

3781--B

2011-2012 Regular Sessions

I N   S E N A T E

March 3, 2011

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Introduced by Sen. SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 FINANCIAL FRAUDS AND CONSUMER  
4     PROTECTION UNIT OF THE DEPARTMENT OF FINANCIAL SERVICES SHALL REFER ANY  
5     INSTANCES OF A PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION OR OTHER  
6     ENTITY WHICH IS OPERATING WITHOUT BEING CHARTERED, LICENSED OR REGIS-  
7     TERED AS REQUIRED UNDER THIS CHAPTER TO THE ATTORNEY GENERAL AND TO ANY  
8     OTHER FEDERAL, STATE OR LOCAL AGENCY OR ENTITY FOR APPROPRIATE ENFORCE-  
9     MENT ACTION. AT LEAST EVERY SIX MONTHS, THE ATTORNEY GENERAL SHALL  
10    PROVIDE THE UNIT WITH A WRITTEN UPDATE OF THE STATUS OF ANY ENFORCEMENT  
11    ACTIONS IT HAS TAKEN AGAINST SUCH PERSONS OR ENTITIES.  
12    S 2. Paragraph (e) of subdivision 5 of section 590 of the banking law  
13    is relettered paragraph (f) and a new paragraph (e) is added to read as  
14    follows:  
15    (E) NO MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION SHALL  
16    CONDUCT BUSINESS WITH ANY PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION  
17    OR OTHER ENTITY WHICH IT KNOWS OR SHOULD HAVE KNOWN IS ACTING AS A MORT-  
18    GAGE BANKER OR A MORTGAGE BROKER WITHOUT BEING LICENSED OR REGISTERED AS  
19    REQUIRED BY THIS ARTICLE. A MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT  
20    ORGANIZATION SHALL PROMPTLY NOTIFY THE DEPARTMENT OF ANY SUCH UNLICENSED  
21    OR UNREGISTERED OPERATIONS.

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

LBD09855-03-2

1 S 3. Subdivision 5 of section 598 of the banking law, as added by  
2 chapter 571 of the laws of 1986, is amended to read as follows:

3 5. Civil penalties assessable against unlicensed or unregistered  
4 persons or entities. If any non-exempt unlicensed or unregistered person  
5 or entity engages in activities encompassed by this article, he shall be  
6 liable to any person or entity affected by such activities for a sum of  
7 money of not less than the amount of money paid to an affected person or  
8 entity in connection with such activities, nor more than four times such  
9 sum; PROVIDED HOWEVER THAT WHERE A NON-EXEMPT UNLICENSED OR UNREGISTERED  
10 PERSON HAS CONTINUED TO ENGAGE IN SUCH UNAUTHORIZED ACTIVITIES AFTER  
11 RECEIVING A CEASE AND DESIST NOTICE FROM THE SUPERINTENDENT, THE MAXIMUM  
12 AMOUNT OF LIABILITY SHALL BE UP TO TEN TIMES SUCH SUM. Such sum may be  
13 sued for and recovered by any person or entity for his use and benefit  
14 in any court of competent jurisdiction.

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

17 [RESIDENTIAL] MORTGAGE FRAUD

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

20 S 187.00 Definitions.

21 As used in this article:

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

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

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

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

44 (a) contains materially false information concerning any fact material  
45 thereto; or

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

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

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

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

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

55 S 7. Section 187.10 of the penal law, as added by chapter 472 of the  
56 laws of 2008, is amended to read as follows:

1 S 187.10 [Residential mortgage] MORTGAGE fraud in the fourth degree.  
2 A person is guilty of [residential] mortgage fraud in the fourth  
3 degree when he or she commits [residential] mortgage fraud and thereby  
4 receives proceeds or any other funds in the aggregate in excess of one  
5 thousand dollars.  
6 [Residential mortgage] MORTGAGE fraud in the fourth degree is a class  
7 E felony.  
8 S 8. Section 187.15 of the penal law, as added by chapter 472 of the  
9 laws of 2008, is amended to read as follows:  
10 S 187.15 [Residential mortgage] MORTGAGE fraud in the third degree.  
11 A person is guilty of [residential] mortgage fraud in the third degree  
12 when he or she commits [residential] mortgage fraud and thereby receives  
13 proceeds or any other funds in the aggregate in excess of three thousand  
14 dollars.  
15 [Residential mortgage] MORTGAGE fraud in the third degree is a class D  
16 felony.  
17 S 9. Section 187.20 of the penal law, as added by chapter 472 of the  
18 laws of 2008, is amended to read as follows:  
19 S 187.20 [Residential mortgage] MORTGAGE fraud in the second degree.  
20 A person is guilty of [residential] mortgage fraud in the second  
21 degree when he or she commits [residential] mortgage fraud and thereby  
22 receives proceeds or any other funds in the aggregate in excess of fifty  
23 thousand dollars.  
24 [Residential mortgage] MORTGAGE fraud in the second degree is a class  
25 C felony.  
26 S 10. Section 187.25 of the penal law, as added by chapter 472 of the  
27 laws of 2008, is amended to read as follows:  
28 S 187.25 [Residential mortgage] MORTGAGE fraud in the first degree.  
29 A person is guilty of [residential] mortgage fraud in the first degree  
30 when he or she commits [residential] mortgage fraud and thereby receives  
31 proceeds or any other funds in the aggregate in excess of one million  
32 dollars.  
33 [Residential mortgage] MORTGAGE fraud in the first degree is a class B  
34 felony.  
35 S 11. This act shall take effect on the thirtieth day after it shall  
36 have become a law.