

2017 -- S 0835 SUBSTITUTE A

LC001231/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO CRIMINAL OFFENSES - FRAUD AND FALSE DEALING

Introduced By: Senators Quezada, Nesselbush, Crowley, Lombardo, and Calkin

Date Introduced: April 27, 2017

Referred To: Senate 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.**

4 (a) For purposes of this section, the following definitions shall apply:

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, or
7 origination, negotiation of terms, real estate appraisals and surveys, third-party provider services,
8 underwriting, signing and closing, and funding of the loan.

9 (2) "Pattern of residential mortgage fraud" means one or more violations of subsection
10 (b)(1) or (b)(2) of this section that involve two (2) or more residential mortgage loans and that
11 have the same or similar intents, results, accomplices, or methods of commission or otherwise
12 result from comparable actions or omissions.

13 (3) "Person" means an individual, corporation, company, limited liability company,
14 partnership, trustee, association, or any other entity.

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

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

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

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

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

15 (3) Knowingly receives or attempts to receive proceeds or any other funds in connection
16 with a residential mortgage transaction that resulted from an act or acts constituting a violation of
17 subsection (b)(1) or (b)(2) of this section;

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

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

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

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

28 (2) Any person who engages or participates in a pattern of residential mortgage fraud or
29 conspires or endeavors to engage or participate in a pattern of residential mortgage fraud shall be
30 guilty of a felony and subject to imprisonment for not more than twenty (20) years, a fine of not
31 more than one hundred thousand dollars (\$100,000), or both.

32 (3) Any person who commits an offense and knew that the victim was vulnerable due to
33 age, disability, infirmity, reduced physical or mental capacity, or national origin shall be guilty of
34 a felony and subject to imprisonment for not more than fifteen (15) years, a fine of not more than

1 fifteen thousand dollars (\$15,000), or both.

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

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

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

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

16 **12-12-17. Statute of limitations.**

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

24 (b) The statute of limitations for the following offenses shall be ten (10) years: larceny
25 under §11-41-2 (receiving stolen goods), §11-41-3 (embezzlement and fraudulent conversion),
26 §11-41-4 (obtaining property by false pretenses or personation), §11-41-11 (embezzlement by
27 bank officer or employee), §11-41-12 (fraudulent conversion by agent or factor), and §11-41-13
28 (obtaining signature by false pretenses), or any larceny which is punishable as a felony; any
29 violation of chapter 7 of title 11 (bribery); any violation of §11-18-1 (giving false document to
30 agent, employee, or public official); perjury; any violation of chapter 42 of title 11 (threats and
31 extortion); any violation of chapter 15 of title 7 (racketeer influenced and corrupt organizations);
32 any violation of chapter 57 of title 11 (racketeer violence); any violation of chapter 36 of title 6
33 (antitrust law); of any violation of §11-68-2 (exploitation of an elder); any violation of §11-41-
34 11.1 (unlawful appropriation); any violation of §11-18-6 (false financial statement to obtain loan

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

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

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

8 (e) The statute of limitations for any violation of chapter 18.9 of title 23 (refuse disposal),
9 chapter 19 of title 23 (solid waste management corporation), chapter 19 .1 of title 23 (hazardous
10 waste management), chapter 12 of title 46 (water pollution), and chapter 13 of title 46 (public
11 drinking water supply) shall be seven (7) years from the time that the facts constituting the
12 offense or violation shall have become known to law enforcement authorities, unless a longer
13 statute of limitations is otherwise provided for in the general laws.

14 SECTION 3. The act shall take effect upon passage.

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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 offenses regarding financial and banking fraud.

3 This act would take effect upon passage.

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