

By: Carona

S.B. No. 1141

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain mortgage brokers and loan officers.

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

SECTION 1. Subdivision (10), Section 156.002, Finance Code, is amended to read as follows;

(10) "Mortgage loan" means a debt against real estate secured by a first-lien security interest or a second-lien or subordinate security interest against one-to-four family residential real estate created by a deed of trust, security deed, or other security instrument.

SECTION 2. Subsection (a), Section 156.303, Finance Code, is amended to reads as follows:

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

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

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

(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, a rule
18 adopted by the finance commission under this chapter, or an order
19 issued by the commissioner under this chapter; or

20 (18) violated any provision of Chapter 342.

21 SECTION 3. Subchapter D, Chapter 156, Finance Code, is
22 amended by adding Section 156.305 to read as follows:

23 Sec. 156.305. EXCLUSIVE JURISDICTION OF COMMISSIONER. The
24 commissioner shall have exclusive jurisdiction to order
25 disciplinary action against any licensed mortgage broker or
26 licensed loan officer if the commissioner, after a hearing, has
27 determined that the person has violated any provision of Chapter

1 342 or any rule or order adopted by the commissioner or the Office
2 of Consumer Credit Commissioner relating to secondary mortgage
3 loans.

4 SECTION 4. Subsection (c), Section 342.051, Finance Code,
5 is amended to read as follows:

6 (c) A person is not required to obtain a license under
7 Subsection (a) if the person is:

8 (1) a bank, savings bank, or savings and loan
9 association organized under the laws of the United States or under
10 the laws of the institution's state of domicile; ~~or~~

11 (2) subject to Chapter 24, Insurance Code; or

12 (3) a person regulated by this state as a mortgage
13 broker under Chapter 156.

14 SECTION 5. This Act takes effect September 1, 2005.