

3781

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

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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.