


**I MINA' TRENTA NA LIHESLATURAN GUÅHAN**  
**2009 (FIRST) Regular Session**

Bill No. 16 (LS)

Introduced by:

Ray Tenorio 

**AN ACT TO ADD A NEW ARTICLE 2 TO CHAPTER 46 OF  
9GCA RELATIVE TO MORTGAGE FRAUD.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** Article 2 is *added* to Chapter 46 of 9GCA to read:

**Article 2**

**Mortgage Fraud**

**§46201. Title.** This Act may be cited as the Mortgage Fraud Act.

**§46202. Definitions.** As used in this Act:

(A) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(B) "Mortgage loan":

2009 JAN - 5 AM 10: 55

1 (1) means a loan or agreement made to extend credit to a person  
2 when the loan is secured by a deed, security deed, mortgage, security  
3 interest, deed of trust, or other document representing a security  
4 interest or lien upon any interest in one-to-four family residential  
5 property;

6  
7 (2) includes the renewal or refinancing of any loan, and

8  
9 (3) includes home equity loans.  
10

11 (C) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
12 command, encourage, or intentionally aid another person to engage in conduct  
13 which would constitute any offense described by the following crimes or  
14 categories of crimes, or to attempt or conspire to engage in an act which would  
15 constitute any of those offenses, regardless of whether the act is in fact charged or  
16 indicted by any authority or is classified as a misdemeanor or a felony

17  
18 (D) "Pattern of unlawful activity" means engaging in conduct which constitute the  
19 commission of at least three (3) episodes of unlawful activity, which episodes are  
20 not isolated, but have the same or similar purposes, results, participants, victims,  
21 or methods of commission, or otherwise are interrelated by distinguishing  
22 characteristics. Taken together, the episodes shall demonstrate continuing  
23 unlawful conduct and be related either to each other or to the enterprise. The most  
24 recent act constituting part of a pattern of unlawful activity as defined by this part  
25 shall have occurred within five (5) years of the commission of the next preceding  
26 act alleged as part of the pattern.

1  
2 (E) "Sensitive personal identifying information" means any of the following  
3 information regarding an individual's:

4  
5 (1) Social Security number;

6 (2) driver license number or other government issued identification  
7 number;

8 (3) financial account number or credit or debit card number;

9 (4) password or personal identification number or other identification  
10 required to gain access to a financial account or a secure website;

11 (5) automated or electronic signature; and

12 (6) unique biometric data; and

13 (7) any other information that can be used to gain access to an  
14 individual's financial accounts or to obtain goods or services.

15  
16 (F) "Value" means the value of the property, money, or thing obtained or sought to  
17 be obtained.

18  
19 (G) "Person" includes any individual or entity capable of holding a legal or  
20 beneficial interest in property, including governmental entities.

21  
22 **§46203. Mortgage Fraud.**

23  
24 (A) A person commits the offense of mortgage fraud if the person does any of the  
25 following with the intent to defraud:

1 (1) knowingly makes any material misstatement, misrepresentation, or  
2 omission during the mortgage lending process, intending that it be  
3 relied upon by a mortgage lender, borrower, or any other party to the  
4 mortgage lending process;

5 (2) knowingly uses or facilitates the use of any material misstatement  
6 misrepresentation, or omission, during the mortgage lending process,  
7 intending that it be relied upon by a mortgage lender, borrower, or  
8 any other party to the mortgage lending process;

9 (3) files or causes to be filed with the Department of Land  
10 Management any document that the person knows contains a material  
11 misstatement, misrepresentation, or omission; or

12 (4) receives any proceeds or any compensation in connection with a  
13 mortgage loan that the person knows resulted from a violation of this  
14 section.

15  
16 **§46204. Classification of Offense.**  
17

18 (A) Notwithstanding any other administrative, civil, or criminal penalties, a person  
19 who violates §46203 of this Chapter is guilty of a:  
20

21 (1) misdemeanor when the value is or exceeds Three Hundred Dollars  
22 (\$300) but is less than One Thousand Dollars (\$1,000);  
23

24 (2) third degree felony when the value is or exceeds One Thousand Dollars  
25 (\$1,000) but is less than Five Thousand Dollars (\$5,000);  
26

1 (3) second degree felony when the value is or exceeds Five Thousand  
2 Dollars (\$5,000);

3  
4 (4) second degree felony when the object or purpose of the commission of  
5 an act of mortgage fraud is other than the obtaining of something of  
6 monetary value; and

7  
8 (5) second degree felony when the object or purpose of the commission of  
9 an act of mortgage fraud is the obtaining of sensitive personal identifying  
10 information, regardless of the value.

11  
12 (6) The determination of the degree of any offense under Subsection (A) is  
13 measured by the total value of all property, money, or things obtained or  
14 sought to be obtained by a violation of §46203 of this Chapter, except as  
15 provided in Subsections (A)(4) and (5).

16  
17 (B) Each residential or commercial property transaction offense under this part  
18 constitutes a separate violation.

19  
20 **§46205. Mortgage Fraud Prosecutor and Investigators.**

21  
22 (A) The Attorney General may employ:

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24 (1) an attorney licensed to practice law who:

25  
26 (i) has knowledge of the law related to mortgage fraud; and

1  
2 (ii) if possible, has a background or expertise in investigating and  
3 prosecuting mortgage fraud; and  
4

5 (B) At least two investigators who have a background or expertise in investigating  
6 mortgage fraud.  
7

8 (1) The attorney employed under Subsection (A)(1) has as that attorney's  
9 primary responsibility the prosecution of mortgage fraud.

10 (2) Each person employed under Subsection (B) shall have as that person's  
11 primary responsibility the investigation of mortgage fraud.  
12

13 (C) The Attorney General may employ clerks, interns, or other personnel to assist  
14 the attorney employed under Subsection (A)(1)  
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