

By Senator Margolis

35-02582A-08

20081116\_\_

1 A bill to be entitled

2 An act relating to real property fraud; creating s.  
3 193.133, F.S.; requiring law enforcement agencies to  
4 notify the county property appraiser of incidents of  
5 mortgage fraud; requiring the property appraiser to  
6 reconsider property assessments under certain conditions;  
7 creating s. 689.043, F.S.; providing a quitclaim deed  
8 form; requiring that the parcel identification number be  
9 included on the form when recorded; limiting the  
10 circumstances under which a quitclaim deed may be used;  
11 amending s. 817.545, F.S.; increasing penalties for  
12 certain types of mortgage fraud; creating a Statewide  
13 Mortgage Fraud Council within the Department of Legal  
14 Affairs; providing for membership; providing duties of the  
15 council; providing for regional mortgage fraud councils;  
16 providing for duties of the regional councils; authorizing  
17 members of the state and regional councils to be  
18 reimbursed for expenses; providing an effective date.

19  
20 WHEREAS, mortgage fraud is a significant problem throughout  
21 the United States and is having a particularly damaging affect on  
22 mortgage investors and homeowners in this state, and

23 WHEREAS, certain types of mortgage fraud result in an  
24 artificial inflation in the value of residential property, which  
25 is directly correlated with an increase in the number of  
26 foreclosure filings, and

27 WHEREAS, this state is ranked number one in incidents of  
28 mortgage fraud and also has one of the highest foreclosure rates  
29 in the nation, and

35-02582A-08

20081116\_\_

30 WHEREAS, the escalation of property values also causes an  
31 increase in property taxes further making homeownership less  
32 affordable in this state, and

33 WHEREAS, providing enhanced penalties for multiple or more  
34 egregious instances of mortgage fraud, providing a uniform form  
35 for quitclaim deeds, establishing a statewide and regional  
36 councils to coordinate investigations of and solutions to  
37 mortgage fraud, and allowing county property appraisers to  
38 disqualify fraudulent property appraisals when deriving just  
39 valuation will help combat and reduce the effect of mortgage  
40 fraud, NOW, THEREFORE,

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Section 193.133, Florida Statutes, is created to  
45 read:

46 193.133 Effect of mortgage fraud on property assessments.--

47 (1) Any state or local law enforcement agency shall provide  
48 notification of an incident of mortgage fraud, as defined in s.  
49 817.545, or other fraud involving real property which may  
50 artificially inflate the value of the property, to the property  
51 appraiser of the county in which the property is located within 7  
52 business days after learning of such incident.

53 (2) Upon notification of an incident of mortgage fraud or  
54 any other fraud involving real property which may artificially  
55 inflate the value of the property, the property appraiser shall  
56 revisit the property assessment and consider the effect of the  
57 fraud on the just valuation of the property.

35-02582A-08

20081116\_\_

58 (3) The property appraiser may adjust his or her assessment  
 59 of the property retroactive to the initial date of the occurrence  
 60 of the mortgage fraud.

61 Section 2. Section 689.043, Florida Statutes, is created to  
 62 read:

63 689.043 Quitclaim deeds; form prescribed.--

64 (1) A relinquishment of any ownership interest in real  
 65 property may be effectuated through the use of a quitclaim deed.

66 (2) A quitclaim deed executed in substantially the  
 67 following form shall be held to be a quitclaim deed with full  
 68 common-law covenants, and shall bind the grantor as if the  
 69 covenants were expressly stated in the quitclaim deed.

70  
 71 THIS QUITCLAIM DEED, made on this date: \_\_\_\_\_,

72 between the GRANTOR: \_\_\_\_\_,

73 of the County of \_\_\_\_\_, State of \_\_\_\_\_,

74 and

75 the GRANTEE: \_\_\_\_\_,

76 of the County of \_\_\_\_\_, State of \_\_\_\_\_.

77 WITNESSETH, that the Grantor, on behalf of himself or  
 78 herself, heirs, executors, administrators, successors,  
 79 representatives, and assigns, for good consideration and for the  
 80 sum of \$10, paid by the Grantee, the receipt of which is  
 81 acknowledged, does hereby remise, release, and quitclaim to the  
 82 Grantee all of the right, title, interest, claim, or demand that  
 83 the Grantor may have had in the following described real  
 84 property, and improvements and appurtenances thereto, situated  
 85 in: \_\_\_\_\_

86 County, Florida:

35-02582A-08

20081116\_\_

87

88 Legal Description of Real Property:

89

90 (2) The form of the quitclaim deed must also include a  
91 blank space for the property appraiser's parcel identification  
92 number describing the real property at issue which number, if  
93 available, shall be entered on the deed before it is presented  
94 for recording. The failure to include a blank space, or the  
95 parcel identification number, or the inclusion of an incorrect  
96 parcel identification number, does not affect the validity of the  
97 relinquishment of ownership interest or the recordability of the  
98 deed. The parcel identification number does not constitute a part  
99 of the legal description of the real property set forth in the  
100 deed and may not be used as a substitute for the legal  
101 description of the property interest being relinquished.

102 (3) This form of relinquishment of ownership may be used  
103 only if title to the real property cannot be cured in any other  
104 manner or in a transaction that involves familial relationships.

105 (4) The quitclaim deed must be executed and acknowledged as  
106 is now or may hereafter be provided by the law regulating the  
107 transfer of realty by deed.

108 Section 3. Section 817.545, Florida Statutes, is amended to  
109 read:

110 817.545 Residential mortgage fraud.--

111 (1) For the purposes of the section, the term "mortgage  
112 lending process" means the process through which a person seeks  
113 or obtains a residential mortgage loan, including, but not  
114 limited to, the solicitation, application or origination,  
115 negotiation of terms, third-party provider services,

35-02582A-08

20081116\_\_

116 | underwriting, signing and closing, and funding of the loan.  
117 | Documents involved in the mortgage lending process include, but  
118 | are not limited to, mortgages, deeds, surveys, inspection  
119 | reports, uniform residential loan applications, or other loan  
120 | applications; appraisal reports; HUD-1 settlement statements;  
121 | supporting personal documentation for loan applications such as  
122 | W-2 forms, verifications of income and employment, credit  
123 | reports, bank statements, tax returns, and payroll stubs; and any  
124 | required disclosures.

125 |       (2) A person commits the offense of mortgage fraud if, with  
126 | the intent to defraud, the person knowingly:

127 |       (a) Makes any material misstatement, misrepresentation, or  
128 | omission during the mortgage lending process with the intention  
129 | that the misstatement, misrepresentation, or omission will be  
130 | relied on by a mortgage lender, borrower, or any other person or  
131 | entity involved in the mortgage lending process; however,  
132 | omissions on a loan application regarding employment, income, or  
133 | assets for a loan which does not require this information are not  
134 | considered a material omission for purposes of this subsection.

135 |       (b) Uses or facilitates the use of any material  
136 | misstatement, misrepresentation, or omission during the mortgage  
137 | lending process with the intention that the material  
138 | misstatement, misrepresentation, or omission will be relied on by  
139 | a mortgage lender, borrower, or any other person or entity  
140 | involved in the mortgage lending process; however, omissions on a  
141 | loan application regarding employment, income, or assets for a  
142 | loan which does not require this information are not considered a  
143 | material omission for purposes of this subsection.

35-02582A-08

20081116\_\_

144 (c) Receives any proceeds or any other funds in connection  
145 with the mortgage lending process that the person knew resulted  
146 from a violation of paragraph (a) or paragraph (b).

147 (d) Files or causes to be filed with the clerk of the  
148 circuit court for any county of this state a document involved in  
149 the mortgage lending process which contains a material  
150 misstatement, misrepresentation, or omission.

151 (3) An offense of mortgage fraud may not be predicated  
152 solely upon information lawfully disclosed under federal  
153 disclosure laws, regulations, or interpretations related to the  
154 mortgage lending process.

155 (4) For the purpose of venue under this section, any  
156 violation of this section is considered to have been committed:

157 (a) In the county in which the real property is located; or

158 (b) In any county in which a material act was performed in  
159 furtherance of the violation.

160 (5) (a) If only one parcel of real property is subject to  
161 the mortgage lending process or the total value of the loan is  
162 \$100,000 or less, a ~~any~~ person who violates subsection (2)  
163 commits a felony of the third degree, punishable as provided in  
164 s. 775.082, s. 775.083, or s. 775.084.

165 (b) If two or more parcels of real property are subject to  
166 the mortgage lending process or the total value of the loan is  
167 greater than \$100,000, a person who violates subsection (2)  
168 commits a felony of the second degree, punishable as provided in  
169 s. 775.082, s. 775.083, or s. 775.084.

170 Section 4. Statewide Mortgage Fraud Council.--

35-02582A-08

20081116\_\_

171       (1) INTENT.--The Legislature finds that there is a need to  
172 develop and implement a statewide strategy to address mortgage  
173 fraud within or affecting this state.

174       (2) ESTABLISHMENT.--The Statewide Mortgage Fraud Council is  
175 established within the Department of Law Enforcement for the  
176 purpose of combating mortgage fraud throughout the state.

177       (a) The council shall have an executive director appointed  
178 by the executive director of the department who shall carry out  
179 the tasks of the council as directed by the council. The  
180 department shall provide administrative support to the council.

181       (b) The council shall be composed of the following members:

182       1. The executive director of the Department of Law  
183 Enforcement, who shall be the chair of the council.

184       2. The statewide prosecutor.

185       3. The Attorney General or a designee who is knowledgeable  
186 about economic crimes.

187       4. The Commissioner of Financial Regulation or a designee  
188 who is knowledgeable about mortgage lending and related financial  
189 institutions.

190       5. The executive director of the Department of Revenue or a  
191 designee who is knowledgeable about ad valorem property  
192 valuation.

193       6. A member of the Florida Real Estate Appraisal Board.

194       (3) DUTIES.--The council may:

195       (a) Collect data about and serve as a resource and  
196 clearinghouse for information relating to mortgage fraud,  
197 including ongoing investigations and prosecutions around the  
198 state which involve mortgage fraud.

35-02582A-08

20081116\_\_

199 (b) Coordinate and initiate statewide or regional mortgage  
200 fraud investigations through the statewide prosecutor or local  
201 state attorneys.

202 (c) Subject to appropriation, establish a statewide toll-  
203 free hotline for reporting mortgage fraud, providing information  
204 and resources to the public regarding mortgage fraud, and routing  
205 reports of mortgage fraud to the appropriate law enforcement and  
206 prosecutorial agencies and the regional councils.

207 (d) In conjunction with state agencies responsible for  
208 determining training needs and establishing training standards  
209 for law enforcement officers, state attorneys, and regulatory  
210 personnel, identify and make recommendations relating to  
211 equipment and training, including continued training for state  
212 licensure or certification, to ensure that the needs of this  
213 state with regard to preparing, equipping, and training law  
214 enforcement officers, state attorneys, and regulatory personnel  
215 to combat mortgage fraud are identified and addressed. In making  
216 such recommendations, the council shall identify all resources  
217 and funding sources that may be available to support and fund  
218 such efforts.

219 (e) Propose legislation to eliminate and prevent mortgage  
220 fraud, including measures that close loopholes in procedures for  
221 making mortgage loans and prevent practices by property  
222 appraisers which provide opportunities for mortgage fraud.

223 (f) Establish regional mortgage fraud councils as provided  
224 in subsection (4).

225 (4) REGIONAL COUNCILS.--A regional mortgage fraud council  
226 shall be established in each of the seven operational regions of  
227 the Department of Law Enforcement. The department shall provide



35-02582A-08

20081116\_\_

228 dedicated staff to support the functions and activities of the  
229 regional councils.

230 (a) Each regional council shall be co-chaired by the  
231 department's special agent in charge of the operational region in  
232 which the council is located and by a local sheriff or chief of  
233 police from within the operational region.

234 (b) Regional council membership may include representatives  
235 of local law enforcement agencies, the state attorney's office,  
236 the county property appraiser, industry professionals, including  
237 property appraisers, mortgage brokers and bankers, and other  
238 affected professions, and business leaders.

239 (c) The co-chairs of a regional council may appoint  
240 committees and committee chairs as necessary to address issues  
241 related to the various disciplines represented on the council,  
242 including a law enforcement, regulatory, business partnership,  
243 education, or victims assistance committee. The committee chair  
244 shall serve at the pleasure of the co-chairs.

245 (d) Each regional council, with oversight and direction  
246 from the Statewide Mortgage Fraud Council, shall:

247 1. Organize, with local law enforcement agencies, sheriff's  
248 departments, and state attorneys, coordinated local initiatives  
249 to address mortgage fraud.

250 2. Coordinate efforts to enforce s. 817.545, Florida  
251 Statutes, and other related state and federal laws to ensure that  
252 such efforts are not fragmented or unnecessarily duplicative.

253 3. Coordinate training for local and state personnel  
254 relating to ss. 193.133 and 817.545, Florida Statutes, and other  
255 related state and federal laws.

35-02582A-08

20081116\_\_

256       4. Coordinate the collection and dissemination of state and  
257 local investigative information relating to mortgage fraud within  
258 each region.

259       5. Incorporate other objectives reasonably related to the  
260 goal of enhancing the state's ability to detect, prevent, and  
261 respond to mortgage fraud within or affecting this state. Each  
262 regional council shall take into account the unique conditions  
263 and resources within its region.

264       (5) MEMBER EXPENSES.--Members of the statewide and regional  
265 councils shall serve without compensation, but, in accordance  
266 with s. 112.061, Florida Statutes, are entitled to reimbursement  
267 for per diem and travel expenses incurred in carrying out the  
268 duties of the council.

269       Section 5. This act shall take effect July 1, 2008.