

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.