

By: Solomons, Anchia

H.B. No. 2783

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of certain persons involved in mortgage
3 lending.

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

5 SECTION 1. Section 156.002(10), Finance Code, is amended to
6 read as follows:

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

11 SECTION 2. Section 156.201(b), Finance Code, is amended to
12 read as follows:

13 (b) An individual may not act or attempt to act as a loan
14 officer unless the individual at the time is:

15 (1) licensed under this chapter and [~~+~~
16 [~~2~~] sponsored by a licensed mortgage broker and
17 acting for the mortgage broker; or

18 (2) [~~3~~] exempt under Section 156.202.

19 SECTION 3. Section 156.202, Finance Code, is amended to
20 read as follows:

21 Sec. 156.202. EXEMPTIONS. This chapter does not apply to:

22 (1) any of the following entities or an employee of any
23 of the following entities provided the employee is acting for the
24 benefit of the employer:

1 (A) a bank, savings bank, or savings and loan
2 association, or a subsidiary or an affiliate of a bank, savings
3 bank, or savings and loan association;

4 (B) a state or federal credit union, or a
5 subsidiary, affiliate, or credit union service organization of a
6 state or federal credit union;

7 (C) an insurance company licensed or authorized
8 to do business in this state under the Insurance Code;

9 (D) a mortgage banker registered under Chapter
10 157;

11 (E) an organization that qualifies for an
12 exemption from state franchise and sales tax as a 501(c)(3)
13 organization;

14 (F) a Farm Credit System institution; or

15 (G) a political subdivision of this state
16 involved in affordable home ownership programs;

17 (2) an individual who makes a mortgage loan from the
18 individual's own funds to a spouse, former spouse, or persons in the
19 lineal line of consanguinity of the individual lending the money;

20 (3) an owner of real property who in any
21 12-consecutive-month period makes no more than five [~~makes a~~
22 mortgage loans [~~loan~~] to purchasers [~~a purchaser~~] of the property
23 for all or part of the purchase price of the real estate against
24 which the mortgage is secured; or

25 (4) an individual who:

26 (A) makes a mortgage loan from the individual's
27 own funds;

1 (B) is not an authorized lender under Chapter
2 342, Finance Code; and

3 (C) does not regularly engage in the business of
4 making or brokering mortgage loans.

5 SECTION 4. Section 156.203(c), Finance Code, is amended to
6 read as follows:

7 (c) An application for a loan officer license must be
8 accompanied by:

9 (1) an application fee in an amount determined by the
10 commissioner not to exceed \$275 [~~\$175~~]; and

11 (2) a recovery fund fee as provided by Section
12 156.502.

13 SECTION 5. Sections 156.204(a) and (b), Finance Code, are
14 amended to read as follows:

15 (a) To be eligible to be licensed as a mortgage broker as an
16 individual, the individual [~~a person~~] must:

17 (1) be [~~an individual who is~~] at least 18 years of age;

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

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

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

24 (A) the person has received a bachelor's degree
25 in an area relating to finance, banking, or business administration
26 from an accredited college or university and has 18 months of
27 experience in the mortgage or lending field as evidenced by

1 documentary proof of full-time employment as a mortgage broker or
2 licensed loan officer with a mortgage broker or a person exempt
3 under Section 156.202;

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

5 (i) an active real estate broker under
6 Chapter 1101, Occupations Code;

7 (ii) an active attorney; or

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

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

16 (5) provide the commissioner with satisfactory
17 evidence of:

18 (A) having passed an examination, offered by a
19 testing service or company approved by the finance commission, that
20 demonstrates knowledge of:

21 (i) the mortgage industry; and

22 (ii) the role and responsibilities of a
23 mortgage broker; and

24 (B) compliance with the financial requirements
25 of this chapter;

26 (6) not have been convicted of a criminal offense that
27 the commissioner determines directly relates to the occupation of a

1 mortgage broker as provided by Chapter 53, Occupations Code;

2 (7) satisfy the commissioner as to the individual's
3 good moral character, including the individual's honesty,
4 trustworthiness, and integrity; and

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

8 (b) A corporation, limited liability company, or limited
9 partnership may not act as a mortgage broker unless the entity
10 obtains a mortgage broker license. To be eligible for a mortgage
11 broker license the entity must designate an individual licensed as
12 a mortgage broker as its designated representative and pay an
13 application fee in an amount to be determined by the commissioner
14 not to exceed \$175. The designated representative must be:

15 (1) if the entity is a corporation, an officer of the
16 corporation;

17 (2) if the entity is a limited liability company, a
18 manager of the limited liability company; or

19 (3) if the entity is a limited partnership:

20 (A) an individual who is a general partner;

21 (B) an officer of a general partner that is a
22 corporation; or

23 (C) a manager of a general partner that is a
24 limited liability company. [A mortgage broker may conduct business

25 under a corporate structure, partnership, or any other business
26 form or as an independent contractor for a corporation,

27 partnership, or any other business entity. Before conducting

1 ~~mortgage broker activities under, through, or for a corporation,~~
2 ~~partnership, or other business entity, a mortgage broker must~~
3 ~~notify the commissioner, in writing, of any corporate name,~~
4 ~~partnership name, assumed name, or any other name under, through,~~
5 ~~or for which the mortgage broker conducts activities for which a~~
6 ~~license is required under this chapter. The corporation,~~
7 ~~partnership, or other business entity under, through, or for which~~
8 ~~the mortgage broker conducts business is not required to be~~
9 ~~separately licensed as a mortgage broker provided that all~~
10 ~~individuals who perform mortgage broker activities are licensed as~~
11 ~~mortgage brokers or loan officers. The commissioner shall require~~
12 ~~proof of compliance with this subsection at the time the mortgage~~
13 ~~broker applies for and renews a license.]~~

14 SECTION 6. Section 156.208(i), Finance Code, as added by
15 Chapter 1018, Acts of the 79th Legislature, Regular Session, 2005,
16 is relettered as Subsection (j), Section 156.208, Finance Code, and
17 amended to read as follows:

18 (j) [~~(i)~~] The commissioner may deny the renewal of a
19 mortgage broker license or a loan officer license if:

20 (1) the mortgage broker or loan officer is in
21 violation of this chapter, a rule adopted under this chapter, or any
22 order previously issued to the individual by the commissioner; [~~or~~]

23 (2) the mortgage broker or loan officer is in default
24 in the payment of any administrative penalty, fee, charge, or other
25 indebtedness owed under this title; or

26 (3) during the current term of the license, the
27 commissioner becomes aware of any fact that would have been grounds

1 for denial of an original license if the fact had been known by the
2 commissioner on the date the license was granted.

3 SECTION 7. Section 156.211, Finance Code, is amended by
4 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

5 (b-1) Not later than the 10th day before a mortgage broker
6 begins doing business under an assumed name, the mortgage broker
7 shall file with the commissioner a copy of an assumed name
8 certificate for each assumed name under which the mortgage broker
9 intends to conduct business and pay a \$25 registration fee for each
10 assumed name. A loan officer may not conduct business under any
11 assumed name that is not the registered assumed name of the
12 sponsoring mortgage broker.

13 (b-2) A person licensed under this chapter must notify the
14 commissioner not later than the 10th day after the date of any
15 change of the person's name and pay to the commissioner a change of
16 name fee of \$25 for the issuance of an amended license certificate.

17 (b-3) A business entity licensed under this chapter shall
18 notify the commissioner of any change of its designated
19 representative. The commissioner may charge a fee of \$25 for each
20 change of a designated representative.

21 SECTION 8. Subchapter C, Chapter 156, Finance Code, is
22 amended by adding Section 156.214 to read as follows:

23 Sec. 156.214. APPROVAL OF COURSES. (a) The finance
24 commission may adopt rules establishing:

25 (1) minimum standards for courses, approved course
26 providers, and approved course instructors; and

27 (2) a fee not to exceed \$200 for the review and

1 approval of each course not provided and approved by a duly
2 organized trade association the purpose of which is primarily to
3 represent residential mortgage originators.

4 (b) An approval is for up to two years.

5 SECTION 9. Section 156.303, Finance Code, is amended by
6 amending Subsection (a) and adding Subsection (j) to read as
7 follows:

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

11 (1) obtained a license, including a renewal of a
12 license, under this chapter through a false or fraudulent
13 representation or made a material misrepresentation in an
14 application for a license or for the renewal of a license under this
15 chapter;

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

19 (A) is misleading;

20 (B) is likely to deceive the public;

21 (C) in any manner tends to create a misleading
22 impression;

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

25 or

26 (E) violates federal or state law;

27 (3) while performing an act for which a license under

1 this chapter is required, engaged in conduct that constitutes
2 improper, fraudulent, or dishonest dealings;

3 (4) entered a plea of guilty or nolo contendere to, or
4 is convicted of, a criminal offense that is a felony or that
5 involves fraud or moral turpitude in a court of this or another
6 state or in a federal court;

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

9 (6) charged or received, directly or indirectly, a fee
10 for assisting a mortgage applicant in obtaining a mortgage loan
11 before all of the services that the person agreed to perform for the
12 mortgage applicant are completed, and the proceeds of the mortgage
13 loan have been disbursed to or on behalf of the mortgage applicant,
14 except as provided by Section 156.304;

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

19 (8) paid compensation to a person who is not licensed
20 or exempt under this chapter for acts for which a license under this
21 chapter is required;

22 (9) induced or attempted to induce a party to a
23 contract to breach the contract so the person may make a mortgage
24 loan;

25 (10) published or circulated an unjustified or
26 unwarranted threat of legal proceedings in matters related to the
27 person's actions or services as a mortgage broker or loan officer,

1 as applicable;

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

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

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

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

16 (15) failed or refused on demand to:

17 (A) produce a document, book, or record
18 concerning a mortgage loan transaction conducted by the mortgage
19 broker or loan officer for inspection by the commissioner or the
20 commissioner's authorized personnel or representative;

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

27 (C) provide information requested by the

1 commissioner as a result of a formal or informal complaint made to
2 the commissioner;

3 (16) failed without just cause to surrender, on
4 demand, a copy of a document or other instrument coming into the
5 person's possession that was provided to the person by another
6 person making the demand or that the person making the demand is
7 under law entitled to receive; ~~or~~

8 (17) disregarded or violated this chapter, a rule
9 adopted by the finance commission under this chapter, or an order
10 issued by the commissioner under this chapter; or

11 (18) provided false information to the commissioner
12 during the course of an investigation or inspection.

13 (j) On notice and opportunity for hearing, the commissioner
14 may suspend a person's license under this chapter if an indictment
15 or information is filed or returned alleging that the person
16 committed a criminal offense involving fraud, theft, or dishonesty.
17 The suspension continues until the criminal case is dismissed or
18 the person is acquitted.

19 SECTION 10. The heading of Section 341.103, Finance Code,
20 is amended to read as follows:

21 Sec. 341.103. REGULATION OF SAVINGS INSTITUTIONS AND
22 LICENSED MORTGAGE BROKERS AND LOAN OFFICERS ~~[ASSOCIATIONS]~~.

23 SECTION 11. Section 341.103(a), Finance Code, is amended to
24 read as follows:

25 (a) The savings and mortgage lending ~~[loan]~~ commissioner
26 shall enforce this subtitle relating to the regulation of:

27 (1) state savings associations operating under this

1 subtitle;

2 (2) state savings banks operating under this subtitle;

3 and

4 (3) persons licensed under Chapter 156.

5 SECTION 12. Section 342.051, Finance Code, is amended by
6 adding Subsection (f) to read as follows:

7 (f) A mortgage broker licensed under Chapter 156 is not
8 required to obtain a license under this chapter to make, negotiate,
9 or transact a mortgage loan, as defined by Chapter 156.

10 SECTION 13. A corporation, limited liability company, or
11 limited partnership is not required to obtain a mortgage broker
12 license, as required by Section 156.204(b), Finance Code, as
13 amended by this Act, to act as a mortgage broker before January 1,
14 2008.

15 SECTION 14. This Act takes effect September 1, 2007.