

By: Wentworth

S.B. No. 1307

A BILL TO BE ENTITLED

AN ACT

relating to residential mortgage fraud; imposing a fee on residential mortgage loans; 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. TEXAS 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 lender" means the secured creditor named in the mortgage lending process documents and the creditor's successors and assigns.

(2) "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.

(3) "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;

1 (D) a credit report;

2 (E) a HUD-1 settlement statement;

3 (F) supporting personal documentation for a loan
4 application such as a W-2 form, a verification of deposits, rent,
5 income, and employment, a bank statement, a tax return, or a payroll
6 stub;

7 (G) a certificate or affidavit of fact;

8 (H) a legal instrument related to the mortgage
9 lending process, including a promissory note, mortgage note, deed
10 of trust, other security instrument, or release, transfer, or
11 assignment of lien; and

12 (I) any required disclosure.

13 (4) "Residential mortgage loan" means a loan or
14 agreement to extend credit made to a person and secured by a
15 mortgage or other lien on residential real property, including the
16 refinancing or renewal of a loan secured by residential real
17 property.

18 (5) "Residential real property" means real property:

19 (A) used or intended to be used as a residence;
20 and

21 (B) containing a single-family house, a
22 townhouse, a duplex, triplex, or quadruplex, or a condominium or
23 cooperative unit in a multifamily structure.

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

26 (1) in connection with the mortgage lending process:

27 (A) intentionally or knowingly makes a

1 materially false or misleading written statement or omission of
2 fact with the intent that the statement or omission be relied on by
3 a mortgage lender, borrower, or other party to the mortgage lending
4 process to obtain credit or property; or

5 (B) causes or induces a public servant to file or
6 record a deed of trust or other instrument affecting title to
7 residential real property knowing the instrument to contain a
8 materially false or misleading written statement;

9 (2) intentionally or knowingly causes or aids an
10 innocent or nonresponsible person to engage in conduct prohibited
11 by Subdivision (1);

12 (3) acting with intent to promote or assist the
13 commission of the offense under this section, solicits, encourages,
14 directs, aids, or attempts to aid the other person to commit the
15 offense; or

16 (4) having a legal duty to prevent commission of the
17 offense under this section and acting with intent to promote or
18 assist its commission, fails to make a reasonable effort to prevent
19 commission of the offense.

20 (b) A person does not commit an offense under this section
21 or Section 28.004 with respect to a statement or omission made by
22 another person if the person does not have actual knowledge of the
23 materially false or misleading written statement or omission of
24 fact made by the other person. This section does not impose a duty
25 on a person to inquire about or investigate mere suspicions or
26 misgivings about a written statement or omission made by another
27 person.

1 (c) If conduct constituting an offense under this section
2 also constitutes an offense under another law, the actor may be
3 prosecuted under this section, the other law, or both.

4 (d) Except as provided by Section 28.004, an offense under
5 this section is:

6 (1) a felony of the third degree if the amount of the
7 mortgage loan is less than \$100,000;

8 (2) a felony of the second degree if the amount of the
9 mortgage loan is \$100,000 or more and less than \$200,000; and

10 (3) a felony of the first degree if the amount of the
11 mortgage loan is \$200,000 or more.

12 (e) Each residential property transaction that violates
13 this section constitutes a separate offense.

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

17 (1) are committed not more than five years apart;

18 (2) involve two or more residential properties; and

19 (3) have the same or similar results, accomplices,
20 victims, or methods of commission.

21 Sec. 28.005. NOTICE OF CRIMINAL PENALTY. A mortgage lender
22 or licensed mortgage broker may provide at any time to an applicant
23 for a residential mortgage loan or to another party to the mortgage
24 lending process a written notice in the following or substantially
25 similar form:

26 "Warning: Intentionally or knowingly making a
27 materially false or misleading written statement or

1 omission of fact with the intent that it be relied on
2 by a mortgage lender, borrower, or other party to the
3 mortgage lending process to obtain credit or property
4 violates the Texas Residential Mortgage Fraud Act
5 (Chapter 28, Business & Commerce Code) and, depending
6 on the amount of the loan, is punishable by
7 imprisonment for a term of not more than 99 years or
8 less than two years and a fine not to exceed \$10,000."

9 SECTION 2. Chapter 343, Finance Code, is amended by adding
10 Subchapter D to read as follows:

11 SUBCHAPTER D. MORTGAGE LOAN FEE

12 Sec. 343.251. RESIDENTIAL MORTGAGE LOAN. In this
13 subchapter, "residential mortgage loan" has the meaning assigned by
14 Section 28.002, Business & Commerce Code.

15 Sec. 343.252. FEE IMPOSED. (a) A person who closes a
16 mortgage loan shall pay a fee of \$5 for each loan.

17 (b) For purposes of this section, a person is considered to
18 have closed a loan if the person is indicated as the secured
19 creditor on the instrument that establishes a lien on the
20 residential real property.

21 (c) A change to a mortgage, lien, or similar instrument
22 solely for the purpose of correcting a clerical error is not subject
23 to the fee under this section.

24 Sec. 343.253. PAYMENT OF FEES; USE BY ATTORNEY GENERAL TO
25 ENFORCE TEXAS RESIDENTIAL MORTGAGE FRAUD ACT. (a) The fee imposed
26 under Section 343.252 shall be remitted to the comptroller
27 quarterly.

1 (b) The fees shall be deposited to the credit of the general
2 revenue fund and may only be used by the attorney general for the
3 enforcement of Chapter 28, Business & Commerce Code. The attorney
4 general shall use an amount determined by the attorney general for
5 the investigation of residential mortgage fraud in this state and
6 shall distribute the remaining money from the fee to prosecuting
7 attorneys to be used for the enforcement of Chapter 28, Business &
8 Commerce Code.

9 (c) The attorney general has discretion regarding the use of
10 the money from the fee. The attorney general may establish a
11 procedure for a prosecuting attorney to apply for money from the fee
12 or may distribute the money in collaboration with prosecuting
13 attorneys.

14 SECTION 3. The change in law made by Chapter 28, Business &
15 Commerce Code, as added by this Act, applies only to an offense
16 committed on or after the effective date of this Act. An offense
17 committed before the effective date of this Act is covered by the
18 law in effect when the offense was committed, and the former law is
19 continued in effect for that purpose. For purposes of this section,
20 an offense is committed before the effective date of this Act if any
21 element of the offense occurs before the effective date.

22 SECTION 4. The fee imposed by Subchapter D, Chapter 343,
23 Finance Code, as added by this Act, applies only to a residential
24 mortgage loan closed on or after the effective date of this Act.

25 SECTION 5. This Act takes effect September 1, 2007.