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CRIMES AND OFFENSES Georgia Residential Mortgage Fraud Act: Enact the "Georgia Residential Mortgage Fraud Act"; Provide a Short Title; Provide for Definitions; Define the Criminal Offense of Residential Mortgage Fraud; Provide for Venue; Provide Penalties; Authorize District Attorneys and the Attorney General to Investigate and Prosecute Cases of Residential Mortgage Fraud; Provide for the Forfeiture of Real and Personal Property; Amend the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," so as to Include Residential Mortgage Fraud within the Definition of Racketeering Activity;

Provide for Findings and a Statement of Purpose; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

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CODE SECTIONS:	O.C.G.A. §§ 16-8-100 to -106 and 16-14-3 (amended)
BILL NUMBER:	SB 100
ACT NUMBER:	162
GEORGIA LAWS:	2005 Ga. Laws 848
SUMMARY:	The Georgia Residential Mortgage Fraud Act defines the crime of residential mortgage fraud. The Act also provides the possible venues for prosecuting residential mortgage fraud in Georgia. Moreover, the Act lays out guidelines for punishing those involved in residential mortgage fraud and gives the district attorneys and the attorney general the power to investigate and prosecute possible cases of residential mortgage fraud. The Act allows for forfeiture of property involved in residential mortgage fraud to the State of Georgia. Furthermore, the Act adds residential mortgage fraud to the Georgia RICO Act.
EFFECTIVE DATE:	May 5, 2005

History

Senator Bill Hamrick of the 30th district introduced SB 100, entitled the Georgia Residential Mortgage Fraud Act.[1] Senator Hamrick stated that "[m]ortgage fraud in Georgia is a huge problem and it spreads through neighborhoods."[2]

Residential mortgage fraud generally involves a number of people, including a closing attorney, a loan officer, and various straw men, acting together to defraud the mortgage company.[3] The property is originally bought from a legitimate seller, then "flipped," usually a number of times, to middlemen or straw men.[4] During each "flipping" of the property, the property's value artificially increases and new mortgages in excess of the actual value of the property are taken out.[5] Eventually, the individuals committing fraud abandon the over-valued property and disappear with the mortgage proceeds.[6]

Currently, the mortgage lending industry is losing hundreds of millions of dollars as a result of residential mortgage fraud.[7] Also, residential mortgage fraud creates blighted neighborhoods filled with abandoned homes.[8] Lastly, residential mortgage fraud raises property assessments, and therefore also raises property taxes in the neighborhood because of the artificially high sale of the property in the mortgage fraud process.[9]

Data collected by the Mortgage Asset Research Institute from 2000 to 2004 revealed that Georgia ranked first in the nation in mortgage fraud.[10] In addition, Fulton County ranked highest for mortgage fraud among all counties in the nation.[11] Moreover, DeKalb County had the

1. Nancy Badertscher, *House OKs Mortgage Fraud Bill*, ATLANTA J. CONST., Mar. 16, 2005, at C3, *available at* 2005 WLNR 4056256.

2. Sonji Jacobs, *Legislature 2005: Stiffer Penalties Proposed for Mortgage Fraud*, ATLANTA J. CONST., Feb. 1, 2005, at B4, *available at* 2005 WLNR 2911268.

3. *See* Audio Recording of House Proceedings, Mar. 15, 2005 (remarks by Rep. Edward Lindsey), http://www.georgia.gov/00/article/0,2086,4802_6107103_33078458,00.html [hereinafter House Audio].

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. House Audio, *supra* note 3 (remarks by Rep. Edward Lindsey).

10. Lisa R. Schoolcraft, *Fed Probe Mortgage Fraud Cases*, ATLANTA BUS. CHRON., Feb. 14, 2005, http://atlanta.bizjournals.com/atlanta/stories/2005/02/14/story6.html.

11. Alyssa Abkowitz, *Home Hassles: The Pro-Industry GOP is Leaving it to Grassroots Groups and Nonprofits to Help Victims of Mortgage Fraud*, CREATIVE LOAFING, May 18, 2005.

third highest rate of mortgage fraud nationwide.[12] In 2003, Georgia lost approximately $15.4 million to mortgage fraud.[13] In 2004, mortgage fraud losses in Georgia climbed to $44.2 million according to the Federal Bureau of Investigation (FBI).[14]

The Act gives Georgia prosecutors a specific law to charge suspects with mortgage fraud.[15] Before the passage of SB 100, Georgia did not list mortgage fraud as a crime, and prosecutors could only charge suspects of mortgage fraud with "general theft, fraud or making false statements."[16]

Bill Tracking of SB 100

The Bill, As Introduced

As introduced, SB 100 provided the attorney general with a clear statute to prosecute residential mortgage fraud in Georgia.[17] SB 100 set forth the key term definitions in the bill and the criminal elements of residential mortgage fraud.[18] Also the bill set forth, for the purposes of venue, that the State can prosecute mortgage fraud cases in (1) the county where the mortgaged property is located; (2) any county in which an act was performed to further the crime; (3) any county in which any person had control or possession of money from the crime; (4) any county in which a closing related to the crime occurred; and (5) any county in which a document containing misleading information was filed.[19] Finally, SB 100 gave the attorney general the power to prosecute residential mortgage fraud, set the penalties for committing the crime, and stated that all property used or intended to be used in violation of this bill is subject to forfeiture to the state.[20]

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12. *Id.*
13. *Id.*
14. *Id.*
15. *See* Badertscher, *supra* note 1.
16. *Id.*
17. *See* Telephone Interview with Sen. Bill Hamrick, Senate District No. 30 (June 17, 2005) [hereinafter Hamrick Interview].
18. SB 100, as introduced, 2005 Ga. Gen. Assem.
19. *Id.*
20. *Id.*

Consideration by the Senate

Senators Bill Hamrick, Steve Thompson, Eric Johnson, and Terrell Starr of the 30th, 33rd, 1st, and 44th districts, respectively, sponsored SB 100.[21] The Senate read the bill for the first time on February 1, 2005.[22] The Banking and Financial Institutions Committee favorably reported the bill on February 16, 2005.[23] The Senate read the bill a second time on February 17, 2005 and a third time on February 22, 2005.[24] On February 22, 2005, the Senate passed SB 100 by substitute, as amended by two minor floor amendments, by a vote of 53 to 0.[25]

Proposed Senate Amendments and Substitute

In Amendment 1, Senators Thompson and Hamrick offered an amendment that struck the words "should have know." on page 3, line 5.[26] In Amendment 1a, Senator Seabaugh of the 28th district offered an amendment to correct a typo in Amendment 1, changing "know" to "known."[27] The Senators offered Amendments 1 and 1a to alleviate banking and mortgage industry concerns that the statute's wording was too broad and that the wording "should have known" may subject individuals who unintentionally became involved with mortgage fraud to prosecution.[28] Amendment 1a passed by a vote of 43 to 0 and Amendment 1, as amended by Amendment 1a, passed by a vote of 36 to 0.[29]

In Amendment 2, Senators Fort, Brown, Tate, and Henson, of the 39th, 26th, 38th, and 41st, respectively, offered a floor substitute to

21. *Id.*
22. *See* State of Georgia Final Composite Status Sheet, SB 100, Feb. 1, 2005 (May 11, 2005).
23. *See* State of Georgia Final Composite Status Sheet, SB 100, Feb. 16, 2005 (May 11, 2005).
24. *See* State of Georgia Final Composite Status Sheet, SB 100, Feb. 17, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 100, Feb. 22, 2005 (May 11, 2005).
25. *See* Georgia Senate Voting Record, SB 100 (Feb. 22, 2005); State of Georgia Final Composite Status Sheet, SB 100, Feb. 22, 2005 (May 11, 2005).
26. SB 100 (SCSFA1), 2005 Ga. Gen. Assem.
27. *See* SB 100 (SCSFA1a), 2005 Ga. Gen. Assem.
28. *See* Hamrick Interview, *supra* note 17; Audio Recording of Senate Proceedings, Feb. 22, 2005 (remarks by Sen. Bill Hamrick), http://www.ga.gov/00/article/0,2086,4802_6107103_33091490,00.html [hereinafter Senate Audio].
29. Georgia Senate Voting Record, SB 100 (Feb. 22, 2005).

SB 100.[30] The Senate Chair ruled the substitute germane because the original bill had a broad preamble and both the original bill and the Amendment dealt with mortgage fraud.[31] Senator Seabaugh appealed the decision of the Chair to the Secretary of the Senate who was substituting for the absent Parliamentarian.[32] The Secretary of the Senate ruled the substitute non-germane because the original bill "primarily addresses a criminal statute, whereas the substitute primarily addresses a civil enforcement" of residential mortgage fraud.[33] Senator Thompson objected to the Secretary's ruling.[34] The Senate then proceeded, by a 33 to 19 vote, to uphold the ruling of the Secretary.[35] The Senate then entered the original bill, plus the two minor amendments, and SB 100 passed unanimously.[36]

Consideration by the House

On February 23, 2005, the House read the bill for the first time.[37] The House read the bill a second time on February 24, 2005, and the House Banks and Banking Committee favorably reported the bill on March 2, 2005.[38] On March 15, 2005, the House read the bill a third time and passed the bill, with a few minor amendments, by a vote of 163 to 2.[39] In proposed House Amendment 1, Representatives Hatfield and Bordeaux of the 177th and 162nd districts, respectively, moved to amend SB 100 by striking the language "used or intended for use in the course of," from page 4, line 4 of the bill.[40] Representative Hatfield offered the amendment because he did not think innocent individuals who owned the property prior to the illegal

30. *See* Failed Senate Floor Amendment to SB 100, introduced by Sen. Vincent D. Fort, Feb. 22, 2005.
31. Senate Audio, *supra* note 28 (remarks by Senate Chair).
32. *Id.* (remarks by Sen. Mitch Seabaugh).
33. *Id.* (remarks by Secretary of the Senate).
34. *Id.* (remarks by Sen. Steve Thompson).
35. Georgia Senate Voting Record, SB 100 (Feb. 22, 2005).
36. *Id.*
37. *See* State of Georgia Final Composite Status Sheet, SB 100, Feb. 23, 2005 (May 11, 2005).
38. *See* State of Georgia Final Composite Status Sheet, SB 100, Feb. 24, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 100, Mar. 2, 2005 (May 11, 2005).
39. *See* State of Georgia Final Composite Status Sheet, SB 100, Mar. 15, 2005 (May 11, 2005); Georgia House of Representatives Voting Record, SB 100 (Mar. 15, 2005).
40. *See* Failed House Floor Amendment to SB 100, introduced by Rep. Mark Hatfield, Mar. 15, 2005.

transaction should have to forfeit their property to the government.[41] Representative Willard attempted to alleviate Representative Hatfield's worries about an innocent party's property being subject to forfeiture by reading the Georgia forfeiture statute that has been on the books since 1980.[42] The statute reads "the interest of an innocent party in the property shall not be subject to forfeiture."[43] Also Representative Mills made clear that residential mortgage fraud generally occurs as part of organized crime "using prior property obtained through fraudulent mortgage practices."[44] The proposed House Amendment 1 failed by a vote of 24 to 140.[45]

In proposed House Amendment 2, Representatives Hatfield and Bordeaux of the 177th and 162nd districts, respectively, moved to delete "or endeavors" from page 3, line 7 of the bill.[46] The House passed Amendment 2 limiting the bill's language to "conspires" instead of "conspires or endeavors."[47] Representative Hatfield claimed that Amendment 2 was merely a technical amendment because "endeavors" is rarely used in conspiracy law, and "conspires" should be sufficient for the purposes of this bill.[48]

Proposed Amendment 3 deleted the word "or" after the word "knew" on page 3, line 5 of the bill.[49] The House passed Amendment 3 without objection or any adverse debate on the House floor.[50]

Finally, Representatives Lindsey and Mills of the 54th and 25th districts, respectively, proposed House Amendment 4, which added the language "[a]n offense of residential mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the mortgage lending process."[51] Representative Lindsey offered Amendment 4 to:

41. House Audio, *supra* note 3 (remarks by Rep. Mark Hatfield).
42. *Id.* (remarks by Rep. Wendell Willard); *see also* 1980 Ga. Laws. 411 (codified at O.C.G.A. § 16-14-7(j) (2003)).
43. 1980 Ga. Laws. 411 (codified at O.C.G.A. § 16-14-7(j) (2003)).
44. House Audio, *supra* note 3 (remarks by Rep. James Mills).
45. Georgia House of Representatives Voting Record, SB 100 (Mar. 15, 2005).
46. *See* SB 100 (HFA2), 2005 Ga. Gen. Assem.
47. *See* House Audio, *supra* note 3 (remarks by House Chair).
48. *Id.* (remarks by Rep. Mark Hatfield).
49. *See* SB 100 (HFA3), 2005 Ga. Gen. Assem.
50. *See* House Audio, *supra* note 3 (remarks by House Chair).
51. *See* SB 100 (HFA4), 2005 Ga. Gen. Assem.

> simply clarif[y] that if any parties to a mortgage transaction are merely following the prescribed procedures and relying on, in good faith, information provided to them in the documents, that they cannot be prosecuted under this section. What it's essentially designed to do is to protect the loan provider and also protect the closing attorney from being prosecuted when they've acted in good faith and in accordance with all the rules that are already set out.[52]

On the House floor, Representative Lindsey repeatedly emphasized that SB 100 required the specific intent of fraud, and individuals acting in good faith would not be guilty of residential mortgage fraud under the bill.[53] The House passed Amendment 4 without objection or any adverse debate on the House floor.[54] SB 100 passed the House on March 15, 2005, and on March 17, 2005, the Senate approved the House amendments by a vote of 45 to 0.[55]

Analysis

Georgia has the most reported incidents of residential mortgage fraud in the nation.[56] According to a study by Fanny Mae, two Georgia zip code clusters—303 and 300—rank first and second nationally in mortgage fraud.[57] SB 100's passage gives prosecutors a law to specifically charge and prosecute individuals involved in residential mortgage fraud.[58] Also, the Act defines residential mortgage fraud, lays out the proper possible venues for residential mortgage fraud prosecution, gives the district attorneys and the attorney general the authority to prosecute residential mortgage fraud, provides punishment guidelines, allows for forfeiture of property involved in residential mortgage fraud, and includes residential mortgage fraud in the Georgia RICO Act.[59]

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52. *See* House Audio, *supra* note 3 (remarks by Rep. Edward Lindsey).
53. *Id.*
54. *Id.* (remarks by House Chair).
55. Georgia House of Representatives Voting Record, SB 100 (Mar. 15, 2005); Georgia Senate Voting Record, SB 100 (Mar. 17, 2005).
56. *See* House Audio, *supra* note 3 (remarks by Rep. Edward Lindsey).
57. *Id.*
58. *See* Hamrick Interview, *supra* note 17.
59. *See* O.C.G.A. §§ 16-8-100 to -106 and 16-14-3 (Supp. 2005).

SB 100 provides clear guidelines for prosecuting mortgage fraud and, therefore, should help the attorney general's office in their efforts to address the problem of mortgage fraud in Georgia.[60] Due to SB 100's nearly unanimous support in both the Senate and the House, the Georgia Legislature appears confident that the passage of SB 100 will decrease mortgage fraud in Georgia.[61]

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60. *See* Hamrick Interview, *supra* note 17.
61 *Id.*