

By: Solomons

H.B. No. 716

A BILL TO BE ENTITLED

AN ACT

relating to residential mortgage fraud; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Business & Commerce Code, is amended by adding Chapter 28 to read as follows:

CHAPTER 28. RESIDENTIAL MORTGAGE FRAUD ACT

Sec. 28.001. SHORT TITLE. This chapter may be cited as the Texas Residential Mortgage Fraud Act.

Sec. 28.002. DEFINITIONS. In this chapter:

(1) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan. The term includes the solicitation, origination, negotiation of terms, underwriting, signing and closing, and funding of the loan and the provision of third-party provider services and application for the loan.

(2) "Mortgage lending process document" includes:

(A) a contract for the sale of real property;  
(B) a uniform residential loan application or other loan application;

(C) an appraisal report;

(D) a HUD-1 settlement statement;

(E) supporting personal documentation for a loan application such as a W-2 form, verification of income and

1 employment, bank statement, tax return, or payroll stub;

2 (F) a certificate or affidavit of fact;

3 (G) a legal instrument related to the mortgage  
4 lending process, including a promissory note, mortgage note, deed  
5 of trust, other security instrument, or release, transfer, or  
6 assignment of lien; and

7 (H) any required disclosure.

8 (3) "Residential mortgage loan" means a loan or  
9 agreement to extend credit made to a person and secured by a  
10 mortgage or other lien on residential real property, including the  
11 refinancing or renewal of a loan secured by residential real  
12 property.

13 (4) "Residential real property" means real property:

14 (A) used or intended to be used as a residence;  
15 and

16 (B) containing a single-family house, a  
17 townhouse, a duplex, triplex, or quadruplex, or a condominium or  
18 cooperative unit in a multifamily structure.

19 Sec. 28.003. RESIDENTIAL MORTGAGE FRAUD. (a) A person  
20 commits an offense if the person:

21 (1) with the intent to mislead:

22 (A) knowingly, and with the intent that the  
23 misstatement, misrepresentation, or omission be relied on by a  
24 mortgage lender, borrower, or other party to the mortgage lending  
25 process:

26 (i) makes a misstatement,  
27 misrepresentation, or omission during the mortgage lending

1 process; or

2 (ii) uses or facilitates the use of a  
3 mortgage lending process document during the mortgage lending  
4 process that contains a misstatement, misrepresentation, or  
5 omission; or

6 (B) files or causes to be filed with a county  
7 clerk or governmental entity a mortgage lending process document  
8 concerning residential real property, knowing that the document  
9 contains a material misstatement, misrepresentation, or omission;

10 (2) derives a direct financial benefit in connection  
11 with a residential mortgage closing that the person knows resulted  
12 from conduct described by Subdivision (1); or

13 (3) conspires to engage in conduct described by  
14 Subdivision (1).

15 (b) An offense under this section is a felony of the second  
16 degree, except as provided by Section 28.004.

17 (c) Each residential property transaction that violates  
18 this section constitutes a separate offense.

19 Sec. 28.004. PATTERN OF RESIDENTIAL MORTGAGE FRAUD. A  
20 second or subsequent offense under Section 28.003 is a felony of the  
21 first degree if the first and the second or subsequent offenses:

22 (1) involve two or more residential properties; and

23 (2) have the same or similar intents, results,  
24 accomplices, victims, or methods of commission or otherwise are  
25 interrelated by distinguishing characteristics.

26 Sec. 28.005. VENUE. For the purpose of venue, an offense  
27 under Section 28.003 is considered to have been committed in any

1 county in which:

2 (1) the residential property for which a mortgage loan  
3 is being sought is located;

4 (2) an act was performed in furtherance of the  
5 offense;

6 (3) a person alleged to have committed an offense  
7 under this chapter had control or possession of any proceeds of the  
8 alleged offense;

9 (4) the closing occurred; or

10 (5) a mortgage lending process document containing a  
11 deliberate misstatement, misrepresentation, or omission is filed  
12 with the county clerk or another governmental entity.

13 Sec. 28.006. NOTICE OF CRIMINAL PENALTY. A mortgage lender  
14 or licensed mortgage broker may provide at any time to an applicant  
15 for a residential mortgage loan or to another party to the mortgage  
16 lending process a written notice in the following or substantially  
17 similar form:

18 "Warning: Knowingly making any material misstatement,  
19 misrepresentation, or omission of fact in connection  
20 with a residential mortgage loan or the mortgage  
21 lending process with the intent to mislead a mortgage  
22 lender or any other party to the mortgage lending  
23 process violates the Texas Residential Mortgage Fraud  
24 Act (Chapter 28, Business & Commerce Code) and is  
25 punishable by imprisonment for a term of not more than  
26 20 years or less than two years and a fine not to exceed  
27 \$10,000."

1           SECTION 2. The change in law made by this Act applies only  
2 to an offense committed on or after the effective date of this Act.  
3 An offense committed before the effective date of this Act is  
4 covered by the law in effect when the offense was committed, and the  
5 former law is continued in effect for that purpose. For purposes of  
6 this section, an offense is committed before the effective date of  
7 this Act if any element of the offense occurs before the effective  
8 date.

9           SECTION 3. This Act takes effect September 1, 2007.