

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 817  
Committee Substitute Favorable 4/11/07  
Third Edition Engrossed 4/17/07  
Senate Commerce, Small Business and Entrepreneurship Committee Substitute  
Adopted 6/14/07

Short Title: Residential Mortgage Fraud Act.

(Public)

Sponsors:

Referred to:

March 15, 2007

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

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

4           (3) Pattern of residential mortgage fraud. – Residential mortgage fraud  
5           that involves five 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, however  
11           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 a structure or  
14           structures designed principally for residential purposes, including, but  
15           not limited to, individual units of townhouses, condominiums, and  
16           cooperatives.

17 **"§ 14-118.12. Residential mortgage fraud.**

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

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

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

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

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

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

42 **"§ 14-118.13. Venue.**

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

- 1           (1) In the county in which the residential real property for which a  
2           mortgage loan is being sought is located;  
3           (2) In any county in which any act was performed in furtherance of the  
4           violation;  
5           (3) In any county in which any person alleged to have violated this Article  
6           had control or possession of any proceeds of the violation;  
7           (4) If a closing occurred, in any county in which the closing occurred; or  
8           (5) In any county in which a document containing a deliberate  
9           misstatement, misrepresentation, or omission is filed with the official  
10          registrar of deeds or with the Division of Motor Vehicles.

11 **"§ 14-118.14. Authority to investigate and prosecute.**

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

17 **"§ 14-118.15. Penalty for violation of Article.**

18          (a) Unless the conduct is prohibited by some other provision of law providing for  
19          greater punishment, a violation of this Article involving a single mortgage loan is a  
20          Class H felony.

21          (b) Unless the conduct is prohibited by some other provision of law providing for  
22          greater punishment, a violation of this Article involving a pattern of residential  
23          mortgage fraud is a Class E felony.

24 **"§ 14-118.16. Forfeiture.**

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

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

36 **"§ 14-118.17. Liability for reporting suspected mortgage fraud.**

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

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