

By: Chavez

H.B. No. 3762

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. Sections 156.002(9) and (10), Finance Code, are amended to read as follows:

(9) "Mortgage broker" has the meaning assigned by 24 C.F.R. Section 3500.2 [~~means a person who receives an application from a prospective borrower for the purposes of making a mortgage loan from that person's own funds or from the funds of another person~~]. The term does not include:

(A) a person who performs only clerical functions such as delivering a loan application to a mortgage broker or mortgage banker or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage broker, or mortgage banker; or

(B) a person who performs functions of a loan processor.

(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, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) A person is subject to this chapter regardless of the

1 method or location of providing the loan with respect to which the  
2 person acts as a mortgage broker. A person who advertises or  
3 provides the services of a mortgage broker by mail, telephone, or  
4 electronic means in connection with a mortgage loan is subject to  
5 this chapter.

6 SECTION 3. Subchapter C, Chapter 156, Finance Code, is  
7 amended by adding Sections 156.214 and 156.215 to read as follows:

8 Sec. 156.214. MORTGAGE BROKER DUTIES.

9 (a) A mortgage broker owes a fiduciary duty to a mortgage  
10 applicant in the origination of a mortgage loan. The exercise of  
11 this duty includes:

12 (1) ensuring that any mortgage loan offered is  
13 affordable and meets the mortgage applicant's purposes, as  
14 determined by considering factors including:

15 (A) the applicant's circumstances;

16 (B) the purposes of the loan, including the  
17 reasons why the applicant sought the loan; and

18 (C) the applicant's ability to repay;

19 (2) making reasonable efforts to secure a loan that is  
20 suitable to the mortgage applicant considering all the  
21 circumstances, including the rates, charges, and repayment terms of  
22 the loan and the loan options for which the applicant qualifies; and

23 (3) being knowledgeable about and offering the  
24 mortgage applicant the most favorable terms available to a person  
25 having the applicant's qualifications.

26 (b) A mortgage applicant's statement of ability to repay a  
27 loan is not conclusive evidence of the applicant's ability to repay

1 the loan. A mortgage broker must evaluate other reliable,  
2 objective evidence of affordability and ability to repay.

3 (c) If a mortgage broker is unable to offer or recommend a  
4 suitable mortgage loan to a mortgage applicant, the mortgage broker  
5 shall:

6 (1) based on the information available and using the  
7 skill, care, and diligence reasonably expected for a mortgage  
8 broker, broker a suitable mortgage loan by another creditor to a  
9 mortgage applicant, if permitted by and in accordance with all  
10 applicable laws; or

11 (2) state to a mortgage applicant:

12 (A) that the broker does not offer a mortgage  
13 loan that would be suitable to the applicant but that other  
14 creditors may offer such a mortgage loan; and

15 (B) the reasons the products are not available to  
16 or suitable for the applicant.

17 (d) The duties of a mortgage broker may not be waived or  
18 disclaimed unless otherwise provided by law.

19 Sec. 156.215. PROHIBITED PRACTICES. (a) A mortgage broker  
20 may not recommend to a mortgage applicant a rate, charge, principal  
21 amount, or prepayment term that is not suitable to the mortgage  
22 applicant considering all of the applicant's circumstances,  
23 including the characteristics of the property that secures or will  
24 secure the mortgage loan and the loan terms for which the mortgage  
25 applicant qualifies.

26 (b) A mortgage broker may not:

27 (1) mischaracterize:

1           (A) a mortgage applicant's credit history; or

2           (B) the mortgage loans available to an applicant;

3           (2) discourage a mortgage applicant from seeking a  
4 mortgage loan from another creditor or with another mortgage  
5 broker, if the mortgage broker is unable to offer or recommend a  
6 suitable mortgage loan to the applicant;

7           (3) misrepresent the material facts or knowingly make  
8 a false promise likely to induce an applicant to obtain a mortgage  
9 loan, or pursue a course of misrepresentation through an agent or  
10 otherwise;

11           (4) misrepresent to or conceal from a mortgage  
12 applicant material factors or terms of a mortgage loan transaction;

13           (5) fail to disburse funds in accordance with an  
14 agreement;

15           (6) engage in a transaction, practice, or course of  
16 business that operates a fraud on a person or violates Subchapter E,  
17 Chapter 17, Business & Commerce Code;

18           (7) fraudulently or deceitfully advertise a mortgage  
19 loan or misrepresent the terms or charges incident to a mortgage  
20 loan in an advertisement;

21           (8) recommend or encourage default on an existing loan  
22 or other debt before and in connection with the closing or planned  
23 closing of a mortgage loan that refinances all or a portion of that  
24 existing loan or debt;

25           (9) knowingly and intentionally engage in the practice  
26 of making a home loan to a mortgage applicant who refinances an  
27 existing loan if the new loan does not have reasonable, tangible,

1 net benefit to the mortgage applicant considering all of the  
2 circumstances, including the terms of the new and refinanced loans,  
3 the cost of the new loan, and the mortgage applicant's  
4 circumstances; and

5 (10) influence or attempt to influence through direct  
6 or indirect means the outcome of a real estate appraisal sought in  
7 connection with a mortgage loan, or otherwise engage in a practice  
8 or course of business that induces or attempts to induce a real  
9 estate appraiser to violate the Uniform Standards of Professional  
10 Appraisal Practice in connection with a mortgage loan.

11 (c) This section does not prohibit a mortgage broker from  
12 providing a mortgage applicant with accurate, unbiased, or general  
13 information about consumer home loans, underwriting standards,  
14 methods of improving credit history, or another matter relevant to  
15 a mortgage applicant.

16 SECTION 4. Section 156.402, Finance Code, is amended by  
17 amending Subsection (a) and adding Subsections (d) and (e) to read  
18 as follows:

19 (a) A mortgage applicant injured by a violation of this  
20 chapter may bring an action for recovery of [~~actual monetary~~]  
21 damages. A mortgage broker found by a preponderance of the evidence  
22 to have violated this chapter is liable to the applicant for:

23 (1) actual damages, including consequential damages;  
24 (2) not less than three times the fees received by the  
25 mortgage broker;

26 (3) punitive damages if the mortgage broker violated  
27 this chapter recklessly or maliciously;

1           (4) ~~[and]~~ reasonable attorney's fees and court costs;  
2 and

3           (5) any relief to which the applicant may be entitled  
4 under other law.

5           (d) A remedy available to a mortgage applicant under this  
6 chapter, common law, or other statutory law is supplemental to the  
7 authority of the commissioner to impose disciplinary action or  
8 otherwise enforce this chapter.

9           (e) Without regard to whether a mortgage applicant acts  
10 individually or on behalf of another similarly situated, a  
11 provision of an agreement with a mortgage broker limiting any claim  
12 or defense an applicant may have or allowing a party to require an  
13 applicant to assert a claim or defense in a forum that is less  
14 convenient, more costly, or more dilatory for the resolution of a  
15 dispute than a judicial forum established in this state, when the  
16 applicant may otherwise properly bring a claim or defense, is  
17 unconscionable and void.

18           SECTION 5. Section 156.406(b), Finance Code, is amended to  
19 read as follows:

20           (b) A person who acts as a mortgage broker without holding a  
21 license or being exempt under this chapter is not entitled to  
22 recover or retain fees or charges connected with the mortgage  
23 broker services performed while the person was not licensed. A  
24 person who received money, or the equivalent of money, as a fee or  
25 profit because of or in consequence of the person acting as a  
26 mortgage broker or loan officer without an active license or being  
27 exempt under this chapter is liable for damages in an amount that is

1 not less than the amount of the fee or profit received and not to  
2 exceed three times the amount of the fee or profit received, as may  
3 be determined by the court. An aggrieved person may recover damages  
4 under this subsection in a court.

5 SECTION 6. Section 156.501(b), Finance Code, is amended to  
6 read as follows:

7 (b) The fund shall be used to reimburse aggrieved persons to  
8 whom a court awards actual damages because of certain acts  
9 committed by a mortgage broker or loan officer who was licensed  
10 under this chapter within one year from when the act was committed.  
11 The use of the fund is limited to an act that constitutes a  
12 violation of Section 156.303(a)(2), (3), (5), (6), (8), (9), (10),  
13 (11), (12), (13), or (16) or 156.304 or other violation of this  
14 chapter. Payments from the fund may not be made to a lender who  
15 makes a mortgage loan originated by the mortgage broker or loan  
16 officer or who acquires a mortgage loan originated by the mortgage  
17 broker or loan officer.

18 SECTION 7. Section 156.505, Finance Code, is amended to  
19 read as follows:

20 Sec. 156.505. RECOVERY LIMITS. (a) A person entitled to  
21 receive payment out of the fund is entitled to receive, as  
22 determined by the court as provided by this section:

23 (1) [~~reimbursement of~~] actual [~~, out of pocket~~]  
24 damages, including consequential damages;

25 (2) not less than three times the fees received by the  
26 mortgage broker;

27 (3) reasonable attorney's fees; [~~7~~] and

1           (4) court costs [~~as determined by the court as~~  
2 ~~provided by this section~~].

3           (b) A payment from the fund may be made only pursuant to a  
4 court order as provided by Section 156.504. A payment for claims:

5           (1) arising out of the same transaction, including  
6 attorney's fees, interest, and court costs, is limited in the  
7 aggregate to \$50,000 [~~\$25,000~~], regardless of the number of  
8 claimants; and

9           (2) based on judgments against a single person  
10 licensed as a mortgage broker or loan officer under this chapter is  
11 limited in the aggregate to \$250,000 [~~\$50,000~~] until the fund has  
12 been reimbursed for all amounts paid.

13           (c) The recovery limits established by this section do not  
14 limit the liability of a mortgage broker.

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