

286.8-990 Kentucky Residential Mortgage Fraud Act -- Provisions -- Criminal proceedings -- Penalties.

- (1) This section shall be known and cited as the "Kentucky Residential Mortgage Fraud Act."
- (2) A person is guilty of residential mortgage fraud when, with the intent to defraud, that person does any of the following in connection with the mortgage lending process:
 - (a) Employs a device, scheme, or artifice to defraud;
 - (b) Engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) Fails to disburse funds in accordance with a loan commitment;
 - (d) Knowingly makes or attempts to make any material misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity involved in the mortgage lending process relies on it;
 - (e) Knowingly uses or facilitates or attempts to use any misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process relies on it;
 - (f) 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 a violation of paragraph (a), (b), (c), (d), or (e) of this subsection;
 - (g) Knowingly causes to be filed with the commissioner or in any proceeding under this subtitle any document that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect; or
 - (h) Conspires or solicits another to violate any of the provisions of this subsection.
- (3) It shall be sufficient in any prosecution under this section for residential mortgage fraud to show that the party accused acted with the intent to deceive or defraud. It shall be unnecessary to show that any particular person or entity was harmed financially in the transaction or that the person or entity to whom the deliberate misstatement, misrepresentation, or omission was made relied upon the misstatement, misrepresentation, or omission.
- (4) In any criminal proceeding brought under this section, the crime shall be construed to have been committed:
 - (a) In the county in which the residential real property for which a mortgage loan is being sought is located;
 - (b) In any county in which any act was performed in furtherance of the violation;
 - (c) In any county in which any person alleged to have violated this section had control or possession of any proceeds of the violation;

- (d) If a closing occurred, in any county in which the closing occurred; or
 - (e) In any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed with the official registrar of deeds or with the Division of Motor Vehicles.
- (5) Upon referral by the commissioner, the Kentucky Real Estate Commission, the Attorney General, the Kentucky Board of Appraisers, or other parties; or upon its own investigation of available evidence concerning any violation of this subtitle; the proper Commonwealth's attorney or district attorney may institute the appropriate criminal proceedings under this section.
- (6) Unless the conduct is prohibited by some other provision of law providing for greater punishment, a violation of this section involving a mortgage loan is a Class D felony for the first or second offense and a Class C felony for each subsequent offense.
- (7) (a) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this section shall be subject to forfeiture to the Commonwealth. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property without knowledge of a violation of this section.
- (b) In addition to the provisions of paragraph (a) of this subsection, courts may order restitution to any person who has suffered a financial loss due to violation of this section.
- (8) 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 to a regulatory or law enforcement agency.
- (9) Nothing in this subtitle shall limit the powers of the state to punish any person for any conduct that constitutes a crime.
- (10) The court may assess a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000,) against any person who is convicted of violating any provision of this section.
- (11) Any person who knowingly engages in the business of residential mortgage lending regulated by this subtitle without first securing a license or registration therefore shall be guilty of a Class A misdemeanor.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 796, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 175, sec. 20, effective April 24, 2008. -- Amended 1998 Ky. Acts ch. 197, sec. 17, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 377, sec. 5, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 77, sec. 13, effective July 14, 1992. -- Created 1980 Ky. Acts ch. 365, sec. 24, effective July 15, 1980.

Formerly codified as KRS 294.990

Legislative Research Commission Note (7/12/2006). In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the

Kentucky Financial Services Code, KRS Chapter 286, and KRS references within this statute have been adjusted to conform with the 2006 renumbering of that code.