



Substitute Senate Bill No. 949

Public Act No. 09-207

AN ACT CONCERNING MORTGAGE PRACTICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2009*) (a) A person commits residential mortgage fraud when, for financial gain and with the intent to defraud, such person: (1) Knowingly makes any material written misstatement, misrepresentation or omission during the mortgage lending process with the intention that a mortgage lender, mortgage correspondent lender or mortgage broker, as defined in section 36a-485 of the general statutes, a borrower or any other person that is involved in the mortgage lending process will rely on such written misstatement, misrepresentation or omission; (2) knowingly uses or facilitates the use or attempts to use or facilitate the use of any written misstatement, misrepresentation or omission during the mortgage lending process with the intention that a mortgage lender, mortgage correspondent lender, as defined in section 36a-485 of the general statutes, borrower or any other person that is involved in the mortgage lending process relies on it; (3) receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew or should have known resulted from an act or acts constituting residential mortgage fraud; or (4) conspires with or solicits another to engage in an act or acts constituting residential

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mortgage fraud.

(b) (1) A person who commits a single act of residential mortgage fraud is guilty of a class D felony.

(2) A person who commits two or more acts of residential mortgage fraud is guilty of a class C felony.

(3) For purposes of this section, (A) "person" means (i) a mortgage broker, mortgage lender, mortgage loan originator or mortgage correspondent lender, as defined in section 36a-485 of the general statutes, or (ii) any other individual who makes more than three individual mortgage loans or who purchases or sells more than three residential properties in a consecutive twelve-month period; (B) "mortgage lending process" means the process through which an individual seeks or obtains a residential mortgage loan, including solicitation, application, origination, negotiation of terms, underwriting, signing, closing and funding of a residential mortgage loan and services provided incident to such mortgage loan, including the appraisal of the residential property; and (C) "residential property" means "residential property" as defined in section 36a-485 of the general statutes.

(c) It shall be sufficient in any prosecution for residential mortgage fraud to show that the party accused did the act with the intent to deceive or defraud. It shall be unnecessary to show that any particular person was harmed financially in the transaction or that the person to whom the deliberate misstatement, misrepresentation or omission was made relied upon the misstatement, misrepresentation or omission. For purposes of this section, the residential mortgage fraud is committed: (1) In the county in which the residential real property for which the mortgage loan is being sought is located; (2) in the county in which any act was performed in furtherance of residential mortgage fraud; (3) in any county in which any person alleged to have engaged

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in an act that constitute residential mortgage fraud had control or possession of any proceeds of such residential mortgage fraud; (4) if a closing occurred, in any county in which the closing occurred; or (5) in any county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with an official registrar.

Sec. 2. (NEW) (*Effective October 1, 2009*) (a) All real and personal property of every kind used or intended for use in the course of, derived from or realized through an act of residential mortgage fraud may be subject to a judgment lien in favor of the state to secure any fine levied against a person convicted of mortgage fraud. Such judgment lien shall comply with the provisions of section 52-380a or 52-355a of the general statutes and shall be subordinate to any security interest in the property recorded prior to the date on which such lien is recorded.

(b) In addition to the penalty prescribed under section 1 of this act, courts may order restitution to any person that has suffered a financial loss due to any act or acts constituting residential mortgage fraud.

(c) In the absence of fraud, bad faith or malice, a person shall not be subject to an action for civil liability for filing reports or furnishing other information regarding suspected residential mortgage fraud under section 1 of this act to a regulatory or law enforcement agency.

Sec. 3. Subsection (a) of section 36a-760 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) As used in this section and sections 36a-760a to 36a-760j, inclusive, as amended by this act:

(1) ["Commissioner" means the Banking Commissioner and, with respect to any function of the commissioner, includes any person authorized or designated by the commissioner to carry out that

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function] "APR" has the same meaning as provided in section 36a-746a;

(2) "CHFA loan" means a loan made, insured, purchased, subsidized or guaranteed by the Connecticut Housing Finance Authority;

(3) "FHA loan" means a loan made, insured, purchased, subsidized or guaranteed by the Federal Housing Administration;

(4) "First mortgage loan" has the same meaning as provided in section 36a-485;

(5) "Lender" means any person engaged in the business of the making of mortgage loans who is required to be licensed by the Department of Banking under chapter 668, or their successors or assigns, and shall also mean any bank, out-of-state bank, Connecticut credit union, federal credit union, out-of-state credit union, or an operating subsidiary of a federal bank or a federally chartered out-of-state bank where such subsidiary engages in the business of making mortgage loans, and their successors and assigns, but shall not include any mortgage broker, as defined in this section, or any mortgage loan originator, as defined in section 36a-485;

(6) "Mortgage broker" means any person, other than a lender, who (A) for a fee, commission or other valuable consideration, negotiates, solicits, arranges, places or finds a mortgage, and (B) who is required to be licensed by the Department of Banking under chapter 668, or their successors or assigns;

(7) "Nonprime home loan" means any loan or extension of credit, excluding an open-end line of credit, and further excluding a reverse mortgage transaction, as defined in 12 CFR 226.33, as amended from time to time:

(A) In which the borrower is a natural person;

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(B) The proceeds of which are to be used primarily for personal family or household purposes;

(C) In which the loan is secured by a mortgage upon any interest in one-to-four family residential property located in this state which is, or when the loan is made, intended to be used or occupied by the borrower as a principal residence;

(D) In which the principal amount of the loan does not exceed (i) four hundred seventeen thousand dollars for a loan originated on or after July 1, 2008, but before July 1, 2010; and (ii) the then current conforming loan limit, as established from time to time by the Federal National Mortgage Association, for a loan originated on or after July 1, 2010;

(E) Where the loan is not a CHFA loan; and

(F) In which the conditions set forth in clauses (i) and (ii) of this subparagraph apply, subject to any adjustments made pursuant to clause (iii) of this subparagraph:

[(i) The difference between the APR for the loan or extension of credit and the yield on United States Treasury securities having comparable periods of maturity is either equal to or greater than (I) three percentage points, if the loan is a first mortgage loan, or (II) five percentage points, if the loan is a secondary mortgage loan. For purposes of such calculation, without regard to whether the loan is subject to or reportable under the provisions of the federal Home Mortgage Disclosure Act, 12 USC 2801 et seq., the difference between the APR and the yield on United States Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirement of the federal Home Mortgage Disclosure Act, as those procedures and calculation methods are

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amended from time to time, provided the yield on United States Treasury securities is determined as of the fifteenth day of the month prior to the application for the loan.]

[(ii)] (i) The difference, at the time of consummation, between the APR for the loan and the conventional mortgage rate is either equal to or greater than (I) one and three-quarters percentage points, if the loan is a first mortgage loan, or (II) three and three-quarters percentage points, if the loan is a secondary mortgage loan. For purposes of such calculation, "conventional mortgage rate" means the [most recent daily] contract interest rate on commitments for fixed-rate mortgages published by the board of governors of the federal reserve system in its statistical release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.

(ii) The difference, at the time of consummation, between the APR for the loan or extension of credit and the average prime offer rate for a comparable transaction, as of the date the interest rate is set, is greater than one and one-half percentage points if the loan is a first mortgage loan or three and one-half percentage points if the loan is a secondary mortgage loan. For purposes of this subparagraph, "average prime offer rate" has the meaning as provided in 12 CFR 226.35, as amended from time to time.

(iii) The commissioner shall have the authority, after consideration of the relevant factors, to increase the percentages set forth in clauses (i) and (ii) of this subparagraph. The authority of the commissioner, and any increases or decreases made under this clause, shall expire on August 31, [2009] 2010. For purposes of this clause, the relevant factors to be considered by the commissioner shall include, but not be limited to, the existence and amount of increases in fees or charges in connection with purchases of mortgages by the Federal National Mortgage Association or the Federal Home Loan Mortgage

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Corporation and increases in fees or charges imposed by mortgage insurers and the impact, including the magnitude of the impact, that such increases have had, or will likely have, on APRs for mortgage loans in this state. When considering such factors, the commissioner shall focus on those increases that are related to the deterioration in the housing market and credit conditions. The commissioner may refrain from increasing such percentages if it appears that lenders are increasing interest rates or fees in bad faith or if increasing the percentages would be contrary to the purposes of sections 36a-760 to 36a-760f, inclusive, as amended by this act. No increase authorized by the commissioner to a particular percentage shall exceed one-quarter of one percentage point, and the total of all increases to a particular percentage under this clause shall not exceed one-half of one percentage point. No increase shall be made unless: (I) The increase is noticed in the Banking Department Bulletin and the Connecticut Law Journal, and (II) a public comment period of twenty days is provided. Any increase made under this clause shall be reduced proportionately when the need for the increase has diminished or no longer exists. The commissioner, in the exercise of his discretion, may authorize an increase in the percentages with respect to all loans or just with respect to a certain class or classes of loans.

(8) "Open-end line of credit" means a mortgage extended by a lender under a plan in which: (A) The lender reasonably contemplates repeated transactions; (B) the lender may impose a finance charge from time to time on an outstanding unpaid balance; (C) the amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the lender, is generally made available to the extent that any outstanding balance is repaid; and (D) none of the proceeds of the open-end line of credit are used at closing to (i) purchase the borrower's primary residence, or (ii) refinance a mortgage loan that had been used by the borrower to purchase the borrower's primary residence;

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(9) "Residential property" has the same meaning as provided in section 36a-485;

(10) "Secondary mortgage loan" has the same meaning as provided in section 36a-485.

Sec. 4. Section 36a-760e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) A lender shall not offer a nonprime home loan that contains:

(1) A prepayment penalty, except that this prohibition shall not apply to FHA loans;

[(2) A provision that increases the interest rate after default other than a failure to comply with a provision to maintain an automatic electronic payment feature where that maintenance provision has been provided in return for an interest rate reduction and the increase is no greater than that reduction;]

[(3)] (2) A provision requiring a borrower, whether acting individually or on behalf of others similarly situated, to assert any claim or defense in a nonjudicial forum that: (A) Utilizes principles which are inconsistent with the law as set forth in the general statutes or common law; (B) limits any claim or defense the borrower may have; or (C) is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring a claim or defense;

(3) For a loan with a term of less than seven years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance, except that this limitation does not apply to a loan with maturities of less than one year if the purpose of the loan is a bridge loan, as used in 12 CFR 226.32, as amended from time to time, connected with the acquisition

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or construction of a dwelling intended to become the borrower's principal dwelling;

(4) A payment schedule with regular periodic payments that cause the principal balance to increase;

(5) A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds, unless such payments are required to be escrowed by a governmental agency;

(6) Default charges in excess of five per cent of the amount in default; or

(7) A call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition shall not apply when repayment of the loan is accelerated by bona fide default, pursuant to a due-on-sale clause provision or pursuant to another provision of the loan agreement unrelated to the payment schedule, including, but not limited to, bankruptcy or receivership.

(b) If a nonprime home loan contains a provision [which] that violates [subdivision (1), (2) or (3) of] subsection (a) of this section, that provision shall be void and unenforceable.

Sec. 5. Section 36a-489 of the general statutes is amended by adding subsection (c) as follows (*Effective from passage*):

(NEW) (c) Notwithstanding the provisions of this section, the commissioner may deem an application for a license as a mortgage lender, mortgage correspondent lender, mortgage broker or mortgage loan originator abandoned if the applicant fails to respond to any request for information required under sections 36a-485 to 36a-498a, inclusive, as amended by this act, or the regulations adopted pursuant to said sections. The commissioner shall notify the applicant in writing that if such information is not submitted within sixty days the

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application shall be deemed abandoned. An application filing fee paid prior to the date an application is deemed abandoned pursuant to this subsection shall not be refunded. Abandonment of an application pursuant to this subsection shall not preclude the applicant from submitting a new application for a license under said sections 36a-485 to 36a-498a, inclusive, as amended by this act.

Sec. 6. Section 36a-498 of the general statutes is amended by adding subsection (h) as follows (*Effective October 1, 2009*):

(NEW) (h) No mortgage lender or mortgage correspondent lender shall include in a mortgage loan a provision that increases the interest rate as a result of a default other than a failure to comply with a provision to maintain an automatic electronic payment feature where such maintenance provision has been provided in return for an interest rate reduction and the increase is no greater than such reduction.

Sec. 7. Subsection (b) of section 36a-498a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) (1) No mortgage lender or mortgage correspondent lender making a secondary mortgage loan may (A) charge, impose or cause to be paid, directly or indirectly, in connection with any secondary mortgage loan transaction, prepaid finance charges that exceed in the aggregate eight per cent of the principal amount of the loan, or (B) include in the loan agreement, under which prepaid finance charges have been assessed, any provision that permits the mortgage lender or mortgage correspondent lender to demand payment of the entire loan balance prior to the scheduled maturity, except that such loan agreement may contain a provision that permits the mortgage lender or mortgage correspondent lender to demand payment of the entire loan balance if any scheduled installment is in default for more than sixty days or if any condition of default set forth in the mortgage note

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exists.

(2) Any mortgage lender [L] or mortgage correspondent lender [or mortgage broker] who fails to comply with the provisions of this subsection shall be liable to the borrower in an amount equal to the sum of: (A) The amount by which the total of all prepaid finance charges exceeds eight per cent of the principal amount of the loan; (B) eight per cent of the principal amount of the loan or two thousand five hundred dollars, whichever is less; and (C) the costs incurred by the borrower in bringing an action under this subsection, including reasonable attorney's fees, as determined by the court, provided no such mortgage lender [L] or mortgage correspondent lender [or mortgage broker] shall be liable for more than the amount specified in this subsection in a secondary mortgage loan transaction involving more than one borrower.

Sec. 8. Section 36a-746c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

A high cost home loan shall not provide for or include the following:

(1) For a loan with a term of less than seven years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance, except that this limitation does not apply to a loan with maturities of less than one year if the purpose of the loan is a bridge loan, as used in 12 CFR 226.32, as amended from time to time, connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling;

(2) A payment schedule with regular periodic payments that cause the principal balance to increase;

(3) A payment schedule that consolidates more than two periodic

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payments and pays them in advance from the proceeds, unless such payments are required to be escrowed by a governmental agency;

[(4) An increase in the interest rate after default or default charges in excess of five per cent of the amount in default;]

[(5)] (4) A refund calculated by a method less favorable than the actuarial method, as defined by Section 933(d) of the Housing and Community Development Act of 1992, 15 USC 1615(d), as amended from time to time, for rebates of interest arising from a loan acceleration due to default;

[(6)] (5) A prepayment penalty;

[(7)] (6) A waiver of participation in a class action or a provision requiring a borrower, whether acting individually or on behalf of others similarly situated, to assert any claim or defense in a nonjudicial forum that: (A) Utilizes principles which are inconsistent with the law as set forth in the general statutes or common law; (B) limits any claim or defense the borrower may have; or (C) is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring a claim or defense; or

[(8)] (7) A call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition shall not apply when repayment of the loan is accelerated by bona fide default, pursuant to a due-on-sale clause provision, or pursuant to another provision of the loan agreement unrelated to the payment schedule including, but not limited to, bankruptcy or receivership.

Approved July 7, 2009