

House Bill 1271

By: Representative Collins of the 95<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 1 of Article 4 of Chapter 12 of Title 15 of the Official Code of Georgia  
2 Annotated, relating to general provisions relative to grand juries, so as to provide that a  
3 victim of commercial mortgage fraud shall have the right to present a case to the grand jury;  
4 to provide for duties of the grand jury; to amend Chapter 8 of Title 16 of the Official Code  
5 of Georgia Annotated, relating to offenses involving theft, so as to enact the "Georgia  
6 Commercial Mortgage Fraud Act"; to provide legislative findings; to provide a short title;  
7 to provide for definitions; to define the criminal offense of commercial mortgage fraud; to  
8 provide for venue; to provide penalties; to mandate investigations by district attorneys and  
9 the Attorney General or by investigative referral to the Georgia Bureau of Investigation; to  
10 authorize district attorneys and the Attorney General to prosecute cases of commercial  
11 mortgage fraud; to provide for the forfeiture of real and personal property; to amend Code  
12 Section 16-14-3 of the Official Code of Georgia Annotated, relating to definitions relative  
13 to racketeer influenced organizations, so as to include commercial mortgage fraud within the  
14 definition of racketeering activity; to provide for related matters; to repeal conflicting laws;  
15 and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 The General Assembly finds and declares that mortgage related fraud is at an all-time high  
19 in the United States and in Georgia. Mortgage lending institutions and borrowers have  
20 suffered hundreds of millions of dollars in losses due to mortgage fraud. The public interest  
21 is being subverted because small, minority, and disadvantaged businesses are often targeted  
22 for fraudulent financing and commercial mortgage fraud due to the availability of public  
23 financing, assistance, and support intended to support these enterprises and low to moderate  
24 income borrowers. The General Assembly therefore concludes that for the protection of the  
25 general public, and particularly for the protection of borrowers, small business, lending

26 institutions, federal and state government, and the integrity of the mortgage lending process,  
 27 the "Georgia Commercial Mortgage Fraud Act" shall be enacted.

28 **SECTION 2.**

29 To amend Part 1 of Article 4 of Chapter 12 of Title 15 of the Official Code of Georgia  
 30 Annotated, relating to general provisions relative to grand juries, by revising Code Section  
 31 15-12-75, which is reserved, as follows:

32 "15-12-75.

33 Any aggrieved person has the absolute right to present evidence of commercial mortgage  
 34 fraud as provided in Article 6 of Chapter 8 of Title 16 and present his or her case directly  
 35 to a special grand jury or a regular grand jury in the county in which he or she resides or  
 36 alternatively in the county in which the real estate is located. The functions of a grand jury  
 37 shall be to:

38 (1) Consider bills of indictment prepared by aggrieved citizens or the district attorney on  
 39 behalf of an aggrieved citizen and to determine whether there is sufficient probable cause  
 40 to return such indictment or true bill; and

41 (2) Investigate and report on any condition that involves or tends to promote criminal  
 42 activity, either in the community or by any governmental authority, agency, or official  
 43 thereof. Such functions may be exercised by either a special grand jury or a regular grand  
 44 jury. Reserved."

45 **SECTION 3.**

46 Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to offenses  
 47 involving theft, is amended by adding a new Article 6 to read as follows:

48 "ARTICLE 6

49 16-8-120.

50 This article shall be known and may be cited as the 'Georgia Commercial Mortgage Fraud  
 51 Act.'

52 16-8-121.

53 As used in this article, the term:

54 (1) 'Commercial mortgage fraud' means any mortgage or title related fraud which occurs  
 55 in a multifamily or commercial property transaction. Commercial mortgage fraud  
 56 includes misrepresentation, intentional wrongful foreclosure, or title slander utilizing  
 57 Georgia's nonjudicial foreclosure provisions or the application for federal or state

58 resources based on fraudulently acquired real property, including but not limited to  
59 zoning, permits, community block grants, tax credits, and municipal securities.

60 (2) 'Commercial mortgage loan' means a loan or agreement to extend credit made to any  
61 person which is secured by a deed to secure debt, security deed, mortgage, security  
62 interest, deed of trust, or other document representing a security interest or lien upon any  
63 interest in multifamily or commercial property located in Georgia, including the renewal  
64 or refinancing of any such loan.

65 (3) 'Mortgage lending process' means the process through which a person seeks or  
66 obtains a mortgage loan, including but not limited to solicitation, application, origination,  
67 negotiation of terms, third-party provider services, underwriting, signing and closing,  
68 funding of the loan, and recording. Documents involved in the mortgage lending process  
69 include, but are not limited to, uniform residential loan applications or other loan  
70 applications; appraisal reports; HUD-1 settlement statements; supporting personal  
71 documentation for loan applications such as W-2 forms, verifications of income and  
72 employment, bank statements, tax returns, and payroll stubs; and any required  
73 disclosures.

74 (4) 'Pattern of commercial mortgage fraud' means one or more misstatements,  
75 misrepresentations, or omissions made during the mortgage lending or federal or state  
76 application process involving two or more real properties or two or more or federal or  
77 state requests which have the same or similar intents, results, accomplices, victims, or  
78 methods of commission or otherwise are interrelated by distinguishing characteristics.

79 (5) 'Person' means any natural person, corporation, company, limited liability  
80 corporation, partnership, trustee, association, or any other entity.

81 16-8-122.

82 A person commits the offense of commercial mortgage fraud when, with the intent to  
83 defraud, such person:

84 (1) Knowingly makes any deliberate misstatement, misrepresentation, or omission during  
85 the mortgage lending or federal or state application process with the intention that it be  
86 relied on by a mortgage lender, borrower, or any other party to the mortgage lending  
87 process or city, state, or federal government;

88 (2) Knowingly uses or facilitates the use of any deliberate misstatement,  
89 misrepresentation, or omission during the mortgage lending or federal or state application  
90 process with the intention that it be relied on by a mortgage lender, borrower, or any other  
91 party to the mortgage lending process or city, state, or federal government;

92 (3) Receives any proceeds or any other funds in connection with a commercial mortgage  
 93 closing or federal or state benefit that such person knew or should have known resulted  
 94 from a violation of paragraph (1) or (2) of this Code section;

95 (4) Conspires or endeavors to violate any of the provisions of paragraph (1), (2), or (3)  
 96 of this Code section; or

97 (5) Files or causes to be filed with the official registrar of deeds of any county of this  
 98 state, or in city, state, or federal applications, any document such person knows to contain  
 99 a deliberate misstatement, misrepresentation, or omission.

100 16-8-123.

101 For the purpose of venue under this article, any violation of this article shall be considered  
 102 to have been committed:

103 (1) In the county in which the residential or commercial property for which a mortgage  
 104 loan is being sought is located;

105 (2) In any county in which any act was performed in furtherance of the violation;

106 (3) In any county in which any person alleged to have violated this article had control  
 107 or possession of any proceeds of the violation;

108 (4) In the county in which any natural person victim resides or the principal place of  
 109 business of any entity alleging violations of this article.

110 (5) If a closing occurred, in any county in which the closing occurred; or

111 (6) In any county in which a document containing a deliberate misstatement,  
 112 misrepresentation, or omission is filed with the official registrar of deeds.

113 16-8-124.

114 In cases involving significant taxpayer financing or public interest, district attorneys and  
 115 the Attorney General are mandated to conduct criminal investigations or provide an  
 116 investigative referral to the Georgia Bureau of Investigation, and district attorneys and the  
 117 Attorney General shall have the authority to prosecute of all cases of commercial mortgage  
 118 fraud under this article or under any other provision of this title.

119 16-8-125.

120 (a) Any person violating this article shall be guilty of a felony and, upon conviction, shall  
 121 be punished by imprisonment for not less than one year nor more than ten years, by a fine  
 122 not to exceed \$100,000.00, or both.

123 (b) If a violation of this article involves engaging or participating in a pattern of  
 124 commercial mortgage fraud or a conspiracy or endeavor to engage or participate in a  
 125 pattern of commercial mortgage fraud, said violation shall be punishable by imprisonment

126 for not less than three years nor more than 25 years, by a fine not to exceed \$250,000.00,  
 127 or both.

128 (c) Each real property transaction subject to a violation of this article shall constitute a  
 129 separate offense and shall not merge with any other crimes set forth in this title.

130 (d) Each application for federal or state resources predicated on a real property transaction  
 131 subject to a violation of this article shall constitute a separate offense and shall not merge  
 132 with any other crimes set forth in this title.

133 16-8-126.

134 All real and personal property of every kind used or intended for use in the course of,  
 135 derived from, or realized through a violation of this article shall be subject to mandatory  
 136 forfeiture to the state. Forfeiture shall be had by the same procedure set forth in Code  
 137 Section 16-14-7. District attorneys and the Attorney General shall commence forfeiture  
 138 proceedings under this article."

139 **SECTION 4.**

140 Code Section 16-14-3 of the Official Code of Georgia Annotated, relating to definitions  
 141 relative to racketeer influenced organizations, is amended in subparagraph (A) of paragraph  
 142 (9) by striking "or" at the end of division (xxxix), by revising division (xxxx), and by adding  
 143 a new division to read as follows:

144 "~~(xxxx)~~(xl) Code Section 16-8-102, relating to residential mortgage fraud; or  
 145 (xli) Code Section 16-8-122, relating to commercial mortgage fraud."

146 **SECTION 5.**

147 All laws and parts of laws in conflict with this Act are repealed.