

1-1 By: Carona S.B. No. 1577
1-2 (In the Senate - Filed March 14, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 10, 2003, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 10, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the consideration of compliance with the law and with
1-9 enforcement orders in the licensing of, and disciplinary action
1-10 against, mortgage brokers and loan officers.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsections (a) and (c), Section 156.204,
1-13 Finance Code, are amended to read as follows:

1-14 (a) To be eligible to be licensed as a mortgage broker a
1-15 person must:

1-16 (1) be an individual who is at least 18 years of age;

1-17 (2) be a citizen of the United States or a lawfully
1-18 admitted alien;

1-19 (3) maintain a physical office in this state and
1-20 designate that office in the application;

1-21 (4) provide the commissioner with satisfactory
1-22 evidence that the applicant satisfies one of the following:

1-23 (A) the person has received a bachelor's degree
1-24 in an area relating to finance, banking, or business administration
1-25 from an accredited college or university and has 18 months of
1-26 experience in the mortgage or lending field as evidenced by
1-27 documentary proof of full-time employment as a mortgage broker or
1-28 loan officer with a mortgage broker or a person exempt under Section
1-29 156.202;

1-30 (B) the person is licensed in this state as:

1-31 (i) an active real estate broker under The
1-32 Real Estate License Act (Article 6573a, Vernon's Texas Civil
1-33 Statutes);

1-34 (ii) an active attorney; or

1-35 (iii) a local recording agent or insurance
1-36 solicitor or agent for a legal reserve life insurance company under
1-37 Chapter 21, Insurance Code, or holds an equivalent license under
1-38 Chapter 21, Insurance Code; or

1-39 (C) the person has three years of experience in
1-40 the mortgage lending field as evidenced by documentary proof of
1-41 full-time employment as a loan officer with a mortgage broker or a
1-42 person exempt under Section 156.202;

1-43 (5) demonstrate evidence of compliance with the
1-44 financial requirements of this chapter; ~~and~~

1-45 (6) not have been convicted of, found guilty of, pled
1-46 guilty or nolo contendere to, placed on probation for, or granted
1-47 deferred adjudication for a criminal offense that the commissioner
1-48 determines directly relates to the occupation of a mortgage broker
1-49 as specified with respect to criminal convictions in ~~under~~
1-50 Chapter 53, Occupations Code;

1-51 (7) satisfy the commissioner as to the individual's
1-52 good moral character, which includes the individual's honesty,
1-53 trustworthiness, and integrity; and

1-54 (8) not be in violation of an order previously issued
1-55 by the commissioner to the individual or in violation of a provision
1-56 of this chapter or a rule promulgated under this chapter.

1-57 (c) To be eligible to be licensed as a loan officer a person
1-58 must:

1-59 (1) be an individual who is at least 18 years of age;

1-60 (2) be a citizen of the United States or a lawfully
1-61 admitted alien;

1-62 (3) designate in the application the name of the
1-63 mortgage broker sponsoring the loan officer;

1-64 (4) provide the commissioner with satisfactory

2-1 evidence that the applicant satisfies one of the following:

2-2 (A) the person meets one of the requirements

2-3 described by Subsection (a)(4);

2-4 (B) the person has successfully completed 15

2-5 hours of education courses approved by the commissioner under this

2-6 section;

2-7 (C) the person has 18 months of experience as a

2-8 loan officer as evidenced by documentary proof of full-time

2-9 employment as a loan officer with a mortgage broker or a person

2-10 exempt under Section 156.202; or

2-11 (D) for applications received prior to January 1,

2-12 2000, the mortgage broker that will sponsor the applicant provides

2-13 a certification under oath that the applicant has been provided

2-14 necessary and appropriate education and training regarding all

2-15 applicable state and federal law and regulations relating to

2-16 mortgage loans; ~~and~~

2-17 (5) not have been convicted of, found guilty of, pled

2-18 guilty or nolo contendere to, placed on probation for, or granted

2-19 deferred adjudication for a criminal offense that the commissioner

2-20 determines directly relates to the occupation of a loan officer as

2-21 specified with respect to criminal convictions in ~~under~~ Chapter

2-22 53, Occupations Code;

2-23 (6) satisfy the commissioner as to the individual's

2-24 good moral character, which includes the individual's honesty,

2-25 trustworthiness, and integrity; and

2-26 (7) not be in violation of an order previously issued

2-27 by the commissioner to the individual or in violation of a provision

2-28 of this chapter or a rule promulgated under this chapter.

2-29 SECTION 2. Subsections (a) and (b), Section 156.208,

2-30 Finance Code, are amended to read as follows:

2-31 (a) A mortgage broker license issued under this chapter is

2-32 valid for two years and may be renewed on or before its expiration

2-33 date if the mortgage broker:

2-34 (1) pays to the commissioner a renewal fee in an amount

2-35 determined by the commissioner not to exceed \$375 and a recovery

2-36 fund fee provided by Section 156.502;

2-37 (2) has not been convicted of, found guilty of, pled

2-38 guilty or nolo contendere to, placed on probation for, or granted

2-39 deferred adjudication for a criminal offense that ~~[felony]~~ the

2-40 commissioner determines is directly related to the occupation of a

2-41 mortgage broker as specified with respect to criminal convictions

2-42 in ~~under~~ Chapter 53, Occupations Code; and

2-43 (3) provides the commissioner with satisfactory

2-44 evidence that the mortgage broker:

2-45 (A) has attended, during the term of the current

2-46 license, 15 hours of continuing education courses that the

2-47 commissioner, in accordance with the rules adopted by the finance

2-48 commission under this section, has approved as continuing education

2-49 courses; or

2-50 (B) maintains an active license in this state as:

2-51 (i) a real estate broker;

2-52 (ii) a real estate salesperson;

2-53 (iii) an attorney; or

2-54 (iv) a local recording agent or insurance

2-55 solicitor or agent for a legal reserve life insurance company under

2-56 Chapter 21, Insurance Code, or an equivalent license under Chapter

2-57 21, Insurance Code.

2-58 (b) A loan officer license issued under this chapter is

2-59 valid for two years and may be renewed on or before its expiration

2-60 date if the loan officer:

2-61 (1) pays to the commissioner a renewal fee in an amount

2-62 determined by the commissioner not to exceed \$175 and a recovery

2-63 fund fee provided by Section 156.502;

2-64 (2) has not been convicted of, found guilty of, pled

2-65 guilty or nolo contendere to, placed on probation for, or granted

2-66 deferred adjudication for a criminal offense that ~~[felony]~~ the

2-67 commissioner determines is directly related to the occupation of a

2-68 loan officer as specified with respect to criminal convictions in

2-69 ~~under~~ Chapter 53, Occupations Code; and

3-1 (3) provides the commissioner with satisfactory
3-2 evidence that the loan officer:

3-3 (A) has attended, during the term of the current
3-4 license, 15 hours of continuing education courses that the
3-5 commissioner, in accordance with the rules adopted by the finance
3-6 commission under this section, has approved as continuing education
3-7 courses, including courses provided by or through the licensed
3-8 mortgage broker with whom the loan officer is associated after
3-9 submission to and approval by the commission; or

3-10 (B) maintains an active license in this state as:
3-11 (i) a real estate broker;
3-12 (ii) a real estate salesperson;
3-13 (iii) an attorney; or
3-14 (iv) a local recording agent or insurance
3-15 solicitor or agent for a legal reserve life insurance company under
3-16 Chapter 21, Insurance Code, or an equivalent license under Chapter
3-17 21, Insurance Code.

3-18 SECTION 3. Subsection (a), Section 156.303, Finance Code,
3-19 is amended to read as follows:

3-20 (a) The commissioner may order disciplinary action against
3-21 a licensed mortgage broker or a licensed loan officer when the
3-22 commissioner, after a hearing, has determined that the person:

3-23 (1) obtained a license under this chapter through a
3-24 false or fraudulent representation or made a material
3-25 misrepresentation in an application for a license under this
3-26 chapter;

3-27 (2) published or caused to be published an
3-28 advertisement related to the business of a mortgage broker or loan
3-29 officer that:

3-30 (A) is misleading;
3-31 (B) is likely to deceive the public;
3-32 (C) in any manner tends to create a misleading
3-33 impression;

3-34 (D) fails to identify as a mortgage broker or
3-35 loan officer the person causing the advertisement to be published;
3-36 or

3-37 (E) violates federal or state law;

3-38 (3) while performing an act for which a license under
3-39 this chapter is required, engaged in conduct that constitutes
3-40 improper, fraudulent, or dishonest dealings;

3-41 (4) failed to notify the commissioner not later than
3-42 the 30th day after the date of the final conviction if the person,
3-43 in a court of this or another state or in a federal court, has been
3-44 convicted of or entered a plea of guilty or nolo contendere to a
3-45 felony or a criminal offense involving fraud;

3-46 (5) failed to use a fee collected in advance of closing
3-47 of a mortgage loan for a purpose for which the fee was paid;

3-48 (6) charged or received, directly or indirectly, a fee
3-49 for assisting a mortgage applicant in obtaining a mortgage loan
3-50 before all of the services that the person agreed to perform for the
3-51 mortgage applicant are completed, and the proceeds of the mortgage
3-52 loan have been disbursed to or on behalf of the mortgage applicant,
3-53 except as provided by Section 156.304;

3-54 (7) failed within a reasonable time to honor a check
3-55 issued to the commissioner after the commissioner has mailed a
3-56 request for payment by certified mail to the person's last known
3-57 business address as reflected by the commissioner's records;

3-58 (8) paid compensation to a person who is not licensed
3-59 or exempt under this chapter for acts for which a license under this
3-60 chapter is required;

3-61 (9) induced or attempted to induce a party to a
3-62 contract to breach the contract so the person may make a mortgage
3-63 loan;

3-64 (10) published or circulated an unjustified or
3-65 unwarranted threat of legal proceedings in matters related to the
3-66 person's actions or services as a mortgage broker or loan officer,
3-67 as applicable;

3-68 (11) established an association, by employment or
3-69 otherwise, with a person not licensed or exempt under this chapter

4-1 who was expected or required to act as a mortgage broker or loan
4-2 officer;

4-3 (12) aided, abetted, or conspired with a person to
4-4 circumvent the requirements of this chapter;

4-5 (13) acted in the dual capacity of a mortgage broker or
4-6 loan officer and real estate broker, salesperson, or attorney in a
4-7 transaction without the knowledge and written consent of the
4-8 mortgage applicant or in violation of applicable requirements under
4-9 federal law;

4-10 (14) discriminated against a prospective borrower on
4-11 the basis of race, color, religion, sex, national origin, ancestry,
4-12 familial status, or a disability;

4-13 (15) failed or refused on demand to:

4-14 (A) produce a document, book, or record
4-15 concerning a mortgage loan transaction conducted by the mortgage
4-16 broker or loan officer for inspection by the commissioner or the
4-17 commissioner's authorized personnel or representative;

4-18 (B) give the commissioner or the commissioner's
4-19 authorized personnel or representative free access to the books or
4-20 records relating to the person's business kept by an officer,
4-21 agent, or employee of the person or any business entity through
4-22 which the person conducts mortgage brokerage activities, including
4-23 a subsidiary or holding company affiliate; or

4-24 (C) provide information requested by the
4-25 commissioner as a result of a formal or informal complaint made to
4-26 the commissioner;

4-27 (16) failed without just cause to surrender, on
4-28 demand, a copy of a document or other instrument coming into the
4-29 person's possession that was provided to the person by another
4-30 person making the demand or that the person making the demand is
4-31 under law entitled to receive; or

4-32 (17) disregarded or violated this chapter, ~~or~~ a rule
4-33 adopted by the finance commission under this chapter, or an order
4-34 issued by the commissioner under this chapter.

4-35 SECTION 4. This Act takes effect September 1, 2003.

4-36 SECTION 5. The change in law made by this Act applies only
4-37 to an application for the issuance or renewal of a license that is
4-38 made on or after the effective date of this Act. An application
4-39 made before that date is governed by the law in effect immediately
4-40 before the effective date of this Act, and the former law is
4-41 continued in effect for that purpose.

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