

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 817  
Committee Substitute Favorable 4/11/07

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, or when the context clearly  
indicates that a different meaning is intended, 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 C 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.