

AN ACT

relating to the effect of a criminal conviction on licensing and regulation of a mortgage broker or loan officer.

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

SECTION 1. Section 156.204, Finance Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) 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 a criminal offense that
16 the commissioner determines directly relates to the occupation of a
17 mortgage broker as provided by ~~under~~ Chapter 53, Occupations
18 Code;

19 (7) satisfy the commissioner as to the individual's
20 good moral character, including the individual's honesty,
21 trustworthiness, and integrity; and

22 (8) not be in violation of this chapter, a rule adopted
23 under this chapter, or any order previously issued to the
24 individual by the commissioner.

25 (c) To be eligible to be licensed as a loan officer a person
26 must:

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

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

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

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

7 (A) the person meets one of the requirements
8 described by Subsection (a)(4);

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

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

16 (D) for applications received prior to January 1,
17 2000, the mortgage broker that will sponsor the applicant provides
18 a certification under oath that the applicant has been provided
19 necessary and appropriate education and training regarding all
20 applicable state and federal law and regulations relating to
21 mortgage loans; ~~and~~

22 (5) not have been convicted of a criminal offense that
23 the commissioner determines directly relates to the occupation of a
24 loan officer as provided by ~~under~~ Chapter 53, Occupations Code;

25 (6) satisfy the commissioner as to the individual's
26 good moral character, including the individual's honesty,
27 trustworthiness, and integrity; and

1 (7) not be in violation of this chapter, a rule adopted
2 under this chapter, or any order previously issued to the
3 individual by the commissioner.

4 (d) For the purposes of Subsections (a)(6) and (c)(5), a
5 person is considered convicted if a sentence is imposed on the
6 person, the person receives community supervision, including
7 deferred adjudication community supervision, or the court defers
8 final disposition of the person's case.

9 SECTION 2. Section 156.208, Finance Code, is amended by
10 amending Subsections (a) and (b) and adding Subsection (h) to read
11 as follows:

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

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

18 (2) has not been convicted of a criminal offense
19 [~~felony~~] the commissioner determines is directly related to the
20 occupation of a mortgage broker as provided by [~~under~~] Chapter 53,
21 Occupations Code; and

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

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

1 courses; or

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

3 (i) a real estate broker;

4 (ii) a real estate salesperson;

5 (iii) an attorney; or

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

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

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

16 (2) has not been convicted of a criminal offense
17 [~~felony~~] the commissioner determines is directly related to the
18 occupation of a loan officer as provided by [~~under~~] Chapter 53,
19 Occupations Code; and

20 (3) provides the commissioner with satisfactory
21 evidence that the loan officer:

22 (A) has attended, during the term of the current
23 license, 15 hours of continuing education courses that the
24 commissioner, in accordance with the rules adopted by the finance
25 commission under this section, has approved as continuing education
26 courses, including courses provided by or through the licensed
27 mortgage broker with whom the loan officer is associated after

1 submission to and approval by the commission; or

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

3 (i) a real estate broker;

4 (ii) a real estate salesperson;

5 (iii) an attorney; or

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

10 (h) For the purposes of Subsections (a)(2) and (b)(2), a
11 person is considered convicted if a sentence is imposed on the
12 person, the person receives community supervision, including
13 deferred adjudication community supervision, or the court defers
14 final disposition of the person's case.

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

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

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

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

27 (A) is misleading;

1 (B) is likely to deceive the public;

2 (C) in any manner tends to create a misleading
3 impression;

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

7 (E) violates federal or state law;

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

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

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

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

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

1 (8) paid compensation to a person who is not licensed
2 or exempt under this chapter for acts for which a license under this
3 chapter is required;

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

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

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

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

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

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

25 (15) failed or refused on demand to:

26 (A) produce a document, book, or record
27 concerning a mortgage loan transaction conducted by the mortgage

1 broker or loan officer for inspection by the commissioner or the
2 commissioner's authorized personnel or representative;

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

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

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

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

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1577 passed the Senate on April 16, 2003, by a viva-voce vote; and that the Senate concurred in House amendment on May 14, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1577 passed the House, with amendment, on May 2, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor