

By: Carona

S.B. No. 1577

A BILL TO BE ENTITLED

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AN ACT

relating to the consideration of compliance with the law and with enforcement orders in the licensing of, and disciplinary action against, mortgage brokers and loan officers.

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

SECTION 1. Subsections (a) and (c), Section 156.204, Finance Code, are amended to read as follows:

(a) To be eligible to be licensed as a mortgage broker a person must:

(1) be an individual who is at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) maintain a physical office in this state and designate that office in the application;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) 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 Section 156.202;

(B) the person is licensed in this state as:

1 (i) an active real estate broker under The  
2 Real Estate License Act (Article 6573a, Vernon's Texas Civil  
3 Statutes);

4 (ii) an active attorney; or

5 (iii) a local recording agent or insurance  
6 solicitor or agent for a legal reserve life insurance company under  
7 Chapter 21, Insurance Code, or holds an equivalent license under  
8 Chapter 21, Insurance Code; or

9 (C) the person has three years of experience in  
10 the mortgage lending field as evidenced by documentary proof of  
11 full-time employment as a loan officer with a mortgage broker or a  
12 person exempt under Section 156.202;

13 (5) demonstrate evidence of compliance with the  
14 financial requirements of this chapter; ~~and~~

15 (6) not have been convicted of, found guilty of, pled  
16 guilty or nolo contendere to, placed on probation for, or granted  
17 deferred adjudication for a criminal offense that the commissioner  
18 determines directly relates to the occupation of a mortgage broker  
19 as specified with respect to criminal convictions in ~~under~~  
20 Chapter 53, Occupations Code;

21 (7) satisfy the commissioner as to the individual's  
22 good moral character, which includes the individual's honesty,  
23 trustworthiness, and integrity; and

24 (8) not be in violation of an order previously issued  
25 by the commissioner to the individual or in violation of a provision  
26 of this chapter or a rule promulgated under this chapter.

27 (c) To be eligible to be licensed as a loan officer a person

1 must:

2 (1) be an individual who is at least 18 years of age;

3 (2) be a citizen of the United States or a lawfully  
4 admitted alien;

5 (3) designate in the application the name of the  
6 mortgage broker sponsoring the loan officer;

7 (4) provide the commissioner with satisfactory  
8 evidence that the applicant satisfies one of the following:

9 (A) the person meets one of the requirements  
10 described by Subsection (a)(4);

11 (B) the person has successfully completed 15  
12 hours of education courses approved by the commissioner under this  
13 section;

14 (C) the person has 18 months of experience as a  
15 loan officer as evidenced by documentary proof of full-time  
16 employment as a loan officer with a mortgage broker or a person  
17 exempt under Section 156.202; or

18 (D) for applications received prior to January 1,  
19 2000, the mortgage broker that will sponsor the applicant provides  
20 a certification under oath that the applicant has been provided  
21 necessary and appropriate education and training regarding all  
22 applicable state and federal law and regulations relating to  
23 mortgage loans; ~~and~~

24 (5) not have been convicted of, found guilty of, pled  
25 guilty or nolo contendere to, placed on probation for, or granted  
26 deferred adjudication for a criminal offense that the commissioner  
27 determines directly relates to the occupation of a loan officer as

1 specified with respect to criminal convictions in [~~under~~] Chapter  
2 53, Occupations Code;

3 (6) satisfy the commissioner as to the individual's  
4 good moral character, which includes the individual's honesty,  
5 trustworthiness, and integrity; and

6 (7) not be in violation of an order previously issued  
7 by the commissioner to the individual or in violation of a provision  
8 of this chapter or a rule promulgated under this chapter.

9 SECTION 2. Subsections (a) and (b), Section 156.208,  
10 Finance Code, are amended to read as follows:

11 (a) A mortgage broker license issued under this chapter is  
12 valid for two years and may be renewed on or before its expiration  
13 date if the mortgage broker:

14 (1) pays to the commissioner a renewal fee in an amount  
15 determined by the commissioner not to exceed \$375 and a recovery  
16 fund fee provided by Section 156.502;

17 (2) has not been convicted of, found guilty of, pled  
18 guilty or nolo contendere to, placed on probation for, or granted  
19 deferred adjudication for a criminal offense that [~~felony~~] the  
20 commissioner determines is directly related to the occupation of a  
21 mortgage broker as specified with respect to criminal convictions  
22 in [~~under~~] Chapter 53, Occupations Code; and

23 (3) provides the commissioner with satisfactory  
24 evidence that the mortgage broker:

25 (A) has attended, during the term of the current  
26 license, 15 hours of continuing education courses that the  
27 commissioner, in accordance with the rules adopted by the finance

1 commission under this section, has approved as continuing education  
2 courses; or

3 (B) maintains an active license in this state as:

4 (i) a real estate broker;

5 (ii) a real estate salesperson;

6 (iii) an attorney; or

7 (iv) a local recording agent or insurance  
8 solicitor or agent for a legal reserve life insurance company under  
9 Chapter 21, Insurance Code, or an equivalent license under Chapter  
10 21, Insurance Code.

11 (b) A loan officer license issued under this chapter is  
12 valid for two years and may be renewed on or before its expiration  
13 date if the loan officer:

14 (1) pays to the commissioner a renewal fee in an amount  
15 determined by the commissioner not to exceed \$175 and a recovery  
16 fund fee provided by Section 156.502;

17 (2) has not been convicted of, found guilty of, pled  
18 guilty or nolo contendere to, placed on probation for, or granted  
19 deferred adjudication for a criminal offense that ~~[felony]~~ the  
20 commissioner determines is directly related to the occupation of a  
21 loan officer as specified with respect to criminal convictions in  
22 ~~[under]~~ Chapter 53, Occupations Code; and

23 (3) provides the commissioner with satisfactory  
24 evidence that the loan officer:

25 (A) has attended, during the term of the current  
26 license, 15 hours of continuing education courses that the  
27 commissioner, in accordance with the rules adopted by the finance

1 commission under this section, has approved as continuing education  
2 courses, including courses provided by or through the licensed  
3 mortgage broker with whom the loan officer is associated after  
4 submission to and approval by the commission; or

5 (B) maintains an active license in this state as:

6 (i) a real estate broker;

7 (ii) a real estate salesperson;

8 (iii) an attorney; or

9 (iv) a local recording agent or insurance  
10 solicitor or agent for a legal reserve life insurance company under  
11 Chapter 21, Insurance Code, or an equivalent license under Chapter  
12 21, Insurance Code.

13 SECTION 3. Subsection (a), Section 156.303, Finance Code,  
14 is amended to read as follows:

15 (a) The commissioner may order disciplinary action against  
16 a licensed mortgage broker or a licensed loan officer when the  
17 commissioner, after a hearing, has determined that the person:

18 (1) obtained a license under this chapter through a  
19 false or fraudulent representation or made a material  
20 misrepresentation in an application for a license under this  
21 chapter;

22 (2) published or caused to be published an  
23 advertisement related to the business of a mortgage broker or loan  
24 officer that:

25 (A) is misleading;

26 (B) is likely to deceive the public;

27 (C) in any manner tends to create a misleading

1 impression;

2 (D) fails to identify as a mortgage broker or  
3 loan officer the person causing the advertisement to be published;  
4 or

5 (E) violates federal or state law;

6 (3) while performing an act for which a license under  
7 this chapter is required, engaged in conduct that constitutes  
8 improper, fraudulent, or dishonest dealings;

9 (4) failed to notify the commissioner not later than  
10 the 30th day after the date of the final conviction if the person,  
11 in a court of this or another state or in a federal court, has been  
12 convicted of or entered a plea of guilty or nolo contendere to a  
13 felony or a criminal offense involving fraud;

14 (5) failed to use a fee collected in advance of closing  
15 of a mortgage loan for a purpose for which the fee was paid;

16 (6) charged or received, directly or indirectly, a fee  
17 for assisting a mortgage applicant in obtaining a mortgage loan  
18 before all of the services that the person agreed to perform for the  
19 mortgage applicant are completed, and the proceeds of the mortgage  
20 loan have been disbursed to or on behalf of the mortgage applicant,  
21 except as provided by Section 156.304;

22 (7) failed within a reasonable time to honor a check  
23 issued to the commissioner after the commissioner has mailed a  
24 request for payment by certified mail to the person's last known  
25 business address as reflected by the commissioner's records;

26 (8) paid compensation to a person who is not licensed  
27 or exempt under this chapter for acts for which a license under this

1 chapter is required;

2 (9) induced or attempted to induce a party to a  
3 contract to breach the contract so the person may make a mortgage  
4 loan;

5 (10) published or circulated an unjustified or  
6 unwarranted threat of legal proceedings in matters related to the  
7 person's actions or services as a mortgage broker or loan officer,  
8 as applicable;

9 (11) established an association, by employment or  
10 otherwise, with a person not licensed or exempt under this chapter  
11 who was expected or required to act as a mortgage broker or loan  
12 officer;

13 (12) aided, abetted, or conspired with a person to  
14 circumvent the requirements of this chapter;

15 (13) acted in the dual capacity of a mortgage broker or  
16 loan officer and real estate broker, salesperson, or attorney in a  
17 transaction without the knowledge and written consent of the  
18 mortgage applicant or in violation of applicable requirements under  
19 federal law;

20 (14) discriminated against a prospective borrower on  
21 the basis of race, color, religion, sex, national origin, ancestry,  
22 familial status, or a disability;

23 (15) failed or refused on demand to:

24 (A) produce a document, book, or record  
25 concerning a mortgage loan transaction conducted by the mortgage  
26 broker or loan officer for inspection by the commissioner or the  
27 commissioner's authorized personnel or representative;



1           (B) give the commissioner or the commissioner's  
2 authorized personnel or representative free access to the books or  
3 records relating to the person's business kept by an officer,  
4 agent, or employee of the person or any business entity through  
5 which the person conducts mortgage brokerage activities, including  
6 a subsidiary or holding company affiliate; or

7           (C) provide information requested by the  
8 commissioner as a result of a formal or informal complaint made to  
9 the commissioner;

10           (16) failed without just cause to surrender, on  
11 demand, a copy of a document or other instrument coming into the  
12 person's possession that was provided to the person by another  
13 person making the demand or that the person making the demand is  
14 under law entitled to receive; or

15           (17) disregarded or violated this chapter, ~~or~~ a  
16 rule adopted by the finance commission under this chapter, or an  
17 order issued by the commissioner under this chapter.

18           SECTION 4. This Act takes effect September 1, 2003.

19           SECTION 5. The change in law made by this Act applies only  
20 to an application for the issuance or renewal of a license that is  
21 made on or after the effective date of this Act. An application  
22 made before that date is governed by the law in effect immediately  
23 before the effective date of this Act, and the former law is  
24 continued in effect for that purpose.