

A bill to be entitled

An act relating to residential mortgage fraud; creating s. 817.545, F.S.; providing a short title; providing legislative findings and declarations; providing definitions; specifying criteria for committing the offense of residential mortgage fraud; providing an exception; providing for venue of the committed offense; providing penalties; authorizing certain investigative agencies to investigate and prosecute cases of residential mortgage fraud; providing for civil forfeiture of property under certain circumstances; reenacting s. 895.02(1)(a), F.S., relating to the definition of "racketeering activity," for purposes of incorporating the creation of s. 817.545, F.S., in a reference to ch. 817, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 817.545, Florida Statutes, is created to read:

817.545 Residential mortgage fraud.--

(1) This section may be cited as the "Florida Residential Mortgage Fraud Act."

(2) The Legislature finds and declares that fraud involving residential mortgages is at an all-time high in the United States and in this state. Mortgage lending institutions and borrowers have suffered hundreds of millions of dollars in losses due to residential mortgage fraud. Fraudulently inflated

29 property values in neighborhoods have resulted in substantial
30 increases in property taxes and have threatened the viability of
31 many communities. The Legislature therefore concludes that for
32 the protection of the general public, and particularly for the
33 protection of borrowers, homeowners, lending institutions, and
34 the integrity of the mortgage lending process, residential
35 mortgage fraud should be made unlawful and subject to the
36 provisions of chapter 895.

37 (3) For purposes of this section:

38 (a) "Mortgage lending process" means the process through
39 which a person seeks or obtains a residential mortgage loan,
40 including, but not limited to, solicitation, application, or
41 origination, negotiation of terms, third-party provider
42 services, underwriting, signing and closing, and funding of the
43 loan. Documents involved in the mortgage lending process
44 include, but are not limited to, uniform residential loan
45 applications or other loan applications; appraisal reports; HUD-
46 1 settlement statements; supporting personal documentation for
47 loan applications such as W-2 forms, verifications of income and
48 employment, bank statements, tax returns, and payroll stubs; and
49 any required disclosures.

50 (b) "Person" means a natural person, corporation, company,
51 limited liability company, partnership, trustee, association, or
52 any other entity.

53 (c) "Residential mortgage fraud" means one or more
54 misstatements, misrepresentations, or omissions made during a
55 mortgage lending process that involves residential property.

56 (d) "Residential mortgage loan" means a loan or agreement

57 to extend credit made to a person, which loan is secured by a
 58 deed to secure debt, security deed, mortgage, security interest,
 59 deed of trust, or other document representing a security
 60 interest or lien upon any interest in one-family to four-family
 61 residential property located in this state, including the
 62 renewal or refinancing of any such loan.

63 (4) A person commits the offense of residential mortgage
 64 fraud if, with the intent to defraud, the person:

65 (a) Knowingly makes any deliberate misstatement,
 66 misrepresentation, or omission during the mortgage lending
 67 process with the intention that the misstatement,
 68 misrepresentation, or omission will be relied on by a mortgage
 69 lender, borrower, or any other party to the mortgage lending
 70 process;

71 (b) Knowingly uses or facilitates the use of any
 72 deliberate misstatement, misrepresentation, or omission, knowing
 73 the misstatement, misrepresentation, or omission contains a
 74 misstatement, misrepresentation, or omission, during the
 75 mortgage lending process with the intention that the
 76 misstatement, misrepresentation, or omission will be relied on
 77 by a mortgage lender, borrower, or any other party to the
 78 mortgage lending process;

79 (c) Receives any proceeds or any other funds in connection
 80 with a residential mortgage closing that the person knew
 81 resulted from a violation of paragraph (a) or paragraph (b);

82 (d) Conspires to violate any of the provisions of
 83 paragraph (a), paragraph (b), or paragraph (c); or

84 (e) Files or causes to be filed with the clerk of the

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85 circuit court for any county of this state any document the
86 person knows to contain a deliberate misstatement,
87 misrepresentation, or omission.

88
89 An offense of residential mortgage fraud shall not be predicated
90 solely upon information lawfully disclosed under federal
91 disclosure laws, regulations, and interpretations related to the
92 mortgage lending process.

93 (5) For the purpose of venue under this section, any
94 violation of this section shall be considered to have been
95 committed:

96 (a) In the county in which the residential property for
97 which a mortgage loan is being sought is located;

98 (b) In any county in which any act was performed in
99 furtherance of the violation;

100 (c) In any county in which any person alleged to have
101 violated this section had control or possession of any proceeds
102 of the violation;

103 (d) If a closing occurred, in any county in which the
104 closing occurred; or

105 (e) In any county in which a document containing a
106 deliberate misstatement, misrepresentation, or omission is filed
107 with the clerk of the circuit court for such county.

108 (6) (a) Any person who violates this section commits a
109 felony of the third degree, punishable as provided in s.
110 775.082, s. 775.083, or s. 775.084.

111 (b) Any person who engages in a pattern of residential
112 mortgage fraud or a conspiracy or endeavor to engage or

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113 participate in a pattern of residential mortgage fraud in
114 violation of this section commits a felony of the second degree,
115 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
116 For purposes of this paragraph, the term "pattern of residential
117 mortgage fraud" means one or more misstatements,
118 misrepresentations, or omissions made during the mortgage
119 lending process that involve two or more residential properties,
120 which have the same or similar intents, results, accomplices,
121 victims, or methods of commission or otherwise are interrelated
122 by distinguishing characteristics.

123 (c) Each residential property transaction subject to a
124 violation of this section shall constitute a separate offense
125 and shall not be combined with any other offense.

126 (7) An investigative agency as defined in s. 895.02 may
127 conduct the criminal investigation and prosecution of all cases
128 of residential mortgage fraud under this section.

129 (8) All real and personal property of every kind used or
130 intended for use in the course of, derived from, or realized
131 through a violation of this section is subject to civil
132 forfeiture to the state, as provided in s. 895.05. An
133 investigative agency as defined in s. 895.02 may commence
134 forfeiture proceedings under this section pursuant to s. 895.05.

135 Section 2. To incorporate the provisions of section
136 817.545, Florida Statutes, as created by this act, paragraph (a)
137 of subsection (1) of section 895.02, Florida Statutes, is
138 reenacted to read:

139 895.02 Definitions.--As used in ss. 895.01-895.08, the
140 term:

141 (1) "Racketeering activity" means to commit, to attempt to
 142 commit, to conspire to commit, or to solicit, coerce, or
 143 intimidate another person to commit:

144 (a) Any crime that is chargeable by indictment or
 145 information under the following provisions of the Florida
 146 Statutes:

147 1. Section 210.18, relating to evasion of payment of
 148 cigarette taxes.

149 2. Section 403.727(3)(b), relating to environmental
 150 control.

151 3. Section 409.920 or s. 409.9201, relating to Medicaid
 152 fraud.

153 4. Section 414.39, relating to public assistance fraud.

154 5. Section 440.105 or s. 440.106, relating to workers'
 155 compensation.

156 6. Section 443.071(4), relating to creation of a
 157 fictitious employer scheme to commit unemployment compensation
 158 fraud.

159 7. Section 465.0161, relating to distribution of medicinal
 160 drugs without a permit as an Internet pharmacy.

161 8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
 162 499.0691, relating to crimes involving contraband and
 163 adulterated drugs.

164 9. Part IV of chapter 501, relating to telemarketing.

165 10. Chapter 517, relating to sale of securities and
 166 investor protection.

167 11. Section 550.235, s. 550.3551, or s. 550.3605, relating
 168 to dogracing and horseracing.

- 169 12. Chapter 550, relating to jai alai frontons.
- 170 13. Section 551.109, relating to slot machine gaming.
- 171 14. Chapter 552, relating to the manufacture,
- 172 distribution, and use of explosives.
- 173 15. Chapter 560, relating to money transmitters, if the
- 174 violation is punishable as a felony.
- 175 16. Chapter 562, relating to beverage law enforcement.
- 176 17. Section 624.401, relating to transacting insurance
- 177 without a certificate of authority, s. 624.437(4)(c)1., relating
- 178 to operating an unauthorized multiple-employer welfare
- 179 arrangement, or s. 626.902(1)(b), relating to representing or
- 180 aiding an unauthorized insurer.
- 181 18. Section 655.50, relating to reports of currency
- 182 transactions, when such violation is punishable as a felony.
- 183 19. Chapter 687, relating to interest and usurious
- 184 practices.
- 185 20. Section 721.08, s. 721.09, or s. 721.13, relating to
- 186 real estate timeshare plans.
- 187 21. Chapter 782, relating to homicide.
- 188 22. Chapter 784, relating to assault and battery.
- 189 23. Chapter 787, relating to kidnapping or human
- 190 trafficking.
- 191 24. Chapter 790, relating to weapons and firearms.
- 192 25. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
- 193 796.05, or s. 796.07, relating to prostitution and sex
- 194 trafficking.
- 195 26. Chapter 806, relating to arson.

- 196 27. Section 810.02(2)(c), relating to specified burglary
- 197 of a dwelling or structure.
- 198 28. Chapter 812, relating to theft, robbery, and related
- 199 crimes.
- 200 29. Chapter 815, relating to computer-related crimes.
- 201 30. Chapter 817, relating to fraudulent practices, false
- 202 pretenses, fraud generally, and credit card crimes.
- 203 31. Chapter 825, relating to abuse, neglect, or
- 204 exploitation of an elderly person or disabled adult.
- 205 32. Section 827.071, relating to commercial sexual
- 206 exploitation of children.
- 207 33. Chapter 831, relating to forgery and counterfeiting.
- 208 34. Chapter 832, relating to issuance of worthless checks
- 209 and drafts.
- 210 35. Section 836.05, relating to extortion.
- 211 36. Chapter 837, relating to perjury.
- 212 37. Chapter 838, relating to bribery and misuse of public
- 213 office.
- 214 38. Chapter 843, relating to obstruction of justice.
- 215 39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 216 s. 847.07, relating to obscene literature and profanity.
- 217 40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 218 849.25, relating to gambling.
- 219 41. Chapter 874, relating to criminal street gangs.
- 220 42. Chapter 893, relating to drug abuse prevention and
- 221 control.
- 222 43. Chapter 896, relating to offenses related to financial
- 223 transactions.

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224 44. Sections 914.22 and 914.23, relating to tampering with
225 a witness, victim, or informant, and retaliation against a
226 witness, victim, or informant.

227 45. Sections 918.12 and 918.13, relating to tampering with
228 jurors and evidence.

229 Section 3. This act shall take effect October 1, 2007.