

2586

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. CLARK, BARRA -- Multi-Sponsored by -- M. of A. ALFANO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to a scheme to defraud in obtaining a credit loan secured by an interest in real property

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

1 Section 1. Legislative findings. The legislature has found that many
2 senior citizens and minority homeowners in New York have been targeted
3 by unethical home improvement contractors and finance companies who are
4 selling them high interest and fraudulently obtained mortgages. In order
5 to entice senior and minority homeowners to take these loans, the
6 contractors and finance companies offer to refinance primary mortgages,
7 consolidate loans and outstanding bills, and give the mortgagor cash at
8 the loan's closing. In most instances the homeowner is unaware that he
9 or she is taking out a mortgage on his or her house and that a default
10 in payment will lead to a foreclosure. In addition, many of these senior
11 and minority homeowners live on a fixed income and are unable to make
12 any loan payments because the monthly payment exceeds his or her income.
13 The legislature further finds that unethical finance companies have
14 engaged in a pattern and practice of refinancing these mortgages, which
15 further decreases the senior and minority homeowners equity in his or
16 her home. These loans often contain exorbitant points, high interest
17 rates, and have monthly payments that exceed the homeowners income. In
18 most instances, senior and minority homeowners are unable to pay these
19 mortgages and lose their home to foreclosure.
20 The legislature further finds that communities that consist of predom-
21 inantly senior and minority homeowners have been specifically targeted
22 for this crime.
23 S 2. The penal law is amended by adding a new section 190.62 to read
24 as follows:

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

LBD04970-01-9

1 S 190.62 SCHEME TO DEFRAUD A PERSON IN OBTAINING A CREDIT LOAN SECURED
2 BY AN INTEREST IN REAL PROPERTY.

3 A PERSON IS GUILTY OF A SCHEME TO DEFRAUD A PERSON IN OBTAINING A
4 CREDIT LOAN SECURED BY AN INTEREST IN REAL PROPERTY WHEN HE OR SHE
5 ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT
6 WITH INTENT TO DEFRAUD A PERSON BY OBTAINING A CREDIT LOAN SECURED BY A
7 MORTGAGE, LIEN, SECURITY INTEREST, OR ANY EQUITABLE OR LEGAL INTEREST IN
8 THAT PERSON'S REAL PROPERTY BY FAILING TO DISCLOSE TO SUCH PERSON THAT
9 THE LOAN IS SECURED BY A MORTGAGE, OR FAILING TO DISCLOSE TO SUCH PERSON
10 THE FULL TERMS AND IMPLICATIONS OF THE LOAN DOCUMENTS AND AGREEMENT.

11 SCHEME TO DEFRAUD A PERSON IN OBTAINING A CREDIT LOAN SECURED BY AN
12 INTEREST IN REAL PROPERTY SHALL BE A CLASS B FELONY IN INSTANCES WHERE
13 MORE THAN FIFTY THOUSAND DOLLARS IN EQUITY IS OBTAINED FROM THE TITLE-
14 HOLDER OF THE REAL PROPERTY.

15 SCHEME TO DEFRAUD A PERSON IN OBTAINING A CREDIT LOAN SECURED BY AN
16 INTEREST IN REAL PROPERTY SHALL BE A CLASS C FELONY IN INSTANCES WHERE
17 MORE THAN TWENTY THOUSAND DOLLARS IN EQUITY IS OBTAINED FROM THE TITLE-
18 HOLDER OF THE REAL PROPERTY.

19 SCHEME TO DEFRAUD A PERSON IN OBTAINING A CREDIT LOAN SECURED BY AN
20 INTEREST IN REAL PROPERTY SHALL BE A CLASS D FELONY IN INSTANCES WHERE
21 MORE THAN TEN THOUSAND DOLLARS IN EQUITY IS OBTAINED FROM THE TITLEHOLD-
22 ER OF THE REAL PROPERTY.

23 SCHEME TO DEFRAUD A PERSON IN OBTAINING A CREDIT LOAN SECURED BY AN
24 INTEREST IN REAL PROPERTY SHALL BE A CLASS E FELONY IN ALL OTHER
25 INSTANCES.

26 S 3. This act shall take effect on the first of November next succeed-
27 ing the date on which it shall have become a law.