

House Bill 42

By: Representative Mitchell of the 88th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,
2 relating to residential mortgage fraud, so as to modify certain provisions relating to the
3 offense of residential mortgage fraud; to provide for legislative intent; to provide for
4 definitions; to include in the criminal offense of residential mortgage fraud an act of fraud
5 committed upon homeowners during or threatened with foreclosure; to provide for related
6 matters; to provide for applicability and an effective date; to repeal conflicting laws; and for
7 other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 The General Assembly finds that the activity of foreclosure predators is ever increasing as
11 more and more Americans face the tragedy of losing their homes in foreclosure. These
12 predators take advantage of homeowners facing economic crisis and personal hardship.
13 Foreclosure predators make fraudulent promises to Georgia's most economically vulnerable,
14 claiming to be able to stop the foreclosure process when there is no reasonable basis for such
15 a claim. These predators use false claims to take money from those least likely to have extra
16 funds. A need exists to protect individuals experiencing this frightening process so that they
17 are not taken advantage of by foreclosure predators. Therefore, the General Assembly
18 concludes that foreclosure scams should be treated under Georgia law as a criminal offense.

19 **SECTION 2.**

20 Article 5 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to
21 residential mortgage fraud, is amended by revising Code Section 16-8-101, relating to
22 definitions, as follows:

23 "16-8-101.

24 As used in this article, the term:

25 (1) 'Mortgage foreclosure process' means the process by which a person's ownership
 26 interest in his or her primary residence is foreclosed on or threatened to be foreclosed on
 27 as provided for in Article 7 of Chapter 14 of Title 44.

28 ~~(1)~~(2) 'Mortgage lending process' means the process through which a person seeks or
 29 obtains a residential mortgage loan, including, but not limited to, solicitation, application,
 30 or origination, negotiation of terms, third-party provider services, underwriting, signing
 31 and closing, and funding of the loan. Documents involved in the mortgage lending
 32 process include, but are not limited to, uniform residential loan applications or other loan
 33 applications; appraisal reports; HUD-1 settlement statements; supporting personal
 34 documentation for loan applications such as W-2 forms, verifications of income and
 35 employment, bank statements, tax returns, and payroll stubs; and any required
 36 disclosures.

37 ~~(2)~~(3) 'Pattern of residential mortgage fraud' means one or more misstatements,
 38 misrepresentations, or omissions made during the mortgage lending process or during the
 39 mortgage foreclosure process that involve two or more residential properties, which have
 40 the same or similar intents, results, accomplices, victims, or methods of commission or
 41 otherwise are interrelated by distinguishing characteristics.

42 ~~(3)~~(4) 'Person' means a natural person, corporation, company, limited liability company,
 43 partnership, trustee, association, or any other entity.

44 ~~(4)~~(5) 'Residential mortgage loan' means a loan or agreement to extend credit made to
 45 a person, which loan is secured by a deed to secure debt, security deed, mortgage,
 46 security interest, deed of trust, or other document representing a security interest or lien
 47 upon any interest in one-to-four family residential property located in Georgia, including
 48 the renewal or refinancing of any such loan."

49 SECTION 3.

50 Said article is further amended by revising Code Section 16-8-102, relating to offense of
 51 residential mortgage fraud, as follows:

52 "16-8-102.

53 A person commits the offense of residential mortgage fraud when, with the intent to
 54 defraud, such person:

55 (1) Knowingly makes any deliberate misstatement, misrepresentation, or omission during
 56 the mortgage lending process with the intention that it be relied on by a mortgage lender,
 57 borrower, or any other party to the mortgage lending process;

58 (2) Knowingly uses or facilitates the use of any deliberate misstatement,
 59 misrepresentation, or omission, knowing the same to contain a misstatement,
 60 misrepresentation, or omission, during the mortgage lending process with the intention

61 that it be relied on by a mortgage lender, borrower, or any other party to the mortgage
62 lending process;

63 (3) Receives any proceeds or any other funds in connection with a residential mortgage
64 closing that such person knew resulted from a violation of paragraph (1) or (2) of this
65 Code section;

66 (4) Conspires to violate any of the provisions of paragraph (1), (2), ~~or (3)~~, or (6) of this
67 Code section; ~~or~~

68 (5) Files or causes to be filed with the official registrar of deeds of any county of this
69 state any document such person knows to contain a deliberate misstatement,
70 misrepresentation, or omission; or

71 (6) Knowingly uses or facilitates the use of any deliberate misstatement,
72 misrepresentation, or omission for the purpose of obtaining remuneration from a
73 homeowner where such homeowner's residence is subject to the mortgage foreclosure
74 process and in reliance upon such deliberate misstatement, misrepresentation, or
75 omission, the homeowner pays such person any amount to prevent or forestall the
76 foreclosure when, in fact, such person is not reasonably able to prevent or forestall the
77 foreclosure.

78 An offense of residential mortgage fraud shall not be predicated solely upon information
79 lawfully disclosed under federal disclosure laws, regulations, and interpretations related to
80 the mortgage lending process."

81 **SECTION 4.**

82 This Act shall become effective on July 1, 2009, and shall apply to all offenses committed
83 on or after that date.

84 **SECTION 5.**

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