

3781

2011-2012 Regular Sessions

I N S E N A T E

March 3, 2011

Introduced by Sen. SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law and the penal law, in relation to unauthorized entities, unregistered mortgage brokers and mortgage fraud

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The banking law is amended by adding a new section 78-a to
2 read as follows:
3 S 78-A. UNAUTHORIZED ENTITIES. THE CRIMINAL INVESTIGATIONS BUREAU
4 SHALL REFER ANY INSTANCES OF A PERSON, PARTNERSHIP, ASSOCIATION, CORPO-
5 RATION OR OTHER ENTITY WHICH IS OPERATING WITHOUT BEING CHARTERED,
6 LICENSED OR REGISTERED AS REQUIRED UNDER THIS CHAPTER TO THE ATTORNEY
7 GENERAL AND TO ANY OTHER FEDERAL, STATE OR LOCAL AGENCY OR ENTITY FOR
8 APPROPRIATE ENFORCEMENT ACTION. AT LEAST EVERY SIX MONTHS, THE ATTORNEY
9 GENERAL SHALL PROVIDE THE BUREAU WITH A WRITTEN UPDATE OF THE STATUS OF
10 ANY ENFORCEMENT ACTIONS IT HAS TAKEN AGAINST SUCH PERSONS OR ENTITIES.
11 S 2. Subdivision 5 of section 590 of the banking law is amended by
12 adding a new paragraph (f) to read as follows:
13 (F) NO MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION SHALL
14 CONDUCT BUSINESS WITH ANY PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION
15 OR OTHER ENTITY WHICH IT KNOWS OR SHOULD HAVE KNOWN IS ACTING AS A MORT-
16 GAGE BANKER OR A MORTGAGE BROKER WITHOUT BEING LICENSED OR REGISTERED AS
17 REQUIRED BY THIS ARTICLE. A MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT
18 ORGANIZATION SHALL PROMPTLY NOTIFY THE DEPARTMENT OF ANY SUCH UNLICENSED
19 OR UNREGISTERED OPERATIONS.
20 S 3. Subdivision 5 of section 598 of the banking law, as added by
21 chapter 571 of the laws of 1986, is amended to read as follows:
22 5. Civil penalties assessable against unlicensed or unregistered
23 persons or entities. If any non-exempt unlicensed or unregistered person
24 or entity engages in activities encompassed by this article, he shall be
25 liable to any person or entity affected by such activities for a sum of

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 money of not less than the amount of money paid to an affected person or
2 entity in connection with such activities, nor more than four times such
3 sum; PROVIDED HOWEVER THAT WHERE A NON-EXEMPT UNLICENSED OR UNREGISTERED
4 PERSON HAS CONTINUED TO ENGAGE IN SUCH UNAUTHORIZED ACTIVITIES AFTER
5 RECEIVING A CEASE AND DESIST NOTICE FROM THE SUPERINTENDENT, THE MAXIMUM
6 AMOUNT OF LIABILITY SHALL BE UP TO TEN TIMES SUCH SUM. Such sum may be
7 sued for and recovered by any person or entity for his use and benefit
8 in any court of competent jurisdiction.

9 S 4. The article heading of article 187 of the penal law, as added by
10 chapter 472 of the laws of 2008, is amended to read as follows:

11 [RESIDENTIAL] MORTGAGE FRAUD

12 S 5. Section 187.00 of the penal law, as amended by chapter 507 of the
13 laws of 2009, is amended to read as follows:

14 S 187.00 Definitions.

15 As used in this article:

16 1. "Person" means any individual or entity.

17 2. ["Residential mortgage"] "MORTGAGE loan" means a loan or agreement
18 to extend credit, including the renewal, refinancing or modification of
19 any such loan, made to a person OR AN ENTITY, which loan is primarily
20 secured by either a mortgage, deed of trust, or other lien upon any
21 interest in [residential] real property or any certificate of stock or
22 other evidence of ownership in, and a proprietary lease from, a corpo-
23 ration or partnership formed for the purpose of cooperative ownership of
24 [residential] real property.

25 3. ["Residential real property"] means real property improved by a
26 one-to-four family dwelling, or a residential unit in a building includ-
27 ing units owned as condominiums or on a cooperative basis, used or occu-
28 pied, or intended to be used or occupied, wholly or partly, as the home
29 or residence of one or more persons, but shall not refer to unimproved
30 real property upon which such dwellings are to be constructed.

31 4. "Residential mortgage"] "MORTGAGE fraud" is committed by a person
32 who, knowingly and with intent to defraud, presents, causes to be
33 presented, or prepares with knowledge or belief that it will be used in
34 soliciting an applicant for, applying for, underwriting or closing a
35 [residential] mortgage loan, or filing with a county clerk of any county
36 in the state arising out of and related to the closing of a [residen-
37 tial] mortgage loan, any written statement which:

38 (a) contains materially false information concerning any fact material
39 thereto; or

40 (b) conceals, for the purpose of misleading, information concerning
41 any fact material thereto.

42 S 6. Section 187.05 of the penal law, as added by chapter 472 of the
43 laws of 2008, is amended to read as follows:

44 S 187.05 [Residential mortgage] MORTGAGE fraud in the fifth degree.

45 A person is guilty of [residential] mortgage fraud in the fifth degree
46 when he or she commits [residential] mortgage fraud.

47 [Residential mortgage] MORTGAGE fraud in the fifth degree is a class A
48 misdemeanor.

49 S 7. Section 187 of the penal law, as added by chapter 472 of the laws
50 of 2008, is amended to read as follows:

51 S 187.10 [Residential mortgage] MORTGAGE fraud in the fourth degree.

52 A person is guilty of [residential] mortgage fraud in the fourth
53 degree when he or she commits [residential] mortgage fraud and thereby
54 receives proceeds or any other funds in the aggregate in excess of one
55 thousand dollars.

1 [Residential mortgage] MORTGAGE fraud in the fourth degree is a class
2 E felony.

3 S 8. Section 187.15 of the penal law, as added by chapter 472 of the
4 laws of 2008, is amended to read as follows:

5 S 187.15 [Residential mortgage] MORTGAGE fraud in the third degree.

6 A person is guilty of [residential] mortgage fraud in the third degree
7 when he or she commits [residential] mortgage fraud and thereby receives
8 proceeds or any other funds in the aggregate in excess of three thousand
9 dollars.

10 [Residential mortgage] MORTGAGE fraud in the third degree is a class D
11 felony.

12 S 9. Section 187.20 of the penal law, as added by chapter 472 of the
13 laws of 2008, is amended to read as follows:

14 S 187.20 [Residential mortgage] MORTGAGE fraud in the second degree.

15 A person is guilty of [residential] mortgage fraud in the second
16 degree when he or she commits [residential] mortgage fraud and thereby
17 receives proceeds or any other funds in the aggregate in excess of fifty
18 thousand dollars.

19 [Residential mortgage] MORTGAGE fraud in the second degree is a class
20 C felony.

21 S 10. Section 187.25 of the penal law, as added by chapter 472 of the
22 laws of 2008, is amended to read as follows:

23 S 187.25 [Residential mortgage] MORTGAGE fraud in the first degree.

24 A person is guilty of [residential] mortgage fraud in the first degree
25 when he or she commits [residential] mortgage fraud and thereby receives
26 proceeds or any other funds in the aggregate in excess of one million
27 dollars.

28 [Residential mortgage] MORTGAGE fraud in the first degree is a class B
29 felony.

30 S 11. This act shall take effect on the thirtieth day after it shall
31 have become a law.