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

3491

2013-2014 Regular Sessions

I N S E N A T E

February 4, 2013

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

AN ACT to amend the penal law, in relation to residential mortgage foreclosure fraud prevention

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

Section 1. Section 187.00 of the penal law is amended by adding seven new subdivisions 5, 6, 7, 8, 9, 10 and 11 to read as follows:

5. "RESIDENTIAL MORTGAGE FORECLOSURE FRAUD" IS COMMITTED BY A PERSON WHO, BEING AN AGENT OF A RESIDENTIAL MORTGAGE BUSINESS ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT, INTENTIONALLY ENGAGES IN FRAUD OR DECEPTION BY AUTHORIZING, PREPARING, EXECUTING, OFFERING OR PRESENTING FOR FILING ANY WRITTEN INSTRUMENT WHICH SUCH PERSON:

(A) KNOWS CONTAINS A MATERIAL FALSE STATEMENT, MATERIAL FALSE INFORMATION OR A MATERIAL OMISSION; AND

(B) KNOWS OR BELIEVES WILL BE FILED WITH A COURT OR OTHER PUBLIC OFFICE OR PUBLIC SERVANT, INCLUDING BUT NOT LIMITED TO A FEDERAL, STATE OR LOCAL AGENCY, DEPARTMENT OR BUREAU, IN SUPPORT OF OR IN CONJUNCTION WITH A PENDING OR PROSPECTIVE RESIDENTIAL MORTGAGE FORECLOSURE ACTION.

6. "AGENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 20.20 OF THIS CHAPTER.

7. "HIGH MANAGERIAL AGENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 20.20 OF THIS CHAPTER.

8. "WRITTEN INSTRUMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION THREE OF SECTION 175.00 OF THIS PART.

9. "RESIDENTIAL MORTGAGE BUSINESS" MEANS A LENDER OR ANY OTHER PARTNERSHIP, CORPORATION, COMPANY, TRUST OR ASSOCIATION ENGAGED IN WHOLE OR IN PART IN THE BUSINESS OF ORIGINATING, GRANTING, SERVICING OR FORECLOSING UPON RESIDENTIAL MORTGAGE LOANS.

10. "LENDER" MEANS A MORTGAGE BANKER AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION FIVE HUNDRED NINETY OF THE BANKING LAW OR AN

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

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EXEMPT ORGANIZATION AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION FIVE HUNDRED NINETY OF THE BANKING LAW.

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

S 2. The penal law is amended by adding two new sections 187.30 and 187.35 to read as follows:

S 187.30 RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE SECOND DEGREE.

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

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

S 187.35 RESIDENTIAL MORTGAGE FORECLOSURE FRAUD IN THE FIRST DEGREE.

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

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

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

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

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

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

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.