

DATE: August 19, 1999

SUBJECT: HIGHLIGHTS OF THE NEW TEXAS MORTGAGE BROKER LICENSE ACT

Effective September 1, 1999, the activities of *mortgage brokers* who receive applications from prospective borrowers for the purpose of making mortgage loans secured by first-lien deeds of trust or other security interests in one-to-four family residential real estate in Texas will be regulated under the new Mortgage Broker License Act. [Enacted by the 76th Texas Legislature as S. B. 1074 and codified as Texas Finance Code §§ 156.00, *et seq.*] Generally, under the Act persons acting in the capacity of, engaging in the business of, or advertising or holding themselves out as a *mortgage broker* will be required to qualify for and maintain a current license, maintain a physical office within the State of Texas, provide certain standardized consumer disclosures regarding the nature of their services and their compensation, and comply with regulations limiting fees that may be charged the applicant before the completion of all services to be performed by the mortgage broker. To qualify for a license, mortgage brokers must meet certain minimum standards for financial net worth and formal education or industry experience and must not have been convicted of a relevant criminal offense. When renewing the license each two years, mortgage brokers must additionally demonstrate that they have completed 15 hours of approved continuing education courses during the license term. ***Mortgage bankers as defined by the Act and certain regulated financial institutions and their employees are exempt from the licensing requirements of the Act.*** Loan officers may be separately licensed under the Act but are exempt from the licensing requirements when acting for a sponsoring licensed mortgage broker.

The Act is administered by the Texas Savings and Loan Commissioner, who is empowered to adopt and enforce rules necessary to give effect to or assure compliance with the Act, including rules to prohibit false, misleading, or deceptive practices by mortgage brokers and loan officers, and to institute action to enjoin violations of the Act and to order disciplinary action against licensed mortgage brokers and loan officers found to have violated the Act. **Licensing of mortgage brokers and, unless exempt, loan officers is required by January 1, 2000**, but the Commissioner may issue provisional licenses to any applicant by that date if a significant delay is necessary to process the application or to obtain or review information related to the qualifications of the applicant. In administering his duties, the Commissioner will be advised and assisted by a newly established Mortgage Broker Advisory Committee composed of six members serving staggered three-year terms, four of whom will be appointed by the Commissioner and must hold mortgage broker licenses and two of whom will be appointed by the Texas Real Estate Commission and must hold real estate broker or salesperson licenses.

HIGHLIGHTS

Key Definitions: [Tex. Fin. Code § 156.002]

- “Mortgage loan” means a debt against real estate secured by a first-lien security interest against one-to-four family residential real estate created by a deed of trust, security deed, or other security instrument.
- “Mortgage broker” means a person who receives an application from a prospective borrower for the purposes of making a mortgage loan from that person’s own funds or from the funds of another person. The term does not include:
 - a person who performs only clerical functions such as delivering a loan application to a mortgage broker or mortgage banker or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage broker, or mortgage banker; or
 - a person who performs functions of a loan processor.
- “Mortgage banker” means a person who is:

- **approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority;**
- **an approved seller or servicer of the Federal National Mortgage Association;**
- **an approved seller or servicer of the Federal Home Loan Mortgage Association; or**
- **an approved issuer for the Governmental National Mortgage Association.**
- “Mortgage applicant” means a person who is solicited to use or who uses a mortgage broker to obtain a mortgage loan.
- “Loan officer” means an individual sponsored by a licensed mortgage broker for the purposes of performing the acts of a mortgage broker. The term does not include:
 - an individual who performs only clerical functions such as delivering a loan application to a mortgage broker or mortgage banker or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage broker, or mortgage banker; or
 - an individual who performs functions of a loan processor.
- “Loan processor” means an individual who works under the instruction of a loan officer or mortgage broker and performs only clerical functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files.

Licenses Required:

Unless exempt from the Act, an active *mortgage broker* license will be required for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a mortgage broker in the State of Texas. [Tex. Fin. Code § 156.201(a).]

An individual may not act or attempt to act as a *loan officer* unless the individual at the time is: (i) licensed under the Act; (ii) sponsored by a licensed mortgage broker and acting for the mortgage broker; or (iii) exempt from the Act. [Tex. Fin. Code § 156.201(b).]

Exemptions: [Tex. Fin. Code § 156.202.]

The Act does not apply to the following, among others:

- any of the following entities or an employee of any of the following entities provided the employee is acting for the benefit of the employer:
 - a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank, or savings and loan association;
 - a state or federal credit union;
 - an insurance company licensed or authorized to do business in this state under the Insurance Code; or
 - a mortgage banker.
- An individual who makes a mortgage loan from his own funds or does not regularly engage in the business of making or brokering mortgage loans.

License Term and License Fees: [Tex. Fin. Code §§ 156.203, 156.208.]

Both the mortgage broker and loan officer licenses are valid for two years. The application and renewal fees set out below are not refundable:

Licensing Type:	Application Fees:
Mortgage Broker *	\$375 + a recovery fund fee in the initial amount of \$20**
Loan Officer	\$175 + a recovery fund fee in the initial amount of \$20**

* \$50 for an additional license certificate for each “branch office.” [Tex. Fin. Code § 156.212.]

** The recovery fee is subject to change pursuant to Section 156.502 of the Act.

The renewal fees are the same as the application fees.

Licensing Qualifications: [Tex. Fin. Code § 156.204.]

(a) *Mortgage Broker and Loan Officer Requirements:*

To be licensed as a mortgage broker or a loan officer, a person must be an individual who is at least 18 years of age and must be a U.S. citizen or a lawfully admitted alien. The applicant must also provide the Commissioner satisfactory evidence that the applicant satisfies **one** of the following:

- the person has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university and has 18 months of experience in the mortgage or lending field as evidenced by documentary proof of full-time employment as a mortgage broker or loan officer with a mortgage broker or a person exempt under the Act;
- the person is licensed in the State of Texas as:
 - an active real estate broker under The Real Estate License Act;
 - an active attorney; or
 - a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or holds an equivalent license under Chapter 21, Insurance Code; or
- the person has three years of experience in the mortgage lending field as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under the Act.

In addition, the person must not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a mortgage broker.

[NOTE: On renewal, licensing applicants (other than licensed attorneys, real estate brokers or salespersons, or insurance recording agents or equivalent insurance license holders) must provide evidence of completion of 15 hours of continuing education courses approved by the Commissioner during the term of the current license.]

(b) *Additional Mortgage Broker Requirements:*

A mortgage broker must also maintain a physical office in the State of Texas and designate that office in the application, and must meet the financial requirements set out in Section 156.205 of the Texas Finance Code (i.e., net assets of at least \$25,000 or a surety bond in at least the amount of \$50,000).

A mortgage broker may conduct business under a corporate structure, partnership, or any other business form or as an independent contractor for a corporation, partnership, or any other business entity. The corporation, partnership, or other business entity under, through, or for which the mortgage broker conducts business is not required to be separately licensed as a mortgage broker provided that all individuals who perform mortgage broker activities are licensed as mortgage brokers or loan officers.

(c) *Additional Loan Officer Requirements:*

In addition to the above requirements, to be eligible to be licensed as loan officer, a person must provide the Commissioner evidence that the applicant satisfies **one** of the following:

- the person has successfully completed 15 hours of education courses approved by the Commissioner under the Act;
- the person has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under the Act; or
- for applications received prior to January 1, 2000, the mortgage broker that will sponsor the applicant has provided a certification under oath that the applicant has been provided necessary and appropriate education and training regarding all applicable state and federal law and regulations relating to mortgage loans.

Disclosures and Fee Regulations:

(a) *Disclosure of Broker Relationship, Duties, and Compensation:* At the time an applicant submits an application to a mortgage broker, the mortgage broker must provide to the applicant a disclosure that

specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated. (The Commissioner must promulgate a standard disclosure form to be used by the mortgage broker.) [Tex. Fin. Code § 156.004.]

(b) *Restrictions on Permitted Fees:* Before the completion of all services to be performed, a mortgage broker may charge and receive, unless prohibited by law, the following fees for services in assisting a mortgage applicant to obtain a mortgage:

- a fee to obtain a credit report;
- a fee for the appraisal of the real estate;
- a fee for processing a mortgage application;
- a fee for taking a mortgage application;
- a fee for automated underwriting;
- a fee for a courier service;
- a fee to issue a loan commitment; or
- a fee for locking in an interest rate, if pursuant to the Act.

[Tex. Fin. Code § 156.304(a).]

[NOTE: These restrictions do not prohibit a mortgage broker from receiving compensation from the lender for the sale, assignment, or release of rights on the closing of a mortgage loan (Tex. Fin. Code § 156.006)]

(c) *Rate Lock Agreement:* A mortgage broker or loan officer may not charge or receive a fee for locking in an interest rate unless there is a *written* agreement signed by the mortgage applicant and mortgage broker that contains a statement of whether the fee to lock in the interest rate is refundable and, if so, the terms and conditions necessary to obtain the refund. [Tex. Fin. Code § 156.304(b).]

Physical Office Location; Display of License Certificates:

Each mortgage broker licensed under the Act must maintain a physical office in the State of Texas, and the address of the office must be designated on the license certificate. [Tex. Fin. Code § 156.212]

If a mortgage broker maintains more than one place of business the state, an additional branch office certificate must be obtained and displayed for each additional office. The mortgage broker's license certificate, the branch office certificate, and a loan officer license certificate must be prominently displayed in the applicable location. [Tex. Fin. Code § 156.212.]

[Tex. S.B. 1074, Laws of 1999, effective 09/01/99.]

Recovery Fund:

A Recovery Fund established and administered by the Commissioner will be available to reimburse aggrieved persons to whom a court awards actual damages because of certain acts committed by a licensed mortgage broker or loan officer that constitute a violation of the Act. The Recovery Fund will be capitalized initially by a \$20 fee collected from each license applicant upon original application and at each application for license renewal, which amounts are subject to future adjustment until a year-end balance of \$3.5 million is accumulated. Recovery against the fund may be obtained in any case only after attempts to collect against the attachable assets of the defendant mortgage broker or loan officer are exhausted and a court order is obtained directing payment from the Recovery Fund for any unpaid judgment amount. Claims against the Recovery Fund arising out of the same transaction are limited to \$25,000, regardless of the number of claimants, and claims based on judgments against the same licensed mortgage broker or loan officer are limited in the aggregate to \$50,000. The Commissioner may revoke the license of any mortgage broker or loan officer against whom a recovery from the fund is made and, in any event, the license of the mortgage broker or loan officer may not be renewed until the Recovery Fund has been repaid in full.

Penalties and Disciplinary Action:

The Commissioner may impose an administrative penalty against a licensed mortgage broker or loan officer not exceeding \$2,500 for each violation of the Act (and each day a violation continues or occurs is a separate violation for this purpose) or may take other disciplinary action when the Commissioner after a hearing has determined that the licensed mortgage broker or loan officer has committed any of the enumerated violations of the Act set out in §156.303. In addition to disciplinary action, the Commissioner may order the licensed mortgage broker or loan officer to cease and desist from continuing a prohibited action or failing to take ordered affirmative action and may order an administrative penalty of up to \$1,000 for each day in which the licensed mortgage broker or loan officer fails to comply with the order. Moreover, carrying on the activities of a mortgage broker or loan officer without a license (by other than an exempt person) constitutes a Class B misdemeanor and a second or subsequent violation of unlicensed brokerage activity constitutes and is punishable as a Class A misdemeanor.

Application Process:

The Texas Savings and Loan Department has announced it will have licensing application forms available by the last week of August, 1999. The forms will be posted on the Department's Website at <http://link.tsl.state.tx.us/tx/TSLD/> and will be available by mail upon written request. The Commissioner will accept requests for application forms in writing by e-mail, regular mail or facsimile transmission and will process requests when the forms become available. The Department may be reached for further information at:

TEXAS SAVINGS AND LOAN DEPARTMENT
2601 North Lamar, Suite 201
Austin, Texas 78705
PHONE (512) 475-1350
FAX (512) 475-1360
TSLD@mail.capnet.state.tx.us

THIS ARTICLE IS PROVIDED FOR THE GENERAL INFORMATION OF THE CLIENTS AND FRIENDS OF OUR FIRM ONLY AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE. YOU SHOULD NOT PLACE RELIANCE ON THIS GENERAL INFORMATION ALONE BUT SHOULD CONSULT COUNSEL REGARDING THE APPLICATION OF THE LAWS AND REGULATIONS DISCUSSED IN THIS ARTICLE TO YOUR SPECIFIC CASE OR CIRCUMSTANCES.