

5251

2013-2014 Regular Sessions

I N S E N A T E

May 15, 2013

Introduced by Sen. KLEIN -- (at request of the Attorney General) -- 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 enacting the "foreclosure fraud prevention act of 2013"

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 2013."
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 TITLE.
22 9. "RESIDENTIAL MORTGAGE BUSINESS" MEANS A LENDER OR ANY OTHER PART-
23 NERSHIP, CORPORATION, COMPANY, TRUST OR ASSOCIATION ENGAGED IN WHOLE OR

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

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1 IN PART IN THE BUSINESS OF ORIGINATING, GRANTING, SERVICING OR FORECLOS-
2 ING UPON RESIDENTIAL MORTGAGE LOANS.

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

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

10 S 3. The penal law is amended by adding two new sections 187.30 and
11 187.35 to read as follows:

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

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

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

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

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

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

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

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

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

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

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