

By: Wentworth

S.B. No. 1308

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the closing of a loan transaction and liability of
3 certain persons involved in the lending and appraisal process.

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

5 SECTION 1. Subchapter B, Chapter 343, Finance Code, is
6 amended by adding Section 343.105 to read as follows:

7 Sec. 343.105. LIABILITY FOR RESIDENTIAL MORTGAGE FRAUD.

8 (a) In this section:

9 (1) "Knowing" means possessing actual knowledge,
10 information, or understanding. The term does not include mere
11 suspicion or misgiving a person may have or information a person
12 should have known or could have known on conducting an inquiry or
13 investigation.

14 (2) "Mortgage lender" means the secured creditor named
15 in a mortgage lending process document and the creditor's
16 successors or assigns.

17 (3) "Mortgage lending process" means the process
18 through which a person seeks or obtains a residential mortgage
19 loan, including:

20 (A) solicitation, application, or origination;

21 (B) negotiation of terms;

22 (C) third-party provider services;

23 (D) underwriting;

24 (E) signing of mortgage lending process

1 documents; and

2 (F) closing and funding of the loan.

3 (4) "Mortgage lending process document" includes:

4 (A) a contract of sale of real property;

5 (B) a uniform residential loan application or
6 other form of loan application;

7 (C) an appraisal report;

8 (D) a HUD-1 settlement statement;

9 (E) supporting personal documentation for a loan
10 application, such as a W-2 form, verification of income and
11 employment, bank statement, tax return, or payroll stub;

12 (F) a certification or affidavit of fact;

13 (G) any required disclosure; and

14 (H) a promissory note, mortgage, deed of trust,
15 other security instrument, release, transfer, assignment of lien,
16 or other legal instrument relating to the mortgage lending process.

17 (5) "Residential mortgage loan" means a loan or
18 agreement to extend credit made to a person and secured by a
19 mortgage or other lien on residential real property, including a
20 refinancing or renewal of a loan secured by residential real
21 property.

22 (6) "Residential real property" means a single-family
23 house, townhouse, duplex, triplex, or quadruplex, or a condominium
24 or cooperative unit in a multifamily structure used or intended to
25 be used as a dwelling or for residential purposes.

26 (b) A person commits residential mortgage fraud if:

27 (1) in connection with a residential mortgage loan or

1 the mortgage lending process, the person:

2 (A) knowingly makes a material misstatement,
3 misrepresentation, or omission of fact with the intent that it be
4 relied on by a mortgage lender, borrower, or other party to the
5 mortgage lending process;

6 (B) knowingly signs, authenticates, uses, or
7 facilitates the use of a mortgage lending process document that the
8 person knows to contain a material misstatement,
9 misrepresentation, or omission of fact, with the intent that it be
10 relied on by a mortgage lender, borrower, or other party to the
11 mortgage lending process; or

12 (C) files or causes to be filed with a county
13 clerk or any other governmental entity a document concerning
14 residential real property knowing that it contains a material
15 misstatement, misrepresentation, or omission of fact;

16 (2) the person receives or derives a direct financial
17 benefit from the closing of a residential mortgage loan knowing of a
18 violation of Subdivision (1) in connection with the loan by any
19 person; or

20 (3) the person conspires with any person to violate
21 Subdivision (1).

22 (c) A person who commits residential mortgage fraud is
23 liable for all losses, including attorney's fees and costs of
24 collection, incurred as a result of the mortgage fraud by any other
25 party to that residential mortgage loan, unless the other party
26 also committed residential mortgage fraud in connection with that
27 residential mortgage loan. If the person who commits residential

1 mortgage fraud is participating in the mortgage lending process as
2 an employee or agent of another person, the employer or principal of
3 the person committing the mortgage fraud also is liable for all
4 losses incurred by any other party to that residential mortgage
5 loan resulting from the mortgage fraud.

6 SECTION 2. Subchapter F, Chapter 2651, Insurance Code, is
7 amended by adding Section 2651.254 to read as follows:

8 Sec. 2651.254. LIABILITY OF TITLE INSURANCE COMPANIES. A
9 title insurance company that issues an insured closing and
10 settlement letter in accordance with Section 2702.001 is liable for
11 losses incurred by any party to a real estate closing transaction
12 resulting from residential mortgage fraud under Section 343.105,
13 Finance Code, committed by the title insurance company's title
14 insurance agent or its employee in the transaction for which the
15 insured closing and settlement letter was issued.

16 SECTION 3. Subchapter A, Chapter 2652, Insurance Code, is
17 amended by adding Section 2652.007 to read as follows:

18 Sec. 2652.007. DUTY AND LIABILITY OF ESCROW OFFICERS. (a)
19 An escrow officer shall close a transaction in accordance with
20 Section 2501.006 and, if a loan is involved, in compliance with all
21 directions and instructions of the lender. An escrow officer may
22 execute written lender loan closing instructions to evidence the
23 officer's receipt of the loan closing instructions and agreement to
24 follow the directions and instructions of the lender.

25 (b) An escrow officer that violates Subsection (a) is liable
26 for all losses incurred by the lender in the transaction as a result
27 of residential mortgage fraud under Section 343.105, Finance Code,

1 committed by any party.

2 SECTION 4. Subchapter D, Chapter 2652, Insurance Code, is
3 amended by adding Section 2652.154 to read as follows:

4 Sec. 2652.154. RELATIONSHIP BETWEEN TITLE INSURANCE AGENT
5 AND ESCROW OFFICER. An escrow officer who is an employee of a title
6 insurance agent or direct operations is an agent for the title
7 insurance agent or direct operations with respect to the closing of
8 a real estate transaction.

9 SECTION 5. Subchapter I, Chapter 1103, Occupations Code, is
10 amended by adding Section 1103.406 to read as follows:

11 Sec. 1103.406. LIABILITY OF APPRAISER. A person who holds a
12 license, certificate, or approval issued under this chapter who
13 does not comply with the requirements of Section 1103.405 or issues
14 an appraisal that is materially inaccurate, whether intentionally
15 or by carelessness or negligence in ascertaining the accuracy of
16 the appraisal, is liable for all losses, including attorney's fees
17 and costs of collection, resulting from the appraiser's action
18 incurred by any person for whose benefit the appraisal was prepared
19 and any person the appraiser could reasonably have foreseen or knew
20 would use and rely on the appraisal.

21 SECTION 6. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2007.