

AN ACT

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

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

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

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

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

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

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

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

SECTION 3. Subchapter C, Chapter 156, Finance Code, is amended by adding Section 156.2011 to read as follows:

Sec. 156.2011. PROVISIONAL LOAN OFFICER LICENSE. (a) An applicant for a loan officer license may be issued a provisional loan officer license as provided by this section only if the applicant:

1           (1) during the 20 months immediately preceding the  
2 application, has at least 18 months of experience as a loan officer  
3 employed by a person exempt from this chapter under Section  
4 156.202; and

5           (2) meets the qualifications for a loan officer  
6 license, other than the educational and examination requirements.

7           (b) The commissioner shall use best efforts to issue the  
8 provisional loan officer license on or before the later of:

9           (1) the 10th business day after the date of receipt of  
10 a completed application; or

11           (2) the second business day after the date of receipt  
12 of the criminal background information required under Section  
13 156.206 demonstrating that the applicant has no pending criminal  
14 charges and has not been convicted of a criminal offense.

15           (c) For purposes of Subsection (b)(2), a person is  
16 considered convicted as provided by Section 156.204(d).

17           (d) A provisional loan officer license is valid for 90 days  
18 after the date the license is issued, except as provided by  
19 Subsection (e).

20           (e) The commissioner may revoke a provisional loan officer  
21 license if the commissioner discovers that the applicant has made a  
22 misrepresentation relating to the applicant's qualifications for a  
23 loan officer license, has violated this chapter, or does not meet  
24 the qualifications for a provisional loan officer license. The  
25 revocation of a provisional loan officer license is not subject to  
26 appeal.

27           (f) The finance commission by rule may impose a fee not to

1 exceed \$100 for an expedited issuance of a provisional loan officer  
2 license. The fee is nonrefundable and is in addition to the fee for  
3 the application for a regular loan officer license.

4 SECTION 4. Section 156.202, Finance Code, is amended to  
5 read as follows:

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

7 (1) any of the following entities or an employee of any  
8 of the following entities provided the employee is acting for the  
9 benefit of the employer:

10 (A) a bank, savings bank, or savings and loan  
11 association, or a subsidiary or an affiliate of a bank, savings  
12 bank, or savings and loan association;

13 (B) a state or federal credit union, or a  
14 subsidiary, affiliate, or credit union service organization of a  
15 state or federal credit union;

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

18 (D) a mortgage banker registered under Chapter  
19 157;

20 (E) an organization that qualifies for an  
21 exemption from state franchise and sales tax as a 501(c)(3)  
22 organization;

23 (F) a Farm Credit System institution; or

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

26 (2) an individual who makes a mortgage loan from the  
27 individual's own funds to a spouse, former spouse, or persons in the

1 lineal line of consanguinity of the individual lending the money;

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

7 (4) an individual who:

8 (A) makes a mortgage loan from the individual's  
9 own funds;

10 (B) is not an authorized lender under Chapter  
11 342, Finance Code; and

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

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

16 (c) An application for a loan officer license must be  
17 accompanied by:

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

20 (2) a recovery fund fee as provided by Section  
21 156.502.

22 SECTION 6. Sections 156.204(a), (b), (c), and (e), Finance  
23 Code, are amended to read as follows:

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

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

27 (2) be a citizen of the United States or a lawfully

1 admitted alien;

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

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

6 (A) the person has received a bachelor's degree  
7 in an area relating to finance, banking, or business administration  
8 from an accredited college or university and has 18 months of  
9 experience in the mortgage or lending field as evidenced by  
10 documentary proof of full-time employment as a mortgage broker or  
11 licensed loan officer with a mortgage broker or a person exempt  
12 under Section 156.202;

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

14 (i) an active real estate broker under  
15 Chapter 1101, Occupations Code;

16 (ii) an active attorney; or

17 (iii) a local recording agent or insurance  
18 solicitor or agent for a legal reserve life insurance company under  
19 Chapter 21, Insurance Code, or holds an equivalent license under  
20 Chapter 21, Insurance Code; or

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

25 (5) provide the commissioner with satisfactory  
26 evidence of:

27 (A) having passed an examination, offered by a

1 testing service or company approved by the finance commission, that  
2 demonstrates knowledge of:

- 3 (i) the mortgage industry; and  
4 (ii) the role and responsibilities of a  
5 mortgage broker; and

6 (B) compliance with the financial requirements  
7 of this chapter;

8 (6) not have been convicted of a criminal offense that  
9 the commissioner determines directly relates to the occupation of a  
10 mortgage broker as provided by Chapter 53, Occupations Code;

11 (7) satisfy the commissioner as to the individual's  
12 good moral character, including the individual's honesty,  
13 trustworthiness, and integrity; ~~and~~

14 (8) not be in violation of this chapter, a rule adopted  
15 under this chapter, or any order previously issued to the  
16 individual by the commissioner; and

17 (9) provide the commissioner with satisfactory  
18 evidence that:

19 (A) if the person has not been previously  
20 licensed as a mortgage broker or a loan officer under this  
21 subchapter, the person has completed 90 classroom hours of  
22 education courses approved by the commissioner under this section;  
23 or

24 (B) if the person has not been previously  
25 licensed as a mortgage broker under this subchapter but has been  
26 licensed as a loan officer under this subchapter, the person has  
27 successfully completed an additional 30 classroom hours of

1 education courses approved by the commissioner under this section.

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

9 (1) if the entity is a corporation, an officer of the  
10 corporation;

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

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

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

15 (B) an officer of a general partner that is a  
16 corporation; or

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

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

21 partnership, or any other business entity. Before conducting  
22 mortgage broker activities under, through, or for a corporation,

23 partnership, or other business entity, a mortgage broker must  
24 notify the commissioner, in writing, of any corporate name,

25 partnership name, assumed name, or any other name under, through,  
26 or for which the mortgage broker conducts activities for which a

27 license is required under this chapter. The corporation,

1 ~~partnership, or other business entity under, through, or for which~~  
2 ~~the mortgage broker conducts business is not required to be~~  
3 ~~separately licensed as a mortgage broker provided that all~~  
4 ~~individuals who perform mortgage broker activities are licensed as~~  
5 ~~mortgage brokers or loan officers. The commissioner shall require~~  
6 ~~proof of compliance with this subsection at the time the mortgage~~  
7 ~~broker applies for and renews a license.]~~

8 (c) To be eligible to be licensed as a loan officer a person  
9 must:

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

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

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

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

17 (A) the person meets one of the requirements  
18 described by Subsection (a)(4) and has [+

19 [~~(B) the person has~~] successfully completed 60  
20 classroom [~~30~~] hours of education courses approved by the  
21 commissioner under this section;

22 (B) [~~(C)~~] the person has 18 months of experience  
23 as a loan officer as evidenced by documentary proof of full-time  
24 employment as a loan officer with [~~a mortgage broker or~~] a person  
25 exempt under Section 156.202 and has successfully completed 30  
26 classroom hours of education courses approved by the commissioner  
27 under this section; or



1                    (C) [~~(D)~~] for applications received prior to  
2 January 1, 2000, the mortgage broker that will sponsor the  
3 applicant provides a certification under oath that the applicant  
4 has been provided necessary and appropriate education and training  
5 regarding all applicable state and federal law and regulations  
6 relating to mortgage loans;

7                    (5) not have been convicted of a criminal offense that  
8 the commissioner determines directly relates to the occupation of a  
9 loan officer as provided by Chapter 53, Occupations Code;

10                    (6) satisfy the commissioner as to the individual's  
11 good moral character, including the individual's honesty,  
12 trustworthiness, and integrity;

13                    (7) provide the commissioner with satisfactory  
14 evidence of having passed an examination, offered by a testing  
15 service or company approved by the finance commission, that  
16 demonstrates knowledge of:

17                    (A) the mortgage industry; and

18                    (B) the role and responsibilities of a loan  
19 officer; and

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

23                    (e) The education courses required for a mortgage broker or  
24 loan officer license under Subsection (a)(9) or (c)(4) [~~(c)(4)(B)~~]  
25 must cover ethics, the Real Estate Settlement Procedures Act of  
26 1974 (12 U.S.C. Section 2601 et seq.), the Truth in Lending Act (15  
27 U.S.C. Section 1601 et seq.), the Equal Credit Opportunity Act (15

1 U.S.C. Section 1691 et seq.), and the provisions of this chapter.

2 SECTION 7. Section 156.208(i), Finance Code, as added by  
3 Chapter 1018, Acts of the 79th Legislature, Regular Session, 2005,  
4 is relettered as Subsection (j), Section 156.208, Finance Code, and  
5 amended to read as follows:

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

8 (1) the mortgage broker or loan officer is in  
9 violation of this chapter, a rule adopted under this chapter, or any  
10 order previously issued to the individual by the commissioner; ~~or~~

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

14 (3) during the current term of the license, the  
15 commissioner becomes aware of any fact that would have been grounds  
16 for denial of an original license if the fact had been known by the  
17 commissioner on the date the license was granted.

18 SECTION 8. Section 156.211, Finance Code, is amended by  
19 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

20 (b-1) Not later than the 10th day before a mortgage broker  
21 begins doing business under an assumed name, the mortgage broker  
22 shall file with the commissioner a copy of an assumed name  
23 certificate for each assumed name under which the mortgage broker  
24 intends to conduct business and pay a \$25 registration fee for each  
25 assumed name. A loan officer may not conduct business under any  
26 assumed name that is not the registered assumed name of the  
27 sponsoring mortgage broker.

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

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

9       SECTION 9. Subchapter C, Chapter 156, Finance Code, is  
10 amended by adding Section 156.214 to read as follows:

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

13               (1) minimum standards for courses, approved course  
14 providers, and approved course instructors; and

15               (2) a fee not to exceed \$200 for the review and  
16 approval of each course not provided and approved by a duly  
17 organized trade association the purpose of which is primarily to  
18 represent residential mortgage originators.

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

20       SECTION 10. Section 156.303, Finance Code, is amended by  
21 amending Subsection (a) and adding Subsection (j) to read as  
22 follows:

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

26               (1) obtained a license, including a renewal of a  
27 license, under this chapter through a false or fraudulent

1 representation or made a material misrepresentation in an  
2 application for a license or for the renewal of a license under this  
3 chapter;

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

7 (A) is misleading;

8 (B) is likely to deceive the public;

9 (C) in any manner tends to create a misleading  
10 impression;

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

14 (E) violates federal or state law;

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

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

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

24 (6) charged or received, directly or indirectly, a fee  
25 for assisting a mortgage applicant in obtaining a mortgage loan  
26 before all of the services that the person agreed to perform for the  
27 mortgage applicant are completed, and the proceeds of the mortgage

1 loan have been disbursed to or on behalf of the mortgage applicant,  
2 except as provided by Section 156.304;

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

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

10 (9) induced or attempted to induce a party to a  
11 contract to breach the contract so the person may make a mortgage  
12 loan;

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

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

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

23 (13) acted in the dual capacity of a mortgage broker or  
24 loan officer and real estate broker, salesperson, or attorney in a  
25 transaction without the knowledge and written consent of the  
26 mortgage applicant or in violation of applicable requirements under  
27 federal law;

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

4           (15) failed or refused on demand to:

5           (A) produce a document, book, or record  
6 concerning a mortgage loan transaction conducted by the mortgage  
7 broker or loan officer for inspection by the commissioner or the  
8 commissioner's authorized personnel or representative;

9           (B) give the commissioner or the commissioner's  
10 authorized personnel or representative free access to the books or  
11 records relating to the person's business kept by an officer,  
12 agent, or employee of the person or any business entity through  
13 which the person conducts mortgage brokerage activities, including  
14 a subsidiary or holding company affiliate; or

15           (C) provide information requested by the  
16 commissioner as a result of a formal or informal complaint made to  
17 the commissioner;

18           (16) failed without just cause to surrender, on  
19 demand, a copy of a document or other instrument coming into the  
20 person's possession that was provided to the person by another  
21 person making the demand or that the person making the demand is  
22 under law entitled to receive; ~~or~~

23           (17) disregarded or violated this chapter, a rule  
24 adopted by the finance commission under this chapter, or an order  
25 issued by the commissioner under this chapter; or

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

1        (j) On notice and opportunity for hearing, the commissioner  
2 may suspend a person's license under this chapter if an indictment  
3 or information is filed or returned alleging that the person  
4 committed a criminal offense involving fraud, theft, or dishonesty.  
5 The suspension continues until the criminal case is dismissed or  
6 the person is acquitted.

7        SECTION 11. The heading of Section 341.103, Finance Code,  
8 is amended to read as follows:

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

11        SECTION 12. Section 341.103(a), Finance Code, is amended to  
12 read as follows:

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

15                (1) state savings associations operating under this  
16 subtitle;

17                (2) state savings banks operating under this subtitle;  
18 and

19                (3) persons licensed under Chapter 156.

20        SECTION 13. Section 342.051, Finance Code, is amended by  
21 adding Subsection (f) to read as follows:

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

25        SECTION 14. The changes in law made by Section 156.2011,  
26 Finance Code, as added by this Act, and Section 156.204, Finance  
27 Code, as amended by this Act, apply only to a loan officer or

1 mortgage broker license for which any part of an application is  
2 submitted on or after September 1, 2007.

3 SECTION 15. A corporation, limited liability company, or  
4 limited partnership is not required to obtain a mortgage broker  
5 license, as required by Section 156.204(b), Finance Code, as  
6 amended by this Act, to act as a mortgage broker before January 1,  
7 2008.

8 SECTION 16. This Act takes effect September 1, 2007.



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President of the Senate

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Speaker of the House

I certify that H.B. No. 2783 was passed by the House on May 4, 2007, by the following vote: Yeas 138, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2783 on May 25, 2007, by the following vote: Yeas 133, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2783 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor