

1 AN ACT

2 relating to the regulation of residential mortgage loan servicers;
3 providing an administrative penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle E, Title 3, Finance Code, is amended by
6 adding Chapter 158 to read as follows:

7 CHAPTER 158. RESIDENTIAL MORTGAGE LOAN SERVICERS

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 158.001. SHORT TITLE. This chapter may be cited as the
10 Residential Mortgage Loan Servicer Registration Act.

11 Sec. 158.002. DEFINITIONS. In this chapter:

12 (1) "Commissioner" means the savings and mortgage
13 lending commissioner.

14 (2) "Finance commission" means the Finance Commission
15 of Texas.

16 (3) "Person" means an individual, corporation,
17 company, limited liability company, partnership, or association.

18 (4) "Registrant" means a person registered under this
19 chapter.

20 (5) "Residential mortgage loan" means a loan primarily
21 for personal, family, or household use that is secured by a
22 mortgage, deed of trust, or other equivalent consensual security
23 interest on a dwelling or on residential real estate.

24 (6) "Residential mortgage loan servicer" means a

1 person who:

2 (A) receives scheduled payments from a borrower
3 under the terms of a residential mortgage loan, including amounts
4 for escrow accounts; and

5 (B) makes the payments of principal and interest
6 to the owner of the loan or other third party and makes any other
7 payments with respect to the amounts received from the borrower as
8 may be required under the terms of the servicing loan document or
9 servicing contract.

10 (7) "Residential real estate" means real property
11 located in this state on which a dwelling designed for occupancy for
12 one to four families is constructed or intended to be constructed.

13 Sec. 158.003. PURPOSE; RULES. (a) The purpose of this
14 chapter is to provide regulatory authority to ensure that
15 residential mortgage loan servicers registered under this chapter
16 comply with federal and state laws, rules, and regulations.

17 (b) The finance commission may adopt and enforce rules
18 necessary for the purposes of or to ensure compliance with this
19 chapter.

20 (c) The finance commission shall consult with the
21 commissioner when proposing and adopting rules under this chapter.

22 [Sections 158.004-158.050 reserved for expansion]

23 SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN SERVICERS

24 Sec. 158.051. REGISTRATION REQUIRED. A person may not act
25 as a residential mortgage loan servicer, directly or indirectly,
26 for a residential mortgage loan secured by a lien on residential
27 real estate in this state unless the person is registered under this

1 chapter or is exempt under Section 158.052.

2 Sec. 158.052. EXEMPTIONS; APPLICABILITY. (a) This chapter
3 does not require registration by:

4 (1) a federal or state depository institution, or a
5 subsidiary or affiliate of a federal or state depository
6 institution;

7 (2) a person registered under Chapter 157;

8 (3) a person licensed under Chapter 342 or regulated
9 under Chapter 343, if the person does not act as a residential
10 mortgage loan servicer servicing first-lien secured loans; or

11 (4) a person making a residential mortgage loan with
12 the person's own funds, or to secure all or a portion of the
13 purchase price of real property sold by that person.

14 (b) This chapter applies only to a residential mortgage loan
15 servicer that services at least one residential mortgage loan.

16 (c) Nothing in this chapter permits a person who is not
17 otherwise exempt from this chapter to act as a residential mortgage
18 loan originator, as defined by Section 180.002, without obtaining a
19 license under the applicable provisions of law.

20 Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) To
21 register under this chapter, a residential mortgage loan servicer
22 shall file with the commissioner an application for registration
23 that must:

24 (1) be in writing;

25 (2) be under oath;

26 (3) be in the form prescribed by the commissioner; and

27 (4) contain:

1 (A) the name and the address of the principal
2 place of business of the applicant; and

3 (B) the name, title, and address of the person
4 authorized by the applicant to respond to complaints.

5 (b) At the time of making application, the applicant shall
6 pay to the commissioner a registration fee in an amount not to
7 exceed \$500 as determined by the finance commission.

8 (c) An applicant is not required to pay a registration fee
9 under Subsection (b) if the applicant:

10 (1) collects delinquent consumer debts owed on
11 residential mortgage loans;

12 (2) does not own the residential mortgage loans for
13 which the applicant acts as a residential mortgage loan servicer;
14 and

15 (3) is a third-party debt collector that has filed a
16 bond in compliance with Chapter 392.

17 Sec. 158.054. UPDATE OF REGISTRATION. A registrant shall
18 notify the commissioner of a change in any of the information
19 provided in the registration application not later than the 30th
20 day after the date the information changes.

21 Sec. 158.055. BOND. (a) Before approval of the
22 registration, an applicant for registration under this chapter
23 shall file with the commissioner, and shall keep in force while the
24 registration remains in effect, a surety bond meeting the
25 requirements of this section or, if a surety bond is not available
26 to the applicant from a surety company authorized to do business in
27 this state, other collateral of like kind as determined by the

1 commissioner.

2 (b) The bond must be:

3 (1) in an amount not to exceed \$200,000, except as
4 provided by Subsection (c); and

5 (2) payable to the commissioner.

6 (c) This subsection applies only to an applicant who
7 services only residential mortgage loans secured by unimproved
8 residential real estate or services only residential mortgage loans
9 secured by foreclosed property with a dwelling, or both. If sales
10 of the property described by this subsection do not exceed \$1
11 million annually, the bond for an applicant described by this
12 section must be in an amount not to exceed \$25,000.

13 (d) If a registrant fails to comply with a final order of the
14 commissioner, the commissioner may make a claim on the bond to
15 recover and pay a consumer the amount to which the consumer was
16 entitled under the commissioner's order.

17 (e) When an action is commenced on a registrant's bond, the
18 commissioner may require the filing of a new acceptable bond.
19 Immediately on recovery on any action on the bond, the registrant
20 shall file a new bond.

21 (f) The bond procedures established by this section are
22 created to specifically exclude the participation of registrants in
23 the recovery fund established under Chapter 156.

24 (g) The finance commission may adopt rules establishing the
25 terms and conditions of the surety bond and the qualifications of
26 the surety.

27 (h) A registrant is not required to file a bond under this

1 chapter if the registrant:

2 (1) collects delinquent consumer debts owed on
3 residential mortgage loans;

4 (2) does not own the residential mortgage loans for
5 which the registrant acts as a residential mortgage loan servicer;
6 and

7 (3) is a third-party debt collector that has filed a
8 bond in compliance with Chapter 392.

9 Sec. 158.056. APPROVAL OF REGISTRATION. The commissioner
10 shall approve an application for registration under this chapter on
11 the applicant's payment of the required fees and the commissioner's
12 approval of the surety bond.

13 Sec. 158.057. NOTICE OF CHANGE OF REGISTRANT'S CONDITION.

14 (a) A registrant shall notify the commissioner in writing not
15 later than the 10th day after:

16 (1) the filing for bankruptcy or reorganization of the
17 registrant;

18 (2) the filing of a criminal indictment related in any
19 manner to the registrant's activities; or

20 (3) the receipt of notification of the issuance of a
21 final order to cease and desist, a final order of the suspension or
22 revocation of a license or registration, or another final formal or
23 informal regulatory action taken against the registrant in this or
24 another state.

25 (b) The notification required by Subsection (a)(3) must
26 include the reasons for a final regulatory action described by that
27 subdivision.

1 Sec. 158.058. RENEWAL OF REGISTRATION. (a) On or before
2 December 31 of each year, a registrant shall renew its registration
3 for the next calendar year and shall pay to the commissioner a
4 renewal fee in an amount not to exceed \$500 as determined by the
5 finance commission. To renew a registration, a registrant must
6 continue to meet all standards for registration provided by this
7 chapter.

8 (b) If a registrant fails to file a renewal and pay the
9 renewal fee on or before December 31 of a calendar year, the
10 registrant's registration is considered expired at that time and
11 the registrant:

12 (1) must reapply for registration as provided by
13 Section 158.053; and

14 (2) may not conduct business as a residential mortgage
15 loan servicer until the registration is approved.

16 (c) The commissioner may refuse to renew a registration if
17 the registrant:

18 (1) has failed to pay any fees or penalties imposed
19 under this chapter;

20 (2) has failed to provide the surety bond required
21 under this chapter; or

22 (3) is not in compliance with any final order of the
23 commissioner.

24 Sec. 158.059. REVOCATION OF REGISTRATION. The commissioner
25 may, after notice and hearing, revoke a registration under this
26 chapter if:

27 (1) the registrant fails or refuses to comply with the

1 commissioner's written request for a response to a complaint;

2 (2) the commissioner determines that the registrant
3 has engaged in an intentional course of conduct to violate federal
4 or state law or has engaged in an intentional course of conduct that
5 constitutes fraudulent, deceptive, or dishonest dealings; or

6 (3) the registrant is not in compliance with any final
7 order of the commissioner.

8 Sec. 158.060. APPEAL OF CERTAIN COMMISSIONER ACTIONS. The
9 denial, nonrenewal, or revocation by the commissioner of a
10 registration under this chapter and the appeal of that action are
11 governed by Chapter 2001, Government Code.

12 [Sections 158.061-158.100 reserved for expansion]

13 SUBCHAPTER C. INVESTIGATIONS, COMPLAINTS, AND ACTIONS AGAINST
14 REGISTRANT

15 Sec. 158.101. DISCLOSURE STATEMENT. A registrant shall
16 provide to the borrower of each residential mortgage loan the
17 following notice not later than the 30th day after the registrant
18 commences servicing the loan:

19 "COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD
20 BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
21 _____ (street address of the Department
22 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
23 AVAILABLE AT _____ (telephone number of the Department of
24 Savings and Mortgage Lending's toll-free consumer hotline)."

25 Sec. 158.102. INVESTIGATION OF COMPLAINTS AGAINST
26 REGISTRANT; SURCHARGE. (a) On receipt of a signed written
27 complaint concerning a registrant by the Department of Savings and

1 Mortgage Lending, the commissioner or the commissioner's designee:

2 (1) shall notify the representative designated by the
3 registrant in the registration application in writing of the
4 complaint and provide a copy of the complaint to the
5 representative;

6 (2) may conduct an investigation with authority to
7 access, receive, and use in the investigation any books, accounts,
8 records, files, documents, information, or other evidence; and

9 (3) may request that the registrant provide
10 documentary and other evidence considered by the commissioner
11 necessary to effectively evaluate the complaint, including
12 correspondence, loan documents, and disclosures.

13 (b) A registrant shall promptly provide any evidence
14 requested by the commissioner.

15 (c) Information obtained by the commissioner during an
16 investigation is confidential unless disclosure of the information
17 is permitted or required by other law or court order. The
18 commissioner may share information gathered during an
19 investigation with any state or federal agency.

20 (d) In addition to the registration fee, the finance
21 commission by rule may impose a complaint investigation fee on a
22 registrant based on the costs incurred by the Department of Savings
23 and Mortgage Lending resulting from the investigation of complaints
24 against the registrant.

25 Sec. 158.103. ACTION ON COMPLAINT. (a) If, after
26 conducting an investigation, the commissioner determines that the
27 registrant has violated this chapter or another applicable law, the

1 commissioner may do one or more of the following:

2 (1) issue an order to the registrant to resolve the
3 complaint by paying to the consumer the damages to which the
4 consumer would be entitled under law; or

5 (2) order the registrant to cease and desist from the
6 actions found to be in violation of law.

7 (b) A registrant may appeal an order issued under this
8 section. The appeal is a contested case governed by Chapter 2001,
9 Government Code.

10 Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. To ensure
11 that residential mortgage loan servicers to whom this chapter
12 applies operate in this state in compliance with this chapter and
13 with other law in accordance with this chapter, the commissioner or
14 the commissioner's designee may participate in multi-state
15 mortgage examinations as scheduled by the Conference of State Bank
16 Supervisors Multi-State Mortgage Committee in accordance with the
17 Conference of State Bank Supervisors protocol for such
18 examinations.

19 Sec. 158.105. CEASE AND DESIST ORDER. (a) If the
20 commissioner has reasonable cause to believe that a person who is
21 not registered or exempt under this chapter has engaged, or is about
22 to engage, in an act or practice for which registration is required
23 under this chapter, the commissioner may issue without notice and
24 hearing an order to cease and desist from continuing a particular
25 action or an order to take affirmative action, or both, to enforce
26 compliance with this chapter.

27 (b) An order issued under Subsection (a) must contain a

1 reasonably detailed statement of the facts on which the order is
2 issued.

3 (c) If, not later than the 30th day after the date an order
4 is issued under this section, the person against whom the order is
5 made requests a hearing, the commissioner shall set and give notice
6 of a hearing before the commissioner or a hearings officer. The
7 hearing shall be governed by Chapter 2001, Government Code.

8 (d) If a hearing is not requested under Subsection (c) not
9 later than the 30th day after the date the order is issued, the
10 order is considered final and not appealable.

11 (e) The commissioner, after giving notice, may impose
12 against a person who violates a cease and desist order an
13 administrative penalty in an amount not to exceed \$2,500 for each
14 day of the violation. In addition to any other remedy provided by
15 law, the commissioner may institute in district court a suit for
16 injunctive relief and to collect the administrative penalty. A
17 bond is not required of the commissioner with respect to injunctive
18 relief granted under this subsection.

19 Sec. 158.106. RESTITUTION. The commissioner may order a
20 residential mortgage loan servicer to pay to a complainant any
21 compensation received by the servicer in a violation cited by the
22 commissioner in a final order.

23 SECTION 2. Subdivision (4), Section 157.002, Finance Code,
24 is amended to read as follows:

25 (4) "Mortgage banker" means a person who:

26 (A) accepts an application for a residential
27 mortgage loan, ~~or~~ makes a residential mortgage loan, or services

1 residential mortgage loans; and

2 (B) is an approved or authorized:

3 (i) mortgagee with direct endorsement
4 underwriting authority granted by the United States Department of
5 Housing and Urban Development;

6 (ii) seller or servicer of the Federal
7 National Mortgage Association or the Federal Home Loan Mortgage
8 Corporation; or

9 (iii) issuer for the Government National
10 Mortgage Association.

11 SECTION 3. Section 157.003, Finance Code, is amended by
12 adding Subsection (f) to read as follows:

13 (f) A mortgage banker that services residential mortgage
14 loans must indicate in its registration that it acts as a
15 residential mortgage loan servicer.

16 SECTION 4. Section 157.007, Finance Code, is amended to
17 read as follows:

18 Sec. 157.007. DISCLOSURE STATEMENT. (a) A mortgage banker
19 shall include the following notice to a residential mortgage loan
20 applicant with an application for a residential mortgage loan:

21 "COMPLAINTS REGARDING MORTGAGE BANKERS SHOULD BE SENT TO THE
22 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
23 _____ (street address of the Department
24 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
25 AVAILABLE AT _____ (telephone number of the Department of
26 Savings and Mortgage Lending's toll-free consumer hotline)."

27 (b) A mortgage banker that indicates in its registration

1 that it acts as a residential mortgage loan servicer shall provide
2 to the borrower of each residential mortgage loan it services the
3 following notice not later than the 30th day after the date the
4 mortgage banker commences servicing the loan:

5 "COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD
6 BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
7 _____ (street address of the Department
8 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
9 AVAILABLE AT _____ (telephone number of the Department of
10 Savings and Mortgage Lending's toll-free consumer hotline)."

11 SECTION 5. Chapter 157, Finance Code, is amended by adding
12 Section 157.0211 to read as follows:

13 Sec. 157.0211. MULTI-STATE EXAMINATION AUTHORITY OF
14 RESIDENTIAL MORTGAGE LOAN SERVICER. To ensure that mortgage
15 bankers that act as residential mortgage loan servicers operate in
16 this state in compliance with this chapter and with other law in
17 accordance with this chapter, the commissioner or the
18 commissioner's designee may participate in multi-state mortgage
19 examinations as scheduled by the Conference of State Bank
20 Supervisors Multi-State Mortgage Committee in accordance with the
21 Conference of State Bank Supervisors protocol for such
22 examinations.

23 SECTION 6. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 17 passed the Senate on March 29, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 17 passed the House, with amendment, on May 25, 2011, by the following vote: Yeas 143, Nays 1, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor