

2013 -- H 5326

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO CRIMINAL OFFENSES - FRAUD AND FALSE DEALING

Introduced By: Representatives Serpa, Fellela, O'Brien, Shekarchi, and Lima

Date Introduced: February 07, 2013

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) A person commits residential mortgage**
4 **fraud when, with the intent to defraud, such person:**

5 (1) Knowingly makes any deliberate written misstatement, misrepresentation or omission
6 during the mortgage lending process with the intention that a mortgage lender, a borrower, or any
7 other person that is involved in the mortgage lending process will rely on such written
8 misstatement, misrepresentation or omission;

9 (2) Knowingly uses or facilitates the use or attempts to use or facilitate the use of any
10 written misstatement, misrepresentation or omission during the mortgage lending process with the
11 intention that a mortgage lender, a borrower or any other person that is involved in the mortgage
12 lending process relies on it;

13 (3) Receives or attempts to receive proceeds or any other funds in connection with a
14 residential mortgage lending transaction that the person knew or should have known resulted
15 from an act or acts constituting residential mortgage fraud;

16 (4) Conspires with or solicits another to engage in an act or acts constituting residential
17 mortgage fraud; or

18 (5) Files or causes to be filed with a city or town clerk any document involved in
19 mortgage lending process that the person knows to contain a deliberate misstatement,

1 misrepresentation or omission.

2 (b) Any person who violates subsection (a) shall be subject to the following penalties:

3 (1) Any person who commits an offense under subsection (a) shall be guilty of a felony
4 subject to imprisonment for not more than five (5) years, a fine of five thousand dollars (\$5,000),
5 or both.

6 (2) Any person who engages or participates in a pattern of residential mortgage fraud or a
7 conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud shall be
8 guilty of a felony subject to imprisonment for not more than twenty (20) years, a fine of one
9 hundred thousand dollars (\$100,000), or both.

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

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

15 (5) In addition to any criminal penalties above, any person found in violation of this
16 section shall forfeit anything of value received by him or her in the course of such violation.
17 Action for recovery of these amounts shall be brought in the superior court of any county in
18 which any element of the crime occurred. The actions shall be brought in the name of the state by
19 the attorney general for the benefit and use of the state.

20 (c) For purposes of this section, the following definitions shall apply:

21 (1) "Mortgage lending process" means the process through which a person seeks or
22 obtains a residential mortgage loan including, but not limited to, solicitation, application,
23 origination, negotiation of terms, real estate appraisals, third-party provider services,
24 underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage
25 lending process include, but are not limited to, uniform residential loan applications or other loan
26 applications; appraisal reports; HUD-1 settlement statements, verifications or certifications
27 regarding occupancy intentions; supporting personal documentation for loan applications such as
28 W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll
29 stubs; and any required disclosures.

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

34 (3) "Person" means an individual, corporation, company, limited liability company,

1 partnership, trustee, association, or any other 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 debt, security deed, mortgage, security interest,
4 deed of trust, or other document representing a security interest or lien upon any interest in a one
5 to four (4) family residential property including the renewal or refinancing of any such loan.

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

8 (d) It shall be sufficient in any prosecution for residential mortgage fraud to show that the
9 party accused committed the act with the intent to defraud. It shall be unnecessary to show that
10 any particular person was harmed financially in the transaction or that the person to whom the
11 deliberate misstatement, misrepresentation or omission was made relied upon the misstatement,
12 misrepresentation or omission.

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

15 **12-12-17. Statute of limitations.** -- (a) There shall be no statute of limitations for the
16 following offenses: treason against the state, any homicide, arson, first degree arson, second
17 degree arson, third degree arson, burglary, counterfeiting, forgery, robbery, rape, first degree
18 sexual assault, first degree child molestation sexual assault, second degree child molestation
19 sexual assault, bigamy, manufacturing, selling, distribution or possession with intent to
20 manufacture, sell or distribute a controlled substance under the Uniform Controlled Substance
21 Act, chapter 28 of title 21, or any other offense for which the maximum penalty provided is life
22 imprisonment.

23 (b) The statute of limitations for the following offenses shall be ten (10) years: larceny
24 under section 11-41-2 (receiving stolen goods), section 11-41-3 (embezzlement and fraudulent
25 conversion), section 11-41-4 (obtaining property by false pretenses or personation), section 11-
26 41-11 (embezzlement by bank officer or employee), section 11-41-12 (fraudulent conversion by
27 agent or factor), and section 11-41-13 (obtaining signature by false pretenses), or any larceny
28 which is punishable as a felony; any violation of chapter 7 of title 11 (bribery); any violation of
29 section 11-18-1 (giving false document to agent, employee, or public official); perjury; any
30 violation of chapter 42 of title 11 (threats and extortion); any violation of chapter 15 of title 7
31 (racketeer influenced and corrupt organizations); any violation of chapter 57 of title 11 (racketeer
32 violence); or any violation of chapter 36 of title 6 (antitrust law); any violation of section 11-41-
33 11.1 (unlawful appropriation); any violation of section 11-41-27 (wrongful conversion by officer
34 or state or municipal employee); any violation of section 11-18-6 (false financial statement to

1 [obtain loan or credit\); any violation of section 19-9-28 \(false statement to obtain a loan\); any](#)
2 [violation of section 11-9-29 \(bank fraud\); or any violation of section 11-18-34 \(residential](#)
3 [mortgage fraud\).](#)

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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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 offenses.

3 This act would take effect upon passage.

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