S T A T E O F N E W Y O R K

4871

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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

AN ACT to amend the banking 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:

Section 1. The banking law is amended by adding a new section 78-a to read as follows:

S 78-A. UNAUTHORIZED ENTITIES. THE CRIMINAL INVESTIGATIONS BUREAU SHALL REFER ANY INSTANCES OF A PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION OR OTHER ENTITY WHICH IS OPERATING WITHOUT BEING CHARTERED, LICENSED OR REGISTERED AS REQUIRED UNDER THIS CHAPTER TO THE ATTORNEY GENERAL AND TO ANY OTHER FEDERAL, STATE OR LOCAL AGENCY OR ENTITY FOR APPROPRIATE ENFORCEMENT ACTION. AT LEAST EVERY SIX MONTHS, THE ATTORNEY GENERAL SHALL PROVIDE THE BUREAU WITH A WRITTEN UPDATE OF THE STATUS OF ANY ENFORCEMENT ACTIONS IT HAS TAKEN AGAINST SUCH PERSONS OR ENTITIES.

S 2. Subdivision 5 of section 590 of the banking law is amended by adding a new paragraph (f) to read as follows:

(F) NO MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION SHALL CONDUCT BUSINESS WITH ANY PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION OR OTHER ENTITY WHICH IT KNOWS OR SHOULD HAVE KNOWN IS ACTING AS A MORTGAGE BANKER OR A MORTGAGE BROKER WITHOUT BEING LICENSED OR REGISTERED AS REQUIRED BY THIS ARTICLE. A MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION SHALL PROMPTLY NOTIFY THE DEPARTMENT OF ANY SUCH UNLICENSED OR UNREGISTERED OPERATIONS.

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

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

S 4. The banking law is amended by adding a new section 598-a to read as follows:

S 598-A. MORTGAGE FRAUD. 1. A FRAUDULENT MORTGAGE ACT IS COMMITTED BY AN OFFICER, DIRECTOR, TRUSTEE, EMPLOYEE OR AGENT OF A MORTGAGE BROKER, MORTGAGE BANKER OR EXEMPT ORGANIZATION WHEN SUCH PERSON, AS PART OF, OR IN SUPPORT OF, AN APPLICATION FOR A MORTGAGE, KNOWINGLY AND WITH INTENT TO DEFRAUD FORGES AN APPLICANT'S SIGNATURE OR PRESENTS, CAUSES TO BE PRESENTED, PARTICIPATES IN THE PREPARATION OR PRESENTMENT, OR PREPARES WITH KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO A MORTGAGE BANKER OR EXEMPT ORGANIZATION A FORM OF IDENTIFICATION, VERIFICATION OF DEPOSIT FORM, BANK OR SECURITIES STATEMENT, TAX RETURN, W-2 FORM, DOCUMENTATION REGARDING EMPLOYMENT STATUS, RENTAL PROPERTY LEASE OR PROPERTY APPRAISAL WHICH SUCH PERSON KNOWS TO CONTAIN FALSE INFORMATION CONCERNING ANY FACT MATERIAL THERETO.

2. A PERSON IS GUILTY OF MORTGAGE FRAUD IN THE SECOND DEGREE WHEN HE COMMITS A FRAUDULENT MORTGAGE ACT. MORTGAGE FRAUD IN THE SECOND DEGREE IS A CLASS E FELONY.

3. A PERSON IS GUILTY OF MORTGAGE FRAUD IN THE FIRST DEGREE WHEN HE COMMITS A FRAUDULENT MORTGAGE ACT AND THEREBY WRONGFULLY DEFRAUDS OR ATTEMPTS TO WRONGFULLY DEFRAUD MORTGAGE BANKERS OR EXEMPT ORGANIZATIONS OF MORE THAN TEN MILLION DOLLARS. MORTGAGE FRAUD IN THE FIRST DEGREE IS A CLASS D FELONY.

S 5. This act shall take effect on the thirtieth day after it shall have become a law; except that the amendments to subdivision 5 of section 590 of the banking law made by section two of this act shall take effect on the same date as section 8 of chapter 472 of the laws of 2008 takes effect.