

House Bill 1271

By: Representative Collins of the 95th

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.