

Alert: The New York State Assembly Will Consider Bill to Criminalize Robosigning

June 25, 2012

On June 14, 2012 New York Attorney General Eric Schneiderman announced the introduction of the Foreclosure Fraud Prevention Act of 2012 in the State Assembly, a bill that would amend New York penal law to include the new crime of *residential mortgage foreclosure fraud*.

As set forth in the bill, residential mortgage foreclosure fraud will be committed when an agent of a residential mortgage business acting within the scope of his or her employment "intentionally engages in fraud or deception by authorizing, preparing, executing, offering or presenting for filing any written instrument which such person: (A) knows contains a material false statement, material false information or a material omission; and (B) knows or believes will be filed with a court or other public office or public servant, including but not limited to a federal, state or local agency, department or bureau, in support of or in conjunction with a pending or prospective residential mortgage foreclosure action."

The bill further provides that a person who commits residential mortgage foreclosure fraud is guilty of a Class A misdemeanor, which is punishable by up to one year in jail and a \$1,000 fine. The crime is increased to a Class E felony, punishable by up to four years in state prison, when as part of a "systematic ongoing course of conduct," a person commits residential mortgage foreclosure fraud with respect to five or more pending or prospective residential mortgage foreclosure actions within a one-year period. The bill also raises the crime to a Class E felony for a high managerial agent of a residential mortgage business that knows or reasonably should know that one or more agents of such business are engaged in residential mortgage foreclosure fraud, and recklessly tolerates such conduct or otherwise fails to take reasonable measures to prevent it from continuing.

Attorney General Schneiderman provided the following statement in his press release announcing the bill: "By treating foreclosure fraud as the serious crime that it is, we can deter future abuse and spare untold numbers of families the trauma of wrongful foreclosure. This legislation will ensure that employees involved in these fraudulent and abusive practices, and their supervisors who allow the misconduct to continue, will be held accountable for their crimes." At this time, however, the road to passage for the Democratic-sponsored bill is unclear, as the proposed legislation could eventually face hurdles in the New York State Senate, which is currently controlled by Republicans. We will provide an additional update if/when the bill successfully progresses through the New York legislature and is passed into law.

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