

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 784

H.P. 535

House of Representatives, February 28, 2013

An Act To Impose Penalties for Residential Mortgage Loan Fraud and False Representation Concerning Title

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BEAVERS of South Berwick.
Cosponsored by Senator DUTREMBLE of York and
Representatives: CASAVANT of Biddeford, CHIPMAN of Portland, LAJOIE of Lewiston,
MARKS of Pittston, PEASE of Morrill, Senator: MASON of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 9-A MRSA §9-409** is enacted to read:

3 **§9-409. Residential mortgage loan fraud; penalties**

4 1. For the purposes of this section, "residential mortgage loan" has the same meaning
5 as in section 8-506, subsection 1, paragraph L.

6 2. A creditor or other person who is a participant in a residential mortgage loan
7 transaction is guilty of residential mortgage loan fraud if the creditor or other person:

8 A. Knowingly or recklessly makes a false statement or misrepresentation concerning
9 a material fact or knowingly conceals or fails to disclose a material fact;

10 B. Knowingly or recklessly uses or facilitates the use of a false statement or
11 misrepresentation made by another person concerning a material fact or knowingly
12 uses or facilitates the use of another person's concealment or failure to disclose a
13 material fact;

14 C. Knowingly or recklessly receives any proceeds or any other money in connection
15 with a residential mortgage loan transaction that the creditor or person knows resulted
16 from a violation of paragraph A or B;

17 D. Knowingly or recklessly conspires with another person to violate any of the
18 provisions of paragraphs A, B and C; or

19 E. Knowingly or recklessly files or causes to be filed with a registry of deeds in
20 which the mortgage deed is or by law ought to be recorded a document that the
21 creditor or person knows to include a misstatement, misrepresentation or omission
22 concerning a material fact.

23 Residential mortgage loan fraud is a Class C crime.

24 3. A person is guilty of engaging in a pattern of residential mortgage loan fraud if the
25 person commits one or more violations of subsection 2 in 2 or more transactions:

26 A. That have the same or similar pattern, purposes, results, accomplices, victims or
27 methods of commission or are otherwise interrelated by distinguishing
28 characteristics;

29 B. That are not isolated incidents within the preceding 4 calendar years; and

30 C. In which the aggregate loss or intended loss is more than \$250.

31 Engaging in a pattern of residential mortgage loan fraud is a Class B crime.

32 4. Each residential mortgage loan transaction in which a person violates a provision
33 of subsection 2 constitutes a separate violation.

34 5. Except as otherwise provided in this subsection, if a lender or any agent of the
35 lender is convicted of the offense of residential mortgage loan fraud in violation of this
36 section, the residential mortgage loan transaction with regard to which the fraud was
37 committed may be rescinded by the borrower within 6 months after the date of the

1 conviction if the borrower gives written notice to the lender and records that notice with
2 the registry of deeds in that county in which the mortgage was recorded. A residential
3 mortgage loan transaction may not be rescinded pursuant to this subsection if the lender
4 has transferred the mortgage to a bona fide purchaser.

5 6. The Attorney General may investigate and prosecute a violation of this section.

6 7. In addition to the criminal penalties imposed for a violation of this section, a
7 creditor or other person who violates this section is subject to a fine of not more than
8 \$5,000 for each violation. This fine must be recovered in a civil action, brought by the
9 Attorney General. In such an action, the Attorney General may recover reasonable
10 attorney's fees and costs.

11 8. The owner or holder of a beneficial interest in real property that is the subject of
12 residential mortgage loan fraud may bring a civil action in the District Court in and for
13 the county in which the real property is located to recover any damages suffered by the
14 owner or holder of the beneficial interest plus reasonable attorney's fees and costs.

15 **Sec. 2. 14 MRSA §6326** is enacted to read:

16 **§6326. False representation concerning title; penalties**

17 **1. Violation; Class C crime.** A person is guilty of making a false representation
18 concerning title if the person:

19 A. Knowingly or recklessly claims an interest in, or a lien or encumbrance against,
20 real property in a document that is recorded with a registry of deeds in which the
21 mortgage deed is or by law ought to be recorded and the person knows or has reason
22 to know that the document is forged or groundless, contains a material misstatement
23 or false claim or is otherwise invalid;

24 B. Knowingly or recklessly executes or notarizes a document purporting to create an
25 interest in, or a lien or encumbrance against, real property that is recorded with a
26 registry of deeds in which the mortgage deed is or by law ought to be recorded and
27 the person knows or has reason to know that the document is forged or groundless,
28 contains a material misstatement or false claim or is otherwise invalid; or

29 C. Knowingly or recklessly causes a document described in paragraph A or B to be
30 recorded with a registry of deeds in which the mortgage deed is or by law ought to be
31 recorded and the person knows or has reason to know that the document is forged or
32 groundless, contains a material misstatement or false claim or is otherwise invalid.

33 Making a false representation concerning title is a Class C crime.

34 **2. Engaging in pattern of making false representations; violation.** A person is
35 guilty of engaging in a pattern of making false representations concerning title if the
36 person commits one or more violations of subsection 1 in 2 or more transactions:

37 A. That have the same or similar pattern, purposes, results, accomplices, victims or
38 methods of commission or are otherwise interrelated by distinguishing
39 characteristics;

1 B. That are not isolated incidents within the preceding 4 calendar years; and

2 C. In which the aggregate loss or intended loss is more than \$250.

3 Engaging in a pattern of making false representations concerning title is a Class B crime.

4 **3. Civil violation.** In addition to the criminal penalties imposed for a violation of
5 this section, a person who violates this section is subject to a fine of not more than \$5,000
6 for each violation. This fine must be recovered in a civil action, brought by the Attorney
7 General. In such an action, the Attorney General may recover reasonable attorney's fees
8 and costs.

9 **4. Private right of action.** Except as otherwise provided in this subsection, the
10 owner or holder of a beneficial interest in real property that is the subject of a false
11 representation concerning title may bring a civil action in the District Court in and for the
12 county in which the real property is located to recover any damages suffered by the
13 owner or holder of the beneficial interest plus reasonable attorney's fees and costs. The
14 owner or holder of the beneficial interest in the real property must, before bringing a civil
15 action pursuant to this subsection, send a written request to the person who made the false
16 representation to record a document that corrects the false representation. If the person
17 records such a document no later than 20 days after the date of the written request, the
18 owner or holder of the beneficial interest may not bring a civil action pursuant to this
19 subsection.

20 SUMMARY

21 This bill establishes civil and criminal penalties for those persons engaging in
22 residential mortgage loan fraud and making a false representation concerning title.