

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 817

Short Title: Residential Mortgage Fraud Act. (Public)

Sponsors: Representatives Blue; Carney, Church, Faison, and Hurley.

Referred to: Judiciary II.

March 15, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE NORTH CAROLINA RESIDENTIAL MORTGAGE  
3 FRAUD ACT.

4 The General Assembly of North Carolina enacts:

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

7 "Article 20A.

8 "Residential Mortgage Fraud Act.

9 "**§ 14-118.10. Title.**

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

11 "**§ 14-118.11. Definitions.**

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

15 (1) Mortgage loan. – A loan made to a natural person or persons primarily  
16 for personal, family, or household use, primarily secured by either a  
17 mortgage or a deed of trust on residential real property located in  
18 North Carolina.

19 (2) Mortgage lending process. – The process through which a person seeks  
20 or obtains a mortgage loan including, solicitation, application,  
21 origination, negotiation of terms, underwriting, signing, closing, and  
22 funding of a mortgage loan and services provided incident to a  
23 mortgage loan, including the appraisal of the residential real property.  
24 Documents involved in the mortgage lending process include (i)  
25 uniform residential loan applications or other loan applications, (ii)  
26 appraisal reports, (iii) settlement statements, (iv) supporting personal  
27 documentation for loan applications, including W-2 or other earnings  
28 or income statements, verifications of rent, income, and employment.

1 bank statements, tax returns, and payroll stubs, (v) and any required  
2 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 engaged in  
10 business activities, however 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 one or more  
13 single-family dwellings or dwelling units.

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

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

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

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

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

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

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

38 **§ 14-118.13. Venue.**

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

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

43 (2) In any county in which any act was performed in furtherance of the  
44 violation; or

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

7 **"§ 14-118.14. Authority to investigate and prosecute.**

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

12 **"§ 14-118.15. Penalty for violation of Article.**

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

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

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

20 **"§ 14-118.16. Forfeiture.**

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

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

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