

By: Solomons

H.B. No. 2783

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mortgage brokers.

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

SECTION 1. 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 [~~+~~]
[~~+~~] sponsored by a licensed mortgage broker and acting for the mortgage broker; or

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

SECTION 2. Section 156.202, Finance Code, is amended to read as follows:

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

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

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

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

(C) an insurance company licensed or authorized

1 to do business in this state under the Insurance Code;

2 (D) a mortgage banker registered under Chapter
3 157;

4 (E) an organization that qualifies for an
5 exemption from state franchise and sales tax as a 501(c)(3)
6 organization;

7 (F) a Farm Credit System institution; or

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

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

13 (3) an owner of real property who in any
14 12-consecutive-month period makes more than four ~~[makes a]~~ mortgage
15 loans ~~[loan]~~ to purchasers ~~[a purchaser]~~ of the property for all or
16 part of the purchase price of the real estate against which the
17 mortgage is secured; or

18 (4) an individual who:

19 (A) makes a mortgage loan from the individual's
20 own funds;

21 (B) is not an authorized lender under Chapter
22 342, Finance Code; and

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

25 SECTION 3. Sections 156.204(a) and (b), Finance Code, are
26 amended to read as follows:

27 (a) To be eligible to be licensed as a mortgage broker as an

1 individual, the individual [~~a person~~] 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) maintain a physical office in this state and
6 designate that office in the application;

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

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

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

17 (i) an active real estate broker under
18 Chapter 1101, Occupations Code;

19 (ii) an active attorney; or

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

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

1 (5) provide the commissioner with satisfactory
2 evidence of:

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

6 (i) the mortgage industry; and

7 (ii) the role and responsibilities of a
8 mortgage broker; and

9 (B) compliance with the financial requirements
10 of this chapter;

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

14 (7) satisfy the commissioner as to the individual's
15 good moral character, including the individual's honesty,
16 trustworthiness, and integrity; and

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

20 (b) A corporation, limited liability company, or limited
21 partnership may not act as a mortgage broker unless the entity
22 obtains a mortgage broker license. To be eligible for a mortgage
23 broker license the entity must designate an individual licensed as
24 a mortgage broker as its designated representative and pay an
25 application fee in an amount to be determined by the commissioner
26 not to exceed \$175. The designated representative must be:

27 (1) if the entity is a corporation, an officer of the

1 corporation;

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

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

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

6 (B) an officer of a general partner that is a
7 corporation; or

8 (C) a manager of a general partner that is a
9 limited liability company. [A mortgage broker may conduct business
10 under a corporate structure, partnership, or any other business
11 form or as an independent contractor for a corporation,
12 partnership, or any other business entity. Before conducting
13 mortgage broker activities under, through, or for a corporation,
14 partnership, or other business entity, a mortgage broker must
15 notify the commissioner, in writing, of any corporate name,
16 partnership name, assumed name, or any other name under, through,
17 or for which the mortgage broker conducts activities for which a
18 license is required under this chapter. The corporation,
19 partnership, or other business entity under, through, or for which
20 the mortgage broker conducts business is not required to be
21 separately licensed as a mortgage broker provided that all
22 individuals who perform mortgage broker activities are licensed as
23 mortgage brokers or loan officers. The commissioner shall require
24 proof of compliance with this subsection at the time the mortgage
25 broker applies for and renews a license.]

26 SECTION 4. Subsection (i), Section 156.208, Finance Code,
27 as added by Chapter 1018, Acts of the 79th Legislature, Regular

1 Session, 2005, is relettered as Subsection (j), Section 156.208,
2 Finance Code, and amended to read as follows:

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

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

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

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

15 SECTION 5. Section 156.211, Finance Code, is amended by
16 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

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

25 (b-2) A person licensed under this chapter must notify the
26 commissioner not later than the 10th day after the date of any
27 change of the person's name and pay to the commissioner a change of

1 name fee of \$25 for the issuance of an amended license certificate.

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

6 SECTION 6. Subchapter C, Chapter 156, Finance Code, is
7 amended by adding Section 156.214 to read as follows:

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

10 (1) minimum standards for courses, approved course
11 providers, and approved course instructors; and

12 (2) a fee for the review and approval of courses not to
13 exceed \$200 for each course.

14 (b) An approval is for a two-year period.

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

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

21 (1) obtained a license, including a renewal of a
22 license, under this chapter through a false or fraudulent
23 representation or made a material misrepresentation in an
24 application for a license or for the renewal of a license under this
25 chapter;

26 (2) published or caused to be published an
27 advertisement related to the business of a mortgage broker or loan

1 officer that:

2 (A) is misleading;

3 (B) is likely to deceive the public;

4 (C) in any manner tends to create a misleading
5 impression;

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

9 (E) violates federal or state law;

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

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

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

19 (6) charged or received, directly or indirectly, a fee
20 for assisting a mortgage applicant in obtaining a mortgage loan
21 before all of the services that the person agreed to perform for the
22 mortgage applicant are completed, and the proceeds of the mortgage
23 loan have been disbursed to or on behalf of the mortgage applicant,
24 except as provided by Section 156.304;

25 (7) failed within a reasonable time to honor a check
26 issued to the commissioner after the commissioner has mailed a
27 request for payment by certified mail to the person's last known

1 business address as reflected by the commissioner's records;

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

5 (9) induced or attempted to induce a party to a
6 contract to breach the contract so the person may make a mortgage
7 loan;

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

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

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

18 (13) acted in the dual capacity of a mortgage broker or
19 loan officer and real estate broker, salesperson, or attorney in a
20 transaction without the knowledge and written consent of the
21 mortgage applicant or in violation of applicable requirements under
22 federal law;

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

26 (15) failed or refused on demand to:

27 (A) produce a document, book, or record

1 concerning a mortgage loan transaction conducted by the mortgage
2 broker or loan officer for inspection by the commissioner or the
3 commissioner's authorized personnel or representative;

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

10 (C) provide information requested by the
11 commissioner as a result of a formal or informal complaint made to
12 the commissioner;

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

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

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

23 (j) On notice and opportunity for hearing, the commissioner
24 may suspend a person's license under this chapter if a charging
25 instrument is filed alleging that the person committed a criminal
26 offense involving fraud, theft, or dishonesty. The suspension
27 continues until the criminal case is dismissed or the person is

1 acquitted.

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