

By: Carona, Davis

S.B. No. 17

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of residential mortgage loan servicers;  
providing an administrative penalty.

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

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by  
adding Chapter 158 to read as follows:

CHAPTER 158. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 158.001. SHORT TITLE. This chapter may be cited as the  
Residential Mortgage Loan Servicer Registration Act.

Sec. 158.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the savings and mortgage  
lending commissioner.

(2) "Finance commission" means the Finance Commission  
of Texas.

(3) "Person" means an individual, corporation,  
company, limited liability company, partnership, or association.

(4) "Registrant" means a person registered under this  
chapter.

(5) "Residential mortgage loan" means a loan primarily  
for personal, family, or household use that is secured by a  
mortgage, deed of trust, or other equivalent consensual security  
interest on a dwelling or on residential real estate.

(6) "Residential mortgage loan servicer" means a

1 person who:

2 (A) receives scheduled payments from a borrower  
3 under the terms of a residential mortgage loan, including amounts  
4 for escrow accounts; and

5 (B) makes the payments of principal and interest  
6 to the owner of the loan or other third party and makes any other  
7 payments with respect to the amounts received from the borrower as  
8 may be required under the terms of the servicing loan document or  
9 servicing contract.

10 (7) "Residential real estate" means real property  
11 located in this state on which a dwelling designed for occupancy for  
12 one to four families is constructed or intended to be constructed.

13 Sec. 158.003. PURPOSE; RULES. (a) The purpose of this  
14 chapter is to provide regulatory authority to ensure that  
15 residential mortgage loan servicers registered under this chapter  
16 comply with federal and state laws, rules, and regulations.

17 (b) The finance commission may adopt and enforce rules  
18 necessary for the purposes of or to ensure compliance with this  
19 chapter.

20 (c) The finance commission shall consult with the  
21 commissioner when proposing and adopting rules under this chapter.

22 [Sections 158.004-158.050 reserved for expansion]

23 SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN SERVICERS

24 Sec. 158.051. REGISTRATION REQUIRED. A person may not act  
25 as a residential mortgage loan servicer, directly or indirectly,  
26 for a residential mortgage loan secured by a lien on residential  
27 real estate in this state unless the person is registered under this

1 chapter or is exempt under Section 158.052.

2 Sec. 158.052. EXEMPTIONS; APPLICABILITY. (a) This chapter  
3 does not require registration by:

4 (1) a federal or state depository institution, or a  
5 subsidiary or affiliate of a federal or state depository  
6 institution;

7 (2) a person registered under Chapter 157;

8 (3) a person licensed under Chapter 342 or regulated  
9 under Chapter 343, if the person does not act as a residential  
10 mortgage loan servicer servicing first-lien secured loans; or

11 (4) a person making a residential mortgage loan with  
12 the person's own funds, or to secure all or a portion of the  
13 purchase price of real property sold by that person.

14 (b) This chapter applies only to a residential mortgage loan  
15 servicer that services at least one residential mortgage loan.

16 (c) Nothing in this chapter permits a person who is not  
17 otherwise exempt from this chapter to act as a residential mortgage  
18 loan originator, as defined by Section 180.002, without obtaining a  
19 license under the applicable provisions of law.

20 Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) To  
21 register under this chapter, a residential mortgage loan servicer  
22 shall file with the commissioner an application for registration  
23 that must:

24 (1) be in writing;

25 (2) be under oath;

26 (3) be in the form prescribed by the commissioner; and

27 (4) contain:

1           (A) the name and the address of the principal  
2 place of business of the applicant; and

3           (B) the name, title, and address of the person  
4 authorized by the applicant to respond to complaints.

5           (b) At the time of making application, the applicant shall  
6 pay to the commissioner a registration fee in an amount not to  
7 exceed \$500 as determined by the finance commission.

8           Sec. 158.054. UPDATE OF REGISTRATION. A registrant shall  
9 notify the commissioner of a change in any of the information  
10 provided in the registration application not later than the 30th  
11 day after the date the information changes.

12           Sec. 158.055. BOND. (a) Before approval of the  
13 registration, an applicant for registration under this chapter  
14 shall file with the commissioner, and shall keep in force while the  
15 registration remains in effect, a surety bond meeting the  
16 requirements of this section or, if a surety bond is not available  
17 to the applicant from a surety company authorized to do business in  
18 this state, other collateral of like kind as determined by the  
19 commissioner.

20           (b) The bond must be:

21                   (1) in an amount not to exceed \$200,000, except as  
22 provided by Subsection (c); and

23                   (2) payable to the commissioner.

24           (c) This subsection applies only to an applicant who  
25 services only residential mortgage loans secured by unimproved  
26 residential real estate or services only residential mortgage loans  
27 secured by foreclosed property with a dwelling, or both. If sales

1 of the property described by this subsection do not exceed \$1  
2 million annually, the bond for an applicant described by this  
3 section must be in an amount not to exceed \$25,000.

4 (d) If a registrant fails to comply with a final order of the  
5 commissioner, the commissioner may make a claim on the bond to  
6 recover and pay a consumer the amount to which the consumer was  
7 entitled under the commissioner's order.

8 (e) When an action is commenced on a registrant's bond, the  
9 commissioner may require the filing of a new acceptable bond.  
10 Immediately on recovery on any action on the bond, the registrant  
11 shall file a new bond.

12 (f) The bond procedures established by this section are  
13 created to specifically exclude the participation of registrants in  
14 the recovery fund established under Chapter 156.

15 (g) The finance commission may adopt rules establishing the  
16 terms and conditions of the surety bond and the qualifications of  
17 the surety.

18 Sec. 158.056. APPROVAL OF REGISTRATION. The commissioner  
19 shall approve an application for registration under this chapter on  
20 the applicant's payment of the required fees and the commissioner's  
21 approval of the surety bond.

22 Sec. 158.057. NOTICE OF CHANGE OF REGISTRANT'S CONDITION.

23 (a) A registrant shall notify the commissioner in writing not  
24 later than the 10th day after:

25 (1) the filing for bankruptcy or reorganization of the  
26 registrant;

27 (2) the filing of a criminal indictment related in any

1 manner to the registrant's activities; or

2 (3) the receipt of notification of the issuance of a  
3 final order to cease and desist, a final order of the suspension or  
4 revocation of a license or registration, or another final formal or  
5 informal regulatory action taken against the registrant in this or  
6 another state.

7 (b) The notification required by Subsection (a)(3) must  
8 include the reasons for a final regulatory action described by that  
9 subdivision.

10 Sec. 158.058. RENEWAL OF REGISTRATION. (a) On or before  
11 December 31 of each year, a registrant shall renew its registration  
12 for the next calendar year and shall pay to the commissioner a  
13 renewal fee in an amount not to exceed \$500 as determined by the  
14 finance commission. To renew a registration, a registrant must  
15 continue to meet all standards for registration provided by this  
16 chapter.

17 (b) If a registrant fails to file a renewal and pay the  
18 renewal fee on or before December 31 of a calendar year, the  
19 registrant's registration is considered expired at that time and  
20 the registrant:

21 (1) must reapply for registration as provided by  
22 Section 158.053; and

23 (2) may not conduct business as a residential mortgage  
24 loan servicer until the registration is approved.

25 (c) The commissioner may refuse to renew a registration if  
26 the registrant:

27 (1) has failed to pay any fees or penalties imposed

under this chapter;

(2) has failed to provide the surety bond required under this chapter; or

(3) is not in compliance with any final order of the commissioner.

Sec. 158.059. REVOCATION OF REGISTRATION. The commissioner may, after notice and hearing, revoke a registration under this chapter if:

(1) the registrant fails or refuses to comply with the commissioner's written request for a response to a complaint;

(2) the commissioner determines that the registrant has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes fraudulent, deceptive, or dishonest dealings; or

(3) the registrant is not in compliance with any final order of the commissioner.

Sec. 158.060. APPEAL OF CERTAIN COMMISSIONER ACTIONS. The denial, nonrenewal, or revocation by the commissioner of a registration under this chapter and the appeal of that action are governed by Chapter 2001, Government Code.

[Sections 158.061-158.100 reserved for expansion]

SUBCHAPTER C. INVESTIGATIONS, COMPLAINTS, AND ACTIONS AGAINST  
REGISTRANT

Sec. 158.101. DISCLOSURE STATEMENT. A registrant shall provide to the borrower of each residential mortgage loan the following notice not later than the 30th day after the registrant commences servicing the loan:

1 "COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD  
2 BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,  
3 \_\_\_\_\_ (street address of the Department  
4 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS  
5 AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of  
6 Savings and Mortgage Lending's toll-free consumer hotline)."

7 Sec. 158.102. INVESTIGATION OF COMPLAINTS AGAINST  
8 REGISTRANT; SURCHARGE. (a) On receipt of a signed written  
9 complaint concerning a registrant by the Department of Savings and  
10 Mortgage Lending, the commissioner or the commissioner's designee:

11 (1) shall notify the representative designated by the  
12 registrant in the registration application in writing of the  
13 complaint and provide a copy of the complaint to the  
14 representative;

15 (2) may conduct an investigation with authority to  
16 access, receive, and use in the investigation any books, accounts,  
17 records, files, documents, information, or other evidence; and

18 (3) may request that the registrant provide  
19 documentary and other evidence considered by the commissioner  
20 necessary to effectively evaluate the complaint, including  
21 correspondence, loan documents, and disclosures.

22 (b) A registrant shall promptly provide any evidence  
23 requested by the commissioner.

24 (c) Information obtained by the commissioner during an  
25 investigation is confidential unless disclosure of the information  
26 is permitted or required by other law or court order. The  
27 commissioner may share information gathered during an



1 investigation with any state or federal agency.

2 (d) In addition to the registration fee, the finance  
3 commission by rule may impose a complaint investigation fee on a  
4 registrant based on the costs incurred by the Department of Savings  
5 and Mortgage Lending resulting from the investigation of complaints  
6 against the registrant.

7 Sec. 158.103. ACTION ON COMPLAINT. (a) If, after  
8 conducting an investigation, the commissioner determines that the  
9 registrant has violated this chapter or another applicable law, the  
10 commissioner may do one or more of the following:

11 (1) issue an order to the registrant to resolve the  
12 complaint by paying to the consumer the damages to which the  
13 consumer would be entitled under law; or

14 (2) order the registrant to cease and desist from the  
15 actions found to be in violation of law.

16 (b) A registrant may appeal an order issued under this  
17 section. The appeal is a contested case governed by Chapter 2001,  
18 Government Code.

19 Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. To ensure  
20 that residential mortgage loan servicers to whom this chapter  
21 applies operate in this state in compliance with this chapter and  
22 with other law in accordance with this chapter, the commissioner or  
23 the commissioner's designee may participate in multi-state  
24 mortgage examinations as scheduled by the Conference of State Bank  
25 Supervisors Multi-State Mortgage Committee in accordance with the  
26 Conference of State Bank Supervisors protocol for such  
27 examinations.

1       Sec. 158.105. CEASE AND DESIST ORDER. (a) If the  
2 commissioner has reasonable cause to believe that a person who is  
3 not registered or exempt under this chapter has engaged, or is about  
4 to engage, in an act or practice for which registration is required  
5 under this chapter, the commissioner may issue without notice and  
6 hearing an order to cease and desist from continuing a particular  
7 action or an order to take affirmative action, or both, to enforce  
8 compliance with this chapter.

9       (b) An order issued under Subsection (a) must contain a  
10 reasonably detailed statement of the facts on which the order is  
11 issued.

12       (c) If, not later than the 30th day after the date an order  
13 is issued under this section, the person against whom the order is  
14 made requests a hearing, the commissioner shall set and give notice  
15 of a hearing before the commissioner or a hearings officer. The  
16 hearing shall be governed by Chapter 2001, Government Code.

17       (d) If a hearing is not requested under Subsection (c) not  
18 later than the 30th day after the date the order is issued, the  
19 order is considered final and not appealable.

20       (e) The commissioner, after giving notice, may impose  
21 against a person who violates a cease and desist order an  
22 administrative penalty in an amount not to exceed \$2,500 for each  
23 day of the violation. In addition to any other remedy provided by  
24 law, the commissioner may institute in district court a suit for  
25 injunctive relief and to collect the administrative penalty. A  
26 bond is not required of the commissioner with respect to injunctive  
27 relief granted under this subsection.

1       Sec. 158.106. RESTITUTION. The commissioner may order a  
2 residential mortgage loan servicer to pay to a complainant any  
3 compensation received by the servicer in a violation cited by the  
4 commissioner in a final order.

5       SECTION 2. Subdivision (4), Section 157.002, Finance Code,  
6 is amended to read as follows:

7           (4) "Mortgage banker" means a person who:

8                   (A) accepts an application for a residential  
9 mortgage loan, ~~or~~ makes a residential mortgage loan, or services  
10 residential mortgage loans; and

11                   (B) is an approved or authorized:

12                           (i) mortgagee with direct endorsement  
13 underwriting authority granted by the United States Department of  
14 Housing and Urban Development;

15                           (ii) seller or servicer of the Federal  
16 National Mortgage Association or the Federal Home Loan Mortgage  
17 Corporation; or

18                           (iii) issuer for the Government National  
19 Mortgage Association.

20       SECTION 3. Section 157.003, Finance Code, is amended by  
21 adding Subsection (f) to read as follows:

22       (f) A mortgage banker that services residential mortgage  
23 loans must indicate in its registration that it acts as a  
24 residential mortgage loan servicer.

25       SECTION 4. Section 157.007, Finance Code, is amended to  
26 read as follows:

27       Sec. 157.007. DISCLOSURE STATEMENT. (a) A mortgage banker

shall include the following notice to a residential mortgage loan applicant with an application for a residential mortgage loan:

"COMPLAINTS REGARDING MORTGAGE BANKERS SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

(b) A mortgage banker that indicates in its registration that it acts as a residential mortgage loan servicer shall provide to the borrower of each residential mortgage loan it services the following notice not later than the 30th day after the date the mortgage banker commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

SECTION 5. Chapter 157, Finance Code, is amended by adding Section 157.0211 to read as follows:

Sec. 157.0211. MULTI-STATE EXAMINATION AUTHORITY OF RESIDENTIAL MORTGAGE LOAN SERVICER. To ensure that mortgage bankers that act as residential mortgage loan servicers operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage

1 examinations as scheduled by the Conference of State Bank  
2 Supervisors Multi-State Mortgage Committee in accordance with the  
3 Conference of State Bank Supervisors protocol for such  
4 examinations.

5       SECTION 6. This Act takes effect September 1, 2011.