

2016 -- H 7316

=====
LC004009
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————
A N A C T

RELATING TO CRIMINAL OFFENSES -- FRAUD AND FALSE DEALING

Introduced By: Representatives Kennedy, Shekarchi, Azzinaro, Ackerman, and
O'Grady

Date Introduced: January 22, 2016

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 11-18 of the General Laws entitled "Fraud and False Dealing" is
2 hereby amended by adding thereto the following section:

3 **11-18-34. Residential mortgage fraud.** -- (a) As used in this section, the following
4 words and terms shall have the following meanings:

5 (1) "Mortgage lending process" means the process through which a person seeks or
6 obtains a residential mortgage loan including, but not limited to, solicitation, application,
7 origination, negotiation of terms, real estate appraisals and surveys, third-party provider services,
8 underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage
9 lending process include, but are not limited to, uniform residential loan applications or other loan
10 applications; appraisal reports; title reports or title policies; homeowners insurance policies;
11 HUD-1 settlement statements; verifications or certifications regarding occupancy intentions;
12 supporting personal documentation for loan applications such as W-2 forms, verifications of
13 income and employment, bank statements, tax returns, and payroll stubs; and any required
14 disclosures.

15 (2) "Pattern of residential mortgage fraud" means one or more violations of subsection
16 (b)(1) or (b)(2) of this section that involve two (2) or more residential mortgage loans and that
17 have the same or similar intent, result, or method of commission or otherwise result from
18 comparable actions or omissions.

19 (3) "Person" means an individual, a business, sole proprietorship, partnership,

1 corporation, limited liability company, association, trust, estate, or any other legal entity.

2 (4) "Residential mortgage loan" means a loan or agreement to extend credit made to a
3 person, which loan is secured by a deed to secure a debt, security deed, mortgage, security
4 interest, deed of trust, promissory note, or other document representing a security interest or lien
5 upon any interest in a one to four (4) family residential property including the renewal,
6 modification or refinancing of any such loan.

7 (5) "Victim" means a person who experienced loss, including, but not limited to
8 monetary loss, due to a violation of subsection (b) of this section.

9 (b) A person commits residential mortgage fraud when, with the intent to defraud, such
10 person:

11 (1) Knowingly makes an omission of a material fact, or a written misrepresentation or
12 misstatement of a material fact during the mortgage lending process with the intention that a
13 mortgage lender, a borrower, or any other person that is involved in the mortgage lending process
14 will rely on the absence of such material fact or the making of such material misrepresentation or
15 misstatement; or

16 (2) Knowingly uses or facilitates the use or attempts to use or facilitate the use of any
17 omission of a material fact or written misrepresentation or misstatement of a material fact during
18 the mortgage lending process with the intention that a mortgage lender, a borrower or any other
19 person that is involved in the mortgage lending process will rely on the absence of such material
20 fact or the making of such material misrepresentation or misstatement; or

21 (3) Receives or attempts to receive proceeds or any other funds in connection with a
22 residential mortgage lending transaction that the person knew or should have known resulted
23 from an act or acts constituting a violation of subsection (b)(1) or (b)(2) of this section;

24 (4) Conspires with or solicits another to engage in an act or acts constituting a violation
25 of subsection (b)(1) or (b)(2) of this section; or

26 (5) Files or causes to be filed with a city or town clerk any document involved in the
27 mortgage lending process that the person knows to contain an omission of a material fact or a
28 written misrepresentation or misstatement of a material fact.

29 (c) Any person who violates this section, upon conviction, shall be subject to the
30 following penalties:

31 (1) Any person who commits an offense under subsection (b) of this section shall be
32 guilty of a felony and subject to imprisonment for not more than ten (10) years, a fine of not more
33 than ten thousand dollars (\$10,000), or both.

34 (2) Any person who engages or participates in a pattern of residential mortgage fraud or

1 conspires or endeavors to engage or participate in a pattern of residential mortgage fraud shall be
2 guilty of a felony and subject to imprisonment for not more than twenty (20) years, a fine of not
3 more than one hundred thousand dollars (\$100,000), or both.

4 (3) Any person who commits an offense and knew that the victim was vulnerable due to
5 age, disability, infirmity, reduced physical or mental capacity, or national origin shall be guilty of
6 a felony and subject to imprisonment for not more than fifteen (15) years, a fine of not more than
7 fifteen thousand dollars (\$15,000), or both.

8 (4) The court shall order restitution to any victim.

9 (5) In addition to any criminal penalties provided for in this section, any person found in
10 violation of this section shall forfeit anything of value received by them in the course of such
11 violation less any restitution they actually paid pursuant to subsection (c)(4) of this section.
12 Action for recovery of these amounts shall be brought in the superior court of any county in
13 which any element of the crime occurred. The actions shall be brought in the name of the state by
14 the attorney general for the benefit and use of the state.

15 (d) It shall be sufficient in any prosecution for residential mortgage fraud to show that the
16 party accused did the act with the intent to defraud. It shall be unnecessary to show that any
17 particular person was harmed financially in the transaction or that the person to whom the
18 material misrepresentation, misstatement or omission was made relied upon the
19 misrepresentation, misstatement or omission.

20 SECTION 2. Section 12-12-17 of the General Laws in Chapter 12-12 entitled
21 "Indictments, Informations and Complaints" is hereby amended to read as follows:

22 **12-12-17. Statute of limitations.** -- (a) There shall be no statute of limitations for the
23 following offenses: treason against the state, any homicide, arson, first-degree arson, second-
24 degree arson, third-degree arson, burglary, counterfeiting, forgery, robbery, rape, first-degree
25 sexual assault, first-degree child molestation sexual assault, second-degree child molestation
26 sexual assault, bigamy, manufacturing, selling, distribution, or possession with intent to
27 manufacture, sell, or distribute, a controlled substance under the Uniform Controlled Substance
28 Act, chapter 28 of title 21, or any other offense for which the maximum penalty provided is life
29 imprisonment.

30 (b) The statute of limitations for the following offenses shall be ten (10) years: larceny
31 under § 11-41-2 (receiving stolen goods), § 11-41-3 (embezzlement and fraudulent conversion), §
32 11-41-4 (obtaining property by false pretenses or personation), § 11-41-11 (embezzlement by
33 bank officer or employee), § 11-41-12 (fraudulent conversion by agent or factor), and § 11-41-13
34 (obtaining signature by false pretenses), or any larceny that is punishable as a felony; any

1 violation of chapter 7 of title 11 (bribery); any violation of § 11-18-1 (giving false document to
2 agent, employee, or public official); perjury; any violation of chapter 42 of title 11 (threats and
3 extortion); any violation of chapter 15 of title 7 (racketeer influenced and corrupt organizations);
4 any violation of chapter 57 of title 11 (racketeer violence); any violation of chapter 36 of title 6
5 (antitrust law); ~~or~~ any violation of § 11-68-2 (exploitation of an elder); [any violation of §11-41-](#)
6 [11.1 \(unlawful appropriation\); any violation of §11-18-6 \(false financial statement to obtain loan](#)
7 [or credit\); any violation of §19-9-28 \(false statement to obtain a loan\); any violation of §19-9-29](#)
8 [\(bank fraud\); or any violation of §11-18-34 \(residential mortgage fraud\).](#)

9 (c) The statute of limitations for any other criminal offense shall be three (3) years unless
10 a longer statute of limitations is otherwise provided for in the general laws.

11 (d) Any person who participates in any offense, either as a principal accessory or
12 conspirator, shall be subject to the same statute of limitations as if the person had committed the
13 substantive offense.

14 (e) The statute of limitations for any violation of chapter 18.9 of title 23 (refuse
15 disposal), chapter 19 of title 23 (solid waste management corporation), chapter 19.1 of title 23
16 (hazardous waste management), chapter 12 of title 46 (water pollution), and chapter 13 of title 46
17 (public drinking water supply) shall be seven (7) years from the time that the facts constituting
18 the offense or violation shall have become known to law enforcement authorities, unless a longer
19 statute of limitations is otherwise provided for in the general laws.

20 SECTION 3. This act shall take effect upon passage.

=====
LC004009
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO CRIMINAL OFFENSES -- FRAUD AND FALSE DEALING

1 This act would criminalize residential mortgage fraud and extend the statute of
2 limitations for certain criminal offenses including unlawful appropriation, false financial
3 statement to obtain loan or credit, false statement to obtain a loan, bank fraud and residential
4 mortgage fraud.

5 This act would take effect upon passage.

=====
LC004009
=====