

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

3

HOUSE BILL 817
Committee Substitute Favorable 4/11/07
Third Edition Engrossed 4/17/07

Short Title: Residential Mortgage Fraud Act.

(Public)

Sponsors:

Referred to:

March 15, 2007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, the following definitions apply in
this Article:

- (1) Mortgage loan. – A loan primarily secured by either (i) a mortgage or
a deed of trust on residential real property or (ii) a security interest in a
manufactured home (as defined by G.S. 143-145(7)) located or to be
located on residential real property.
- (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
or income statements, verifications of rent, income, and employment.

1 bank statements, tax returns, and payroll stubs, and (v) any required
2 mortgage-related disclosures.

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

8 (4) Person. – An individual, partnership, limited liability company, limited
9 partnership, corporation, association, or other entity, however
10 organized.

11 (5) Residential real property. – Real property located in the State of North
12 Carolina upon which there is located or is to be located a structure or
13 structures designed principally for residential purposes, including, but
14 not limited to, individual units of townhouses, condominiums, and
15 cooperatives.

16 **"§ 14-118.12. Residential mortgage fraud.**

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

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

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

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

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

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

40 **"§ 14-118.13. Venue.**

41 In any criminal proceeding brought under this Article, the crime shall be construed
42 to have been committed:

43 (1) In the county in which the residential real property for which a
44 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 or with the Division of Motor Vehicles.

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, the North
12 Carolina Appraisal Board, or other parties, of available evidence concerning violations
13 of this Article, the proper district attorney may institute the appropriate criminal
14 proceedings under this Article.

15 **"§ 14-118.15. Penalty for violation of Article.**

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

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

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

23 **"§ 14-118.16. Forfeiture.**

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

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

35 **"§ 14-118.17. Liability for reporting suspected mortgage fraud.**

36 In the absence of fraud, bad faith, or malice, a person shall not be subject to an
37 action for civil liability for filing reports or furnishing other information regarding
38 suspected residential mortgage fraud to a regulatory or law enforcement agency."

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