

House Bill 42

By: Representative Mitchell of the 88<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 5 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to residential mortgage fraud, so as to modify certain provisions relating to the  
3 offense of residential mortgage fraud; to provide for legislative intent; to provide for  
4 definitions; to include in the criminal offense of residential mortgage fraud an act of fraud  
5 committed upon homeowners during or threatened with foreclosure; to provide for related  
6 matters; to provide for applicability and an effective date; to repeal conflicting laws; and for  
7 other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 The General Assembly finds that the activity of foreclosure predators is ever increasing as  
11 more and more Americans face the tragedy of losing their homes in foreclosure. These  
12 predators take advantage of homeowners facing economic crisis and personal hardship.  
13 Foreclosure predators make fraudulent promises to Georgia's most economically vulnerable,  
14 claiming to be able to stop the foreclosure process when there is no reasonable basis for such  
15 a claim. These predators use false claims to take money from those least likely to have extra  
16 funds. A need exists to protect individuals experiencing this frightening process so that they  
17 are not taken advantage of by foreclosure predators. Therefore, the General Assembly  
18 concludes that foreclosure scams should be treated under Georgia law as a criminal offense.

19 **SECTION 2.**

20 Article 5 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to  
21 residential mortgage fraud, is amended by revising Code Section 16-8-101, relating to  
22 definitions, as follows:

23 "16-8-101.

24 As used in this article, the term:

25 (1) 'Mortgage foreclosure process' means the process by which a person's ownership  
 26 interest in his or her primary residence is foreclosed on or threatened to be foreclosed on  
 27 as provided for in Article 7 of Chapter 14 of Title 44.

28 ~~(1)~~(2) 'Mortgage lending process' means the process through which a person seeks or  
 29 obtains a residential mortgage loan, including, but not limited to, solicitation, application,  
 30 or origination, negotiation of terms, third-party provider services, underwriting, signing  
 31 and closing, and funding of the loan. Documents involved in the mortgage lending  
 32 process include, but are not limited to, uniform residential loan applications or other loan  
 33 applications; appraisal reports; HUD-1 settlement statements; supporting personal  
 34 documentation for loan applications such as W-2 forms, verifications of income and  
 35 employment, bank statements, tax returns, and payroll stubs; and any required  
 36 disclosures.

37 ~~(2)~~(3) 'Pattern of residential mortgage fraud' means one or more misstatements,  
 38 misrepresentations, or omissions made during the mortgage lending process or during the  
 39 mortgage foreclosure process that involve two or more residential properties, which have  
 40 the same or similar intents, results, accomplices, victims, or methods of commission or  
 41 otherwise are interrelated by distinguishing characteristics.

42 ~~(3)~~(4) 'Person' means a natural person, corporation, company, limited liability company,  
 43 partnership, trustee, association, or any other entity.

44 ~~(4)~~(5) 'Residential mortgage loan' means a loan or agreement to extend credit made to  
 45 a person, which loan is secured by a deed to secure debt, security deed, mortgage,  
 46 security interest, deed of trust, or other document representing a security interest or lien  
 47 upon any interest in one-to-four family residential property located in Georgia, including  
 48 the renewal or refinancing of any such loan."

### 49 SECTION 3.

50 Said article is further amended by revising Code Section 16-8-102, relating to offense of  
 51 residential mortgage fraud, as follows:

52 "16-8-102.

53 A person commits the offense of residential mortgage fraud when, with the intent to  
 54 defraud, such person:

55 (1) Knowingly makes any deliberate misstatement, misrepresentation, or omission during  
 56 the mortgage lending process with the intention that it be relied on by a mortgage lender,  
 57 borrower, or any other party to the mortgage lending process;

58 (2) Knowingly uses or facilitates the use of any deliberate misstatement,  
 59 misrepresentation, or omission, knowing the same to contain a misstatement,  
 60 misrepresentation, or omission, during the mortgage lending process with the intention

61 that it be relied on by a mortgage lender, borrower, or any other party to the mortgage  
62 lending process;

63 (3) Receives any proceeds or any other funds in connection with a residential mortgage  
64 closing that such person knew resulted from a violation of paragraph (1) or (2) of this  
65 Code section;

66 (4) Conspires to violate any of the provisions of paragraph (1), (2), ~~or (3)~~, or (6) of this  
67 Code section; ~~or~~

68 (5) Files or causes to be filed with the official registrar of deeds of any county of this  
69 state any document such person knows to contain a deliberate misstatement,  
70 misrepresentation, or omission; or

71 (6) Knowingly uses or facilitates the use of any deliberate misstatement,  
72 misrepresentation, or omission for the purpose of obtaining remuneration from a  
73 homeowner where such homeowner's residence is subject to the mortgage foreclosure  
74 process and in reliance upon such deliberate misstatement, misrepresentation, or  
75 omission, the homeowner pays such person any amount to prevent or forestall the  
76 foreclosure when, in fact, such person is not reasonably able to prevent or forestall the  
77 foreclosure.

78 An offense of residential mortgage fraud shall not be predicated solely upon information  
79 lawfully disclosed under federal disclosure laws, regulations, and interpretations related to  
80 the mortgage lending process."

81 **SECTION 4.**

82 This Act shall become effective on July 1, 2009, and shall apply to all offenses committed  
83 on or after that date.

84 **SECTION 5.**

85 All laws and parts of laws in conflict with this Act are repealed.