

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-163
HOUSE BILL 817**

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, bank statements, tax returns, and payroll stubs, and (v) any required mortgage-related disclosures.
- (3) Pattern of residential mortgage fraud. – Residential mortgage fraud that involves five or more mortgage loans, which have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics.
- (4) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other entity, however organized.
- (5) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located a structure or structures designed principally for residential purposes, including, but not limited to, individual units of townhouses, condominiums, and cooperatives.

"§ 14-118.12. Residential mortgage fraud.

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

- (1) Knowingly makes or attempts to make any material misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity that is involved in the mortgage lending process relies on it.
- (2) Knowingly uses or facilitates or attempts to use or facilitate the use of any misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity that is involved in the mortgage lending process relies on it.
- (3) Receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew, or should have known, resulted from a violation of subdivision (1) or (2) of this subsection.
- (4) Conspires or solicits another to violate any of the provisions of subdivision (1), (2), or (3) of this subsection.

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

"§ 14-118.13. Venue.

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

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

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

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

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

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

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

"§ 14-118.16. Forfeiture.

(a) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Article shall be subject to forfeiture to the State as set forth in G.S. 14-2.3 and G.S. 14-7.20. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under

this section against an owner who made a bona fide purchase of the property without knowledge of a violation of this Article.

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

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

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

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

In the General Assembly read three times and ratified this the 26th day of June, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:00 a.m. this 4th day of July, 2007