

10629--A

R. R. 340

I N A S S E M B L Y

June 11, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein, Lentol, V. Lopez, P. Rivera, Robinson, Colton, Hooper, Clark, Lavine, Weprin, Rosenthal, M. Miller, Abinanti, Weisenberg, Barrett, Brindisi, Bronson, Zebrowski, Roberts, Russell, Ramos, Gabryszak, Skartados, Cymbrowitz, Schimel) -- (at request of the Department of Law) -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the penal law, in relation to enacting the "foreclosure fraud prevention act of 2012"

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

1 Section 1. This act shall be known and may be cited as the "foreclo-
2 sure fraud prevention act of 2012."
3 S 2. Section 187.00 of the penal law is amended by adding seven new
4 subdivisions 5, 6, 7, 8, 9, 10 and 11 to read as follows:
5 5. "RESIDENTIAL MORTGAGE FORECLOSURE FRAUD" IS COMMITTED BY A PERSON
6 WHO, BEING AN AGENT OF A RESIDENTIAL MORTGAGE BUSINESS ACTING WITHIN THE
7 SCOPE OF HIS OR HER EMPLOYMENT, INTENTIONALLY ENGAGES IN FRAUD OR DECEP-
8 TION BY AUTHORIZING, PREPARING, EXECUTING, OFFERING OR PRESENTING FOR
9 FILING ANY WRITTEN INSTRUMENT WHICH SUCH PERSON:
10 (A) KNOWS CONTAINS A MATERIAL FALSE STATEMENT, MATERIAL FALSE INFORMA-
11 TION OR A MATERIAL OMISSION; AND
12 (B) KNOWS OR BELIEVES WILL BE FILED WITH A COURT OR OTHER PUBLIC
13 OFFICE OR PUBLIC SERVANT, INCLUDING BUT NOT LIMITED TO A FEDERAL, STATE
14 OR LOCAL AGENCY, DEPARTMENT OR BUREAU, IN SUPPORT OF OR IN CONJUNCTION
15 WITH A PENDING OR PROSPECTIVE RESIDENTIAL MORTGAGE FORECLOSURE ACTION.
16 6. "AGENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN PARAGRAPH (A) OF
17 SUBDIVISION ONE OF SECTION 20.20 OF THIS CHAPTER.
18 7. "HIGH MANAGERIAL AGENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN
19 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 20.20 OF THIS CHAPTER.
20 8. "WRITTEN INSTRUMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN
21 SUBDIVISION THREE OF SECTION 175.00 OF THIS PART.

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

LBD16190-03-2

1 9. "RESIDENTIAL MORTGAGE BUSINESS" MEANS A LENDER OR ANY OTHER PART-
2 NERSHIP, CORPORATION, COMPANY, TRUST OR ASSOCIATION ENGAGED IN WHOLE OR
3 IN PART IN THE BUSINESS OF ORIGINATING, GRANTING, SERVICING OR FORECLOS-
4 ING UPON RESIDENTIAL MORTGAGE LOANS.

5 10. "LENDER" MEANS A MORTGAGE BANKER AS DEFINED IN PARAGRAPH (F) OF
6 SUBDIVISION ONE OF SECTION FIVE HUNDRED NINETY OF THE BANKING LAW OR AN
7 EXEMPT ORGANIZATION AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF
8 SECTION FIVE HUNDRED NINETY OF THE BANKING LAW.

9 11. "RESIDENTIAL MORTGAGE FORECLOSURE ACTION" MEANS AN ACTION BROUGHT
10 PURSUANT TO THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW TO FORECLOSE
11 UPON A RESIDENTIAL MORTGAGE LOAN.

12 S 3. The penal law is amended by adding two new sections 187.30 and
13 187.35 to read as follows:

14 S 187.30 RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE SECOND DEGREE.

15 A PERSON IS GUILTY OF RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE
16 SECOND DEGREE WHEN HE OR SHE COMMITS RESIDENTIAL MORTGAGE FORECLOSURE
17 FRAUD.

18 RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE SECOND DEGREE IS A CLASS
19 A MISDEMEANOR.

20 S 187.35 RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE FIRST DEGREE.

21 A PERSON IS GUILTY OF RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE
22 FIRST DEGREE WHEN:

23 1. AS PART OF A SYSTEMATIC ONGOING COURSE OF CONDUCT, SUCH PERSON
24 ENGAGES IN THE CONDUCT PROHIBITED BY SECTION 187.30 OF THIS ARTICLE WITH
25 RESPECT TO FIVE OR MORE PENDING OR PROSPECTIVE RESIDENTIAL MORTGAGE
26 FORECLOSURE ACTIONS WITHIN A ONE-YEAR PERIOD; OR

27 2. BEING A HIGH MANAGERIAL AGENT OF A RESIDENTIAL MORTGAGE BUSINESS,
28 HE OR SHE:

29 (A) KNOWS THAT ONE OR MORE AGENTS OF SUCH BUSINESS ARE ENGAGED IN THE
30 CONDUCT PROHIBITED BY SUBDIVISION ONE OF THIS SECTION; AND

31 (B) FAILS TO TAKE REASONABLE MEASURES TO PREVENT SUCH CONDUCT FROM
32 CONTINUING.

33 RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE FIRST DEGREE IS A CLASS
34 E FELONY.

35 S 4. This act shall take effect on the ninetieth day after it shall
36 have become a law.