

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1865

By: Leftwich

AS INTRODUCED

An Act relating to mortgages; creating the Oklahoma Residential Mortgage Fraud Act; providing short title; defining terms; creating certain offense; specifying certain authority; stating proper venue; establishing punishment for certain offense; providing for forfeiture of certain property; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 46, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Residential Mortgage Fraud Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 46, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications

of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures;

2. "Pattern of residential mortgage fraud" means one or more misstatements, misrepresentations, or omissions made during the mortgage lending process that involve two or more residential properties, which have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics;

3. "Person" means a natural person, corporation, company, limited liability company, partnership, trustee, association, or any other entity; and

4. "Residential mortgage loan" means a loan or agreement to extend credit made to a person, which loan is secured by a deed to secure debt, security deed, mortgage, security interest, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Oklahoma including the renewal or refinancing of any such loan.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103 of Title 46, unless there is created a duplication in numbering, reads as follows:

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

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

2. Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

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

4. Conspires to violate any of the provisions of paragraph 1, 2, or 3 of this section; or

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

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 46, unless there is created a duplication in numbering, reads as follows:

A. District attorneys and the Attorney General shall have the authority to conduct the criminal investigation and prosecution of all cases of residential mortgage fraud under this act.

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

1. In the county in which the residential property for which a mortgage loan is being sought is located;

2. In any county in which any act was performed in furtherance of the violation;

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

4. If a closing occurred, in any county in which the closing occurred; or

5. In any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed with the official registrar of deeds.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 46, unless there is created a duplication in numbering, reads as follows:

A. Any person violating this article shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than ten (10) years, by a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

B. If a violation of this article involves engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud, said violation shall be punishable by imprisonment for not less than three (3) years nor more than twenty (20) years, by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or both.

C. Each residential property transaction subject to a violation of this article shall constitute a separate offense and shall not merge with any other crimes set forth in this title.

D. All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this article shall be subject to forfeiture to the state.

SECTION 6. This act shall become effective November 1, 2006.

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