



General Assembly

January Session, 2009

Raised Bill No. 949

LCO No. 3425

03425_____BA_

Referred to Committee on Banks

Introduced by:

(BA)

**AN ACT CONCERNING THE DEPARTMENT OF BANKING'S
PROPOSAL ON MORTGAGE PRACTICES.**

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

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) A person commits
2 residential mortgage fraud when, for financial gain and with the intent
3 to defraud, such person: (1) Knowingly makes or attempts to make any
4 material misstatement, misrepresentation or omission during the
5 mortgage lending process with the intention that a mortgage lender,
6 mortgage correspondent lender or mortgage broker, as defined in
7 section 36a-485 of the general statutes, a borrower or any other person
8 that is involved in the mortgage lending process will rely on such
9 misstatement, misrepresentation or omission; (2) knowingly uses or
10 facilitates the use or attempts to use or facilitate the use of any
11 misstatement, misrepresentation or omission during the mortgage
12 lending process with the intention that a mortgage lender, mortgage
13 correspondent lender, as defined in section 36a-485 of the general
14 statutes, borrower or any other person that is involved in the mortgage
15 lending process relies on it; (3) receives or attempts to receive proceeds
16 or any other funds in connection with a residential mortgage closing

17 that the person knew or should have known resulted from an act or
18 acts constituting residential mortgage fraud; or (4) conspires with or
19 solicits another to engage in an act or acts constituting residential
20 mortgage fraud.

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

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

25 For purposes of this subsection, (A) "mortgage lending process"
26 means the process through which an individual seeks or obtains a
27 residential mortgage loan, including solicitation, application,
28 origination, negotiation of terms, underwriting, signing, closing and
29 funding of a residential mortgage loan and services provided incident
30 to such mortgage loan, including the appraisal of the residential
31 property; and (B) "residential property" means "residential property"
32 as defined in section 36a-485 of the general statutes.

33 (c) It shall be sufficient in any prosecution for residential mortgage
34 fraud to show that the party accused did the act with the intent to
35 deceive or defraud. It shall be unnecessary to show that any particular
36 person was harmed financially in the transaction or that the person to
37 whom the deliberate misstatement, misrepresentation or omission was
38 made relied upon the misstatement, misrepresentation or omission.
39 For purposes of this section, the residential mortgage fraud is
40 committed: (1) In the county in which the residential real property for
41 which the mortgage loan is being sought is located; (2) in the county in
42 which any act was performed in furtherance of residential mortgage
43 fraud; (3) in any county in which any person alleged to have engaged
44 in an act that constitute residential mortgage fraud had control or
45 possession of any proceeds of such residential mortgage fraud; (4) if a
46 closing occurred, in any county in which the closing occurred; or (5) in
47 any county in which a document containing a deliberate misstatement,
48 misrepresentation or omission is filed with an official registrar.

49 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) All real and personal
50 property of every kind used or intended for use in the course of,
51 derived from or realized through an act of residential mortgage fraud
52 under section 1 of this act shall be subject to forfeiture to the state as set
53 forth in section 54-72 of the general statutes, provided the forfeiture of
54 any real or personal property shall be subordinate to any security
55 interest in the property taken by a mortgage lender or mortgage
56 correspondent lender in good faith as collateral for the extension of
57 credit and recorded as provided by law, and no real or personal
58 property shall be forfeited under this section against an owner who
59 made a bona fide purchase of the property without knowledge of the
60 act or acts constituting residential mortgage fraud.

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

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

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

70 Other definitions applying to this title or to specified parts thereof
71 and the sections in which they appear are:

- T1 "Account". Sections 36a-155 and 36a-365.
- T2 "Additional proceeds". Section 36a-746e.
- T3 "Administrative expense". Section 36a-237.
- T4 "Advance fee". Sections 36a-485 and 36a-615.
- T5 "Advertise" or "advertisement". Section 36a-485.
- T6 "Agency bank". Section 36a-285.
- T7 ["Alternative mortgage loan". Section 36a-265.]
- T8 "Amount financed". Section 36a-690.

- T9 "Annual percentage rate". Section 36a-690.
- T10 "Annual percentage yield". Section 36a-316.
- T11 "Annuities". Section 36a-455a.
- T12 "Applicant". Section 36a-736.
- T13 "APR". Section 36a-746a.
- T14 "Assessment area". Section 36a-37.
- T15 "Assets". Section 36a-70.
- T16 "Associate". Section 36a-184.
- T17 "Associated member". Section 36a-458a.
- T18 "Bank". Section 36a-30.
- T19 "Bankers' bank". Section 36a-70.
- T20 "Banking business". Section 36a-425.
- T21 "Basic services". Section 36a-437a.
- T22 "Billing cycle". Section 36a-565.
- T23 "Bona fide nonprofit organization". Section 36a-655.
- T24 "Branch". Sections 36a-145, 36a-410 and 36a-435b.
- T25 "Branch office". Section 36a-485.
- T26 "Branch or agency net payment entitlement". Section 36a-428n.
- T27 "Branch or agency net payment obligation". Section 36a-428n.
- T28 "Broker". Section 36a-746a.
- T29 "Business and industrial development corporation". Section
- T30 36a-626.
- T31 "Business and property in this state". Section 36a-428n.
- T32 "Capital". Section 36a-435b.
- T33 "Cash advance". Section 36a-564.
- T34 "Cash price". Section 36a-770.
- T35 "Certificate of incorporation". Section 36a-435b.
- T36 "CHFA loan". Section 36a-760, as amended by this act.
- T37 "Closely related activities". Sections 36a-250 and 36a-455a.
- T38 "Collective managing agency account". Section 36a-365.
- T39 "Commercial vehicle". Section 36a-770.
- T40 "Community bank". Section 36a-70.
- T41 "Community credit union". Section 36a-37.
- T42 "Community development bank". Section 36a-70.

- T43 "Community reinvestment performance". Section 36a-37.
- T44 "Connecticut holding company". Sections 36a-53 and 36a-410.
- T45 "Consolidate". Section 36a-145.
- T46 "Construction loan". Section 36a-458a.
- T47 "Consumer". Sections 36a-155, 36a-676 and 36a-695.
- T48 "Consumer Credit Protection Act". Section 36a-676.
- T49 "Consumer debtor" and "debtor". Sections 36a-645 and
- T50 36a-800.
- T51 "Consumer collection agency". Section 36a-800.
- T52 "Consummation". Section 36a-746a.
- T53 "Controlling interest". Section 36a-276.
- T54 "Conventional mortgage rate". Section 36a-760, as amended by this act.
- T55 "Corporate". Section 36a-435b.
- T56 "Credit". Sections 36a-645 and 36a-676.
- T57 "Credit manager". Section 36a-435b.
- T58 "Creditor". Sections 36a-676, 36a-695 and 36a-800.
- T59 "Credit card", "cardholder" and "card issuer". Section 36a-676.
- T60 "Credit clinic". Section 36a-700.
- T61 "Credit rating agency". Section 36a-695.
- T62 "Credit report". Section 36a-695.
- T63 "Credit sale". Section 36a-676.
- T64 "Credit union service organization". Section 36a-435b.
- T65 "Credit union service organization services". Section 36a-435b.
- T66 "De novo branch". Section 36a-410.
- T67 "Debt". Section 36a-645.
- T68 "Debt adjustment". Section 36a-655.
- T69 "Debt mutual fund". Sections 36a-275 and 36a-459a.
- T70 "Debt securities". Sections 36a-275 and 36a-459a.
- T71 "Debtor". Section 36a-655.
- T72 "Deliver". Section 36a-316.
- T73 "Deposit". Section 36a-316.
- T74 "Deposit account". Section 36a-316.
- T75 "Deposit account charge". Section 36a-316.

- T76 "Deposit account disclosures". Section 36a-316.
- T77 "Deposit contract". Section 36a-316.
- T78 "Deposit services". Section 36a-425.
- T79 "Depositor". Section 36a-316.
- T80 "Director". Section 36a-435b.
- T81 "Earning period". Section 36a-316.
- T82 "Electronic payment instrument". Section 36a-596.
- T83 "Eligible collateral". Section 36a-330.
- T84 "Equity mutual fund". Sections 36a-276 and 36a-459a.
- T85 "Equity security". Sections 36a-276 and 36a-459a.
- T86 "Executive officer". Sections 36a-263 and 36a-469c.
- T87 "Federal Credit Union Act". Section 36a-435b.
- T88 "Federal Home Mortgage Disclosure Act". Section 36a-736.
- T89 "FHA loan". Section 36a-760, as amended by this act.
- T90 "Fiduciary". Section 36a-365.
- T91 "Filing fee". Section 36a-770.
- T92 "Finance charge". Sections 36a-690 and 36a-770.
- T93 "Financial institution". Sections 36a-41, 36a-44a, 36a-155, 36a-316,
- T94 36a-330, 36a-435b, 36a-736 and 36a-755.
- T95 "Financial records". Section 36a-41.
- T96 "First mortgage loan". Sections 36a-485, 36a-705, 36a-715 and
- T97 36a-725.
- T98 "Foreign banking corporation". Section 36a-425.
- T99 "Fully indexed rate". Section 36a-760b, as amended by this act.
- T100 "General facility". Section 36a-580.
- T101 "Global net payment entitlement". Section 36a-428n.
- T102 "Global net payment obligation". Section 36a-428n.
- T103 "Goods". Sections 36a-535 and 36a-770.
- T104 "Graduated payment mortgage loan". Section 36a-265.
- T105 "Guardian". Section 36a-365.
- T106 "High cost home loan". Section 36a-746a.
- T107 "Holder". Section 36a-596.
- T108 "Home banking services". Section 36a-170.
- T109 "Home banking terminal". Section 36a-170.

- T110 "Home improvement loan". Section 36a-736.
- T111 "Home purchase loan". Section 36a-736.
- T112 "Home state". Section 36a-410.
- T113 "Immediate family member". Section 36a-435b.
- T114 "Insider". Section 36a-454b.
- T115 "Installment loan contract". Sections 36a-535 and 36a-770.
- T116 "Insurance". Section 36a-455a.
- T117 "Insurance bank". Section 36a-285.
- T118 "Insurance department". Section 36a-285.
- T119 "Interest". Section 36a-316.
- T120 "Interest rate". Section 36a-316.
- T121 "Interim interest". Section 36a-746a.
- T122 "Lender". Sections 36a-746a, 36a-760, as amended by this act, [and] 36a-770, and section 4 of this act.
- T123 "Lessor". Section 36a-676.
- T124 "License". Section 36a-626.
- T125 "Licensee". Sections 36a-596 and 36a-626.
- T126 "Limited branch". Section 36a-145.
- T127 "Limited facility". Section 36a-580.
- T128 "Loan broker". Section 36a-615.
- T129 "Loss". Section 36a-330.
- T130 "Made in this state". Section 36a-770.
- T131 "Main office". Section 36a-485.
- T132 "Managing agent". Section 36a-365.
- T133 "Manufactured home". Section 36a-457b.
- T134 "Material litigation". Section 36a-596.
- T135 "Member". Section 36a-435b.
- T136 "Member business loan". Section 36a-458a.
- T137 "Member in good standing". Section 36a-435b.
- T138 "Membership share". Section 36a-435b.
- T139 "Mobile branch". Section 36a-435b.
- T140 "Money order". Section 36a-596.
- T141 "Money transmission". Section 36a-365.
- T142 "Mortgage". Section 36a-760g.

- T143 "Mortgage broker". Sections 36a-485, 36a-705 and 36a-760, as amended by this act.
- T144 "Mortgage correspondent lender". Section 36a-485.
- T145 "Mortgage insurance". Section 36a-725.
- T146 "Mortgage lender". Sections 36a-485, 36a-705 and 36a-725.
- T147 "Mortgage loan". Sections 36a-261, 36a-265, as amended by this act,
36a-457b,
T148 36a-485 and 36a-736.
- T149 "Mortgage loan originator". Section 36a-485.
- T150 "Mortgage rate lock-in". Section 36a-705.
- T151 "Mortgage servicing company". Section 36a-715.
- T152 "Mortgagor". Section 36a-715.
- T153 "Motor vehicle". Section 36a-770.
- T154 "Multiple common bond membership". Section 36a-435b.
- T155 "Municipality". Section 36a-800.
- T156 "Net outstanding member business loan balance". Section 36a-458a.
- T157 "Net worth". Sections 36a-441a, 36a-458a and 36a-596.
- T158 "Network". Section 36a-155.
- T159 "Nonprime home loan". Section 36a-760, as amended by this act.
- T160 "Nonrefundable". Section 36a-498, as amended by this act.
- T161 "Note account". Sections 36a-301 and 36a-456b.
- T162 "Office". Sections 36a-23, 36a-316 and 36a-485.
- T163 "Officer". Section 36a-435b.
- T164 "Open-end credit plan". Section 36a-676.
- T165 "Open-end line of credit". Section 36a-760, as amended by this act.
- T166 "Open-end loan". Section 36a-565.
- T167 "Organization". Section 36a-800.
- T168 "Out-of-state holding company". Section 36a-410.
- T169 "Outstanding". Section 36a-596.
- T170 "Passbook savings account". Section 36a-316.
- T171 "Payment instrument". Section 36a-596.
- T172 "Periodic statement". Section 36a-316.
- T173 "Permissible investment". Section 36a-596.
- T174 "Person". Section 36a-184.

- T175 "Post". Section 36a-316.
- T176 "Prepaid finance charge". Section 36a-746a.
- T177 "Prime quality". Section 36a-596.
- T178 "Principal amount of the loan". Section 36a-485.
- T179 "Processor". Section 36a-155.
- T180 "Public deposit". Section 36a-330.
- T181 "Purchaser". Section 36a-596.
- T182 "Qualified financial contract". Section 36a-428n.
- T183 "Qualified public depository" and "depository". Section 36a-330.
- T184 "Real estate". Section 36a-457b.
- T185 "Records". Section 36a-17.
- T186 "Related person". Section 36a-53.
- T187 "Relocate". Sections 36a-145 and 36a-462a.
- T188 "Residential property". Section 36a-485.
- T189 "Retail buyer". Sections 36a-535 and 36a-770.
- T190 "Retail credit transaction". Section 42-100b.
- T191 "Retail installment contract". Sections 36a-535 and 36a-770.
- T192 "Retail installment sale". Sections 36a-535 and 36a-770.
- T193 "Retail seller". Sections 36a-535 and 36a-770.
- T194 ["Reverse annuity mortgage loan". Section 36a-265.] "Reverse mortgage". Section 4 of this act.
- T195 "Sales finance company". Sections 36a-535 and 36a-770.
- T196 "Savings department". Section 36a-285.
- T197 "Savings deposit". Section 36a-316.
- T198 "Secondary mortgage loan". Section 36a-485.
- T199 "Security convertible into a voting security". Section 36a-184.
- T200 "Senior management". Section 36a-435b.
- T201 "Share". Section 36a-435b.
- T202 "Simulated check". Section 36a-485.
- T203 "Single common bond membership". Section 36a-435b.
- T204 "Special mortgage". Section 36a-760c, as amended by this act.
- T205 "Social purpose investment". Section 36a-277.
- T206 "Standard mortgage loan". Section 36a-265, as amended by this act.
- T207 "Table funding agreement". Section 36a-485.

- T208 "Tax and loan account". Sections 36a-301 and 36a-456b.
- T209 "The Savings Bank Life Insurance Company". Section 36a-285.
- T210 "Time account". Section 36a-316.
- T211 "Travelers check". Section 36a-596.
- T212 "Troubled Connecticut credit union". Section 36a-448a.
- T213 "Unsecured loan". Section 36a-615.
- T214 "Warehouse agreement". Section 36a-485.

72 Sec. 4. Section 36a-265 of the general statutes is repealed and the
73 following is substituted in lieu thereof (*Effective October 1, 2009*):

74 (a) (1) "Mortgage loan" means a loan secured by a first mortgage on
75 one, two, three or four family, owner-occupied residential real
76 property;

77 (2) "Standard mortgage loan" means a mortgage loan authorized by
78 section 36a-261 or section 36a-457b for the Connecticut bank or
79 Connecticut credit union making such loan; and

80 [(3) "Alternative mortgage loan" means a mortgage loan which is a
81 reverse annuity mortgage loan or graduated payment mortgage loan,
82 other than a standard mortgage loan;

83 (4) "Reverse annuity mortgage loan" means a mortgage loan in
84 which loan proceeds are advanced to the mortgagors, in installments,
85 either directly or indirectly, and which together with unpaid interest, if
86 any, is to be repaid in accordance with subdivision (2) of subsection (e)
87 of this section; and]

88 [(5)] (3) "Graduated payment mortgage loan" means a mortgage
89 loan, other than a standard mortgage loan, in which principal and
90 interest payments, if any, and the making of additional advances, if
91 any, are designed to reflect the prospective increasing or decreasing
92 income of the mortgagor.

93 (b) Notwithstanding any other provision of the general statutes,

94 Connecticut banks and Connecticut credit unions may make
95 [alternative] graduated payment mortgage loans in accordance with
96 this section. The provisions of the general statutes governing standard
97 mortgage loans by a Connecticut bank or Connecticut credit union
98 making such loans shall apply to [alternative] graduated payment
99 mortgage loans unless inconsistent with the provisions of this section.
100 Nothing in this section shall be construed to prohibit a Connecticut
101 bank or Connecticut credit union from making any loan which is not
102 [an alternative] a graduated payment mortgage loan, provided such
103 loan otherwise complies with the general statutes.

104 (c) A Connecticut bank or Connecticut credit union making [an
105 alternative] a graduated payment mortgage loan may contract with the
106 mortgagor for interest to be paid currently or to accrue, and if accrued,
107 for accrued interest to be added to the mortgage debt on which interest
108 may be charged and collected. Such accrued interest which is added to
109 the mortgage debt shall be secured by the mortgage to the same extent
110 as the principal of such [alternative] graduated payment mortgage
111 debt. No instrument evidencing [an alternative] a graduated payment
112 mortgage loan and no deed granting [an alternative] a graduated
113 payment mortgage shall contain any provision imposing a penalty for
114 prepayment of such loan.

115 (d) (1) Each Connecticut bank and Connecticut credit union that
116 offers or makes [any type of alternative] a graduated payment
117 mortgage loan shall disclose to each person who requests an
118 application for a mortgage loan or who states that such person is a
119 prospective mortgage loan applicant [such] information concerning all
120 types of mortgage loans, including each type of [alternative] graduated
121 payment mortgage loan, offered by such bank or credit union as the
122 commissioner [shall] may prescribe by regulations. The commissioner
123 may prescribe forms for such disclosure.

124 (2) Each prospective mortgage loan applicant shall have the choice
125 of applying for a standard mortgage loan or any type of [alternative]

126 graduated payment mortgage loan offered by such Connecticut bank
127 or Connecticut credit union.

128 [(e) (1) If the mortgagee or its assignee and the mortgagor agree, any
129 installment payment of either the loan proceeds or any annuity
130 purchased with the loan proceeds of a reverse annuity mortgage loan
131 may be reduced by an amount used for partial repayment of the
132 mortgage debt, except as provided in subdivision (2) of this subsection.

133 (A) Notwithstanding any such reduction, each mortgagor shall
134 receive a cash payment in each installment for the term of the annuity
135 or, if no annuity, for the term during which the mortgagee contracted
136 with the mortgagor to advance loan proceeds; and

137 (B) No repayments of any part of the mortgage debt shall be
138 required from the mortgagor after termination of the period during
139 which loan proceeds or any annuity purchased with the loan proceeds
140 are advanced to the mortgagor.

141 (2) If the mortgagee or its assignee and the mortgagor agree, and at
142 the option of the mortgagee, advances under a reverse annuity
143 mortgage loan may terminate and the entire unpaid balance of the loan
144 plus accrued interest may become due and payable upon the
145 occurrence of any of the following events:

146 (A) The death of the last surviving mortgagor;

147 (B) The sale or other transfer of the real estate securing the loan to a
148 person other than any of the original mortgagors; or

149 (C) Any other occurrence which materially decreases the value of
150 the property securing the loan or which will have the likely effect of
151 causing the loan not to be repaid. Any such additional occurrence shall
152 be clearly recited in the mortgage deed.]

153 [(f)] (e) Every graduated payment mortgage loan offered or made by
154 a Connecticut bank or Connecticut credit union shall provide for

155 interest at a specified rate or a series of specified rates.

156 [(g)] (f) The commissioner may adopt such regulations pursuant to
157 chapter 54 as the commissioner deems necessary to carry out the
158 provisions of this section.

159 Sec. 5. (NEW) (*Effective October 1, 2009*) (a) As used in this section:

160 (1) "Reverse mortgage" means a nonrecourse loan secured by real
161 property which provides cash advances to a borrower based on the
162 equity in a borrower's owner-occupied principal residence in this state
163 and requires no payment of principal or interest until the entire loan
164 becomes due and payable; and

165 (2) "Lender" means a "Connecticut bank" or "Connecticut credit
166 union", as defined in section 36a-2 of the general statutes, or a person
167 licensed as a mortgage lender or mortgage correspondent lender
168 pursuant to sections 36a-485 to 36a-498a, inclusive, of the general
169 statutes, as amended by this act.

170 (b) No person shall make a reverse mortgage loan, except as
171 authorized under federal law or under the provisions of this section.

172 (c) A lender may make or acquire a reverse mortgage loan made to
173 an owner of real estate improved with a dwelling designed to be
174 occupied by not more than four families, pursuant to a program for
175 reverse mortgage loans that has been submitted to and approved by
176 the commissioner, provided such owner is at least sixty years of age
177 and occupies the mortgaged real estate in whole or in part. A person
178 shall be considered to be the owner of real estate notwithstanding that
179 legal title thereto is held in the name of a trust if the person is the
180 beneficiary of such trust.

181 (d) The proceeds from a reverse mortgage loan shall be disbursed to
182 the borrower pursuant to the approved program, and together with
183 unpaid interest, if any, shall become due and payable: (1) At the end of
184 a fixed term, if any; (2) upon the death of the borrower; (3) upon the

185 conveyance of title to the mortgaged real estate; (4) upon the borrower
186 ceasing to occupy the real estate as a principal dwelling; or (5) upon
187 default by the borrower in the performance of its obligations under the
188 loan agreement.

189 (e) The program for reverse mortgage loans submitted to the
190 commissioner shall include the following:

191 (1) A description of the type of loan, including whether it is open-
192 end or closed;

193 (2) A provision that an applicant for the loan shall not be bound for
194 seven days after the applicant's acceptance, in writing, of the lender's
195 written commitment to make the loan;

196 (3) A provision requiring the lender to obtain a written statement
197 signed by the borrower acknowledging receipt of disclosure of all
198 contractual contingencies that could force a sale of the mortgaged real
199 estate;

200 (4) A provision permitting prepayment of the loan without penalty
201 at any time before the loan becomes due and payable;

202 (5) The interest rate, which may be fixed or variable, and the method
203 of calculation thereof, which shall be established at loan origination
204 and, at the option of the borrower, may be contingent on the value of
205 the mortgaged real estate at closing or at maturity or on changes in the
206 value during the period between closing and maturity;

207 (6) The method of disbursement of the proceeds of the loan to the
208 borrower; but, at the request of the borrower, disbursement may be
209 made to a third party pursuant to the terms of the loan agreement;

210 (7) A copy of the form of the note and mortgage deed that will be
211 utilized for the loans;

212 (8) A detailed description of how the reverse mortgage program will

213 function; and

214 (9) Any other information the commissioner may require.

215 (f) Before making a reverse mortgage loan, the lender shall provide
216 a prospective borrower with written materials explaining in plain
217 language the type of loan being offered and its specific terms,
218 including, but not limited to:

219 (1) A schedule, if applicable, and explanation of payments to the
220 borrower pursuant to the terms of the mortgage agreement and
221 whether or not property taxes and insurance premiums are to be
222 deducted;

223 (2) A schedule of outstanding debt over time, if applicable;

224 (3) The repayment date, if a fixed term loan, and other provisions
225 which cause the loan to become due and payable;

226 (4) The method of repayment and schedule, if any;

227 (5) All contractual contingencies, including lack of home
228 maintenance and other default provisions that may result in a forced
229 sale of the mortgaged property;

230 (6) The interest rate and annual percentage rate, and for a reverse
231 mortgage loan for a specified term, the total interest payable thereon;

232 (7) The loan fees and charges;

233 (8) A description of prepayment and, if applicable, refinancing
234 features; and

235 (9) A statement that the mortgage has tax and estate planning
236 consequences and may affect levels of, or eligibility for, certain
237 government benefits, grants or pensions, and that applicants are
238 advised to explore those matters with appropriate authorities.

239 (g) A lender shall not make a reverse mortgage loan as provided in
240 this section until it has received a notice, in writing, that the
241 prospective borrower has completed a reverse mortgage counseling
242 program that includes instruction on reverse mortgage loans. Such
243 instruction shall include, but not be limited to, the subject matter of
244 subdivisions (1) to (9), inclusive, of subsection (e) of this section with
245 respect to all reverse mortgage loan programs approved by the
246 commissioner pursuant to this section.

247 (h) A reverse mortgage loan shall constitute a lien against the
248 property securing the loan to the extent of all advances made pursuant
249 to the reverse mortgage and all interest accrued on the advances, and
250 the lien shall have priority over any lien filed or recorded after
251 recordation of a reverse mortgage loan.

252 Sec. 6. Subsection (a) of section 36a-760 of the general statutes is
253 repealed and the following is substituted in lieu thereof (*Effective*
254 *October 1, 2009*):

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

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

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

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

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

267 (5) "Lender" means any person engaged in the business of the

268 making of mortgage loans who is required to be licensed by the
269 Department of Banking under chapter 668, or their successors or
270 assigns, and shall also mean any bank, out-of-state bank, Connecticut
271 credit union, federal credit union, out-of-state credit union, or an
272 operating subsidiary of a federal bank or a federally chartered out-of-
273 state bank where such subsidiary engages in the business of making
274 mortgage loans, and their successors and assigns, but shall not include
275 any mortgage broker, as defined in this section, or any mortgage loan
276 originator, as defined in section 36a-485;

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

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

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

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

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

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

298 2010;

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

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

303 (i) The difference between the APR for the loan or extension of
304 credit and the yield on United States Treasury securities having
305 comparable periods of maturity is either equal to or greater than (I)
306 three percentage points, if the loan is a first mortgage loan, or (II) five
307 percentage points, if the loan is a secondary mortgage loan. For
308 purposes of such calculation, without regard to whether the loan is
309 subject to or reportable under the provisions of the federal Home
310 Mortgage Disclosure Act, 12 USC 2801 et seq., the difference between
311 the APR and the yield on United States Treasury securities having
312 comparable periods of maturity shall be determined using the same
313 procedures and calculation methods applicable to loans that are
314 subject to the reporting requirement of the federal Home Mortgage
315 Disclosure Act, as those procedures and calculation methods are
316 amended from time to time, provided the yield on United States
317 Treasury securities is determined as of the fifteenth day of the month
318 prior to the application for the loan.

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

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

336 [(iii)] (ii) The commissioner shall have the authority, after
337 consideration of the relevant factors, to increase the percentages set
338 forth in [clauses] clause (i) [and (ii)] of this subparagraph. The
339 authority of the commissioner, and any increases or decreases made
340 under this clause, shall expire on August 31, [2009] 2010. For purposes
341 of this clause, the relevant factors to be considered by the
342 commissioner shall include, but not be limited to, the existence and
343 amount of increases in fees or charges in connection with purchases of
344 mortgages by the Federal National Mortgage Association or the
345 Federal Home Loan Mortgage Corporation and increases in fees or
346 charges imposed by mortgage insurers and the impact, including the
347 magnitude of the impact, that such increases have had, or will likely
348 have, on APRs for mortgage loans in this state. When considering such
349 factors, the commissioner shall focus on those increases that are related
350 to the deterioration in the housing market and credit conditions. The
351 commissioner may refrain from increasing such percentages if it
352 appears that lenders are increasing interest rates or fees in bad faith or
353 if increasing the percentages would be contrary to the purposes of
354 sections 36a-760 to 36a-760f, inclusive, as amended by this act. No
355 increase authorized by the commissioner to a particular percentage
356 shall exceed one-quarter of one percentage point. [, and the total of all
357 increases to a particular percentage under this clause shall not exceed
358 one-half of one percentage point.] No increase shall be made unless: (I)
359 The increase is noticed in the Banking Department Bulletin and the
360 Connecticut Law Journal, and (II) a public comment period of twenty
361 days is provided. Any increase made under this clause shall be
362 reduced proportionately when the need for the increase has

363 diminished or no longer exists. The commissioner, in the exercise of his
364 discretion, may authorize an increase in the percentages with respect
365 to all loans or just with respect to a certain class or classes of loans;

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

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

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

381 Sec. 7. Section 36a-760b of the general statutes is repealed and the
382 following is substituted in lieu thereof (*Effective from passage*):

383 (a) No lender shall make a nonprime home loan unless the lender
384 reasonably believes, at the time the loan is consummated, that one or
385 more of the [obligors] borrowers, when considered individually or
386 collectively, will be able to make the scheduled payments to repay the
387 loan, and to pay related real estate taxes and insurance premiums,
388 based upon a consideration of the [obligor's] borrower's current and
389 expected income, current and expected obligations as disclosed by the
390 [obligor] borrower, or otherwise known to the lender, including
391 subordinate mortgages made contemporaneously, homeowner's fees,
392 condominium fees, employment status and other financial resources,
393 excluding the equity in the dwelling that secures repayment of the

394 loan. Notwithstanding the provisions of this subsection, in the case of a
395 bridge loan, a lender may consider the equity in the dwelling as a
396 source of repayment for the loan.

397 (b) A lender's analysis of [an obligor's] a borrower's ability to repay
398 under subsection (a) of this section may utilize commercially
399 recognized underwriting standards and methodologies, including
400 automated underwriting systems, provided they comply with the
401 requirements of this subsection and subsection (a) of this section. In
402 determining [an obligor's] a borrower's ability to repay a nonprime
403 home loan, the lender shall take reasonable steps to verify the accuracy
404 and completeness of information provided by or on behalf of the
405 [obligor] borrower using tax returns, consumer reports, payroll
406 receipts, bank records, reasonable alternative methods or reasonable
407 third-party verification. In determining an [obligor's] borrower's ability
408 to repay a nonprime home loan according to its terms when the loan
409 has an adjustable rate feature, the lender shall underwrite the
410 repayment schedule assuming that the interest rate is a fixed rate equal
411 to the fully indexed interest rate at the time of consummation, or
412 [within fifteen] no later than fifteen days [thereof] after the date of
413 consummation, without considering any initial discounted rate. For
414 purposes of this subsection, the "fully indexed rate" means the interest
415 rate that would have been applied had the initial interest rate been
416 determined by the application of the same interest rate formula that
417 applies under the terms of the loan documents to subsequent interest
418 rate adjustments, disregarding any limitations on the amount by which
419 the interest rate may change at any one time. In determining [an
420 obligor's] borrower's ability to repay a nonprime home loan that is not
421 fully amortizing by its terms, the lender shall underwrite the loan
422 based on a fully amortizing repayment schedule based on the maturity
423 set forth in the note.

424 (c) This section shall not apply to FHA loans.

425 Sec. 8. Section 36a-760c of the general statutes is repealed and the

426 following is substituted in lieu thereof (*Effective from passage*):

427 [(a)] No lender shall make a nonprime home loan where all or a
428 portion of the proceeds are used to fully or partially pay off a special
429 mortgage on the same property unless the borrower has obtained a
430 written certification from a counselor with an independent third-party
431 nonprofit organization approved by the United States Department of
432 Housing and Urban Development that the borrower has received
433 mortgage counseling. For purposes of this section, "special mortgage"
434 means a loan originated, subsidized or guaranteed by or through a
435 state, federal, tribal or local government, or nonprofit organization.

436 [(b) The prohibition in subsection (a) of this section shall not apply
437 where the borrower provides the lender with a statement from an
438 organization described in subsection (a) of this section, on the
439 organization's letterhead, stating that the required counseling is not
440 available for at least thirty days from the date of the request for
441 counseling.

442 (c) For purposes of this section, a lender shall make a good-faith
443 effort to determine whether the loan to be refinanced is a special
444 mortgage, but shall not be required to obtain the certification in
445 subsection (a) of this section if the lender: (1) Makes a good-faith
446 inquiry to the current holder or servicer of the loan and to the
447 borrower as to whether the loan is a special mortgage; and (2) does not
448 receive an affirmative response from either the current holder or
449 servicer of the loan or the borrower indicating that it is a special
450 mortgage.]

451 Sec. 9. Section 36a-760e of the general statutes is repealed and the
452 following is substituted in lieu thereof (*Effective from passage*):

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

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

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

461 [(3)] (2) A provision requiring a borrower, whether acting
462 individually or on behalf of others similarly situated, to assert any
463 claim or defense in a nonjudicial forum that: (A) Utilizes principles
464 which are inconsistent with the law as set forth in the general statutes
465 or common law; (B) limits any claim or defense the borrower may
466 have; or (C) is less convenient, more costly or more dilatory for the
467 resolution of a dispute than a judicial forum established in this state
468 where the borrower may otherwise properly bring a claim or defense.

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

472 Sec. 10. Section 36a-489 of the general statutes is amended by adding
473 subsection (c) as follows (*Effective from passage*):

474 (c) (NEW) Notwithstanding the provisions of this section, the
475 commissioner may deem an application for a license as a mortgage
476 lender, mortgage correspondent lender, mortgage broker or mortgage
477 loan originator abandoned if the applicant fails to respond to any
478 request for information required under sections 36a-485 to 36a-498a,
479 inclusive, as amended by this act, or the regulations adopted pursuant
480 to said sections. The commissioner shall notify the applicant in writing
481 that if such information is not submitted within sixty days the
482 application shall be deemed abandoned. An application filing fee paid
483 prior to the date an application is deemed abandoned pursuant to this
484 subsection shall not be refunded. Abandonment of an application
485 pursuant to this subsection shall not preclude the applicant from
486 submitting a new application for a license under said sections.

487 Sec. 11. Section 36a-498 of the general statutes is amended by adding
488 subsection (h) as follows (*Effective from passage*):

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

495 Sec. 12. Subsection (b) of section 36a-498a of the general statutes is
496 repealed and the following is substituted in lieu thereof (*Effective from*
497 *passage*):

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

512 (2) Any mortgage lender [~~]~~ or mortgage correspondent lender [~~or~~
513 ~~mortgage broker~~] who fails to comply with the provisions of this
514 subsection shall be liable to the borrower in an amount equal to the
515 sum of: (A) The amount by which the total of all prepaid finance
516 charges exceeds eight per cent of the principal amount of the loan; (B)
517 eight per cent of the principal amount of the loan or two thousand five
518 hundred dollars, whichever is less; and (C) the costs incurred by the

519 borrower in bringing an action under this subsection, including
520 reasonable attorney's fees, as determined by the court, provided no
521 such mortgage lender [,] or mortgage correspondent lender [or
522 mortgage broker] shall be liable for more than the amount specified in
523 this subsection in a secondary mortgage loan transaction involving
524 more than one borrower.

525 Sec. 13. Section 36a-746c of the general statutes is repealed and the
526 following is substituted in lieu thereof (*Effective from passage*):

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

529 (1) For a loan with a term of less than seven years, a payment
530 schedule with regular periodic payments that when aggregated do not
531 fully amortize the outstanding principal balance, except that this
532 limitation does not apply to a loan with maturities of less than one
533 year if the purpose of the loan is a bridge loan, as used in 12 CFR
534 226.32, as amended from time to time, connected with the acquisition
535 or construction of a dwelling intended to become the borrower's
536 principal dwelling;

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

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

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

544 [(5)] (4) A refund calculated by a method less favorable than the
545 actuarial method, as defined by Section 933(d) of the Housing and
546 Community Development Act of 1992, 15 USC 1615(d), as amended
547 from time to time, for rebates of interest arising from a loan
548 acceleration due to default;

549 [(6)] (5) A prepayment penalty;

550 [(7)] (6) A waiver of participation in a class action or a provision
551 requiring a borrower, whether acting individually or on behalf of
552 others similarly situated, to assert any claim or defense in a nonjudicial
553 forum that: (A) Utilizes principles which are inconsistent with the law
554 as set forth in the general statutes or common law; (B) limits any claim
555 or defense the borrower may have; or (C) is less convenient, more
556 costly or more dilatory for the resolution of a dispute than a judicial
557 forum established in this state where the borrower may otherwise
558 properly bring a claim or defense; or

559 [(8)] (7) A call provision that permits the lender, in its sole
560 discretion, to accelerate the indebtedness. This prohibition shall not
561 apply when repayment of the loan is accelerated by bona fide default,
562 pursuant to a due-on-sale clause provision, or pursuant to another
563 provision of the loan agreement unrelated to the payment schedule
564 including, but not limited to, bankruptcy or receivership.

565 Sec. 14. Subsection (d) of section 49-2 of the general statutes is
566 repealed and the following is substituted in lieu thereof (*Effective*
567 *October 1, 2009*):

568 (d) (1) Any mortgage to secure advancements made by a mortgagee
569 or its assignee to a mortgagor pursuant to the terms of a mortgage
570 securing a [reverse annuity mortgage loan, as defined in subdivision
571 (4) of subsection (a) of section 36a-265] reverse mortgage loan, as
572 defined in section 4 of this act, shall be sufficiently definite and certain
573 and valid to secure all money actually advanced pursuant to and in
574 accordance with its terms, whether at or subsequent to closing of the
575 loan, up to but not exceeding the full amount of the loan therein
576 authorized with the same priority as if all such money had been
577 advanced at the time such mortgage was delivered if such mortgage
578 sets forth: (A) That it is a ["reverse annuity mortgage loan"] "reverse
579 mortgage loan" and contains a reference to [subdivision (4) of
580 subsection (a) of section 36a-265] subdivision (1) of section 4 of this act;

581 (B) the full amount of the loan authorized; (C) a statement of the dates
582 on which such advancements are to be made and the amounts of such
583 advancements; and (D) the events which will give rise to the maturity
584 of the loan.

585 (2) The mortgagee or its assignee and the mortgagor may
586 subsequently modify the dates set forth in the mortgage for
587 advancements by a writing setting forth such modification signed by
588 the mortgagee or its assignee and the mortgagor and recorded upon
589 the proper land records. Such modification shall in no way limit or
590 otherwise affect the priority of such mortgage.

591 Sec. 15. Subsection (h) of section 36a-261 of the general statutes is
592 repealed and the following is substituted in lieu thereof (*Effective*
593 *October 1, 2009*):

594 (h) Loans not exceeding ninety per cent of the value of the real
595 estate may be made subject to the following additional limitations set
596 forth in subdivisions (1) and (2) of this subsection. (1) No loan shall be
597 made until the person or persons liable on the note have filed with the
598 bank a satisfactory financial statement which shall be kept on file. (2)
599 All such loans shall require repayment of principal and payment of
600 interest in at least consecutive semiannual installments of principal
601 and interest, such payments to be sufficient to pay the loan in full not
602 later than forty-two years from the date of the first payment and the
603 first payment to be made within twenty-four months of the date of the
604 note. The requirements for semiannual principal payments pursuant to
605 this subdivision are not applicable to: (A) Consumer revolving loan
606 agreements made pursuant to subsection (c) of section 49-2, (B)
607 [alternative mortgage loans] graduated payment mortgage loans made
608 pursuant to section 36a-265, as amended by this act, (C) reverse
609 mortgage loans made pursuant to section 4 of this act, (D) loans which
610 may be demanded at any time and which are secured by residential
611 real estate, and [(D)] (E) any other loan or class of loans determined by
612 the commissioner not to be subject to such requirements.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	36a-3
Sec. 4	<i>October 1, 2009</i>	36a-265
Sec. 5	<i>October 1, 2009</i>	New section
Sec. 6	<i>October 1, 2009</i>	36a-760(a)
Sec. 7	<i>from passage</i>	36a-760b
Sec. 8	<i>from passage</i>	36a-760c
Sec. 9	<i>from passage</i>	36a-760e
Sec. 10	<i>from passage</i>	36a-489
Sec. 11	<i>from passage</i>	36a-498
Sec. 12	<i>from passage</i>	36a-498a(b)
Sec. 13	<i>from passage</i>	36a-746c
Sec. 14	<i>October 1, 2009</i>	49-2(d)
Sec. 15	<i>October 1, 2009</i>	36a-261(h)

Statement of Purpose:

To prohibit specific acts or patterns of residential mortgage fraud and to provide criminal penalties for violations of such provisions; to amend the definition of "nonprime home loan" to make it consistent with the definition of "higher priced loans" in Federal Reserve Regulation Z; and to provide additional protections for borrowers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]