss due to violation of this  
33    Article."

34    **SECTION 2.** This act becomes effective December 1, 2007, and applies to  
35    offenses committed on or after that date.