

By: Carona

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:  
(A) registered under this chapter; or  
(B) licensed under Chapter 156 or registered or  
licensed under Chapter 157 and, through the license or registration  
process, authorized to act as a residential mortgage loan servicer.

(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 person who:

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

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

(7) "Residential real estate" means real property located in this state on which a dwelling is constructed or intended to be constructed.

Sec. 158.003. RULES. (a) The finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter.

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

[Sections 158.004-158.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN SERVICERS

Sec. 158.051. REGISTRATION REQUIRED. A person may not act as a residential mortgage loan servicer, directly or indirectly, for a residential mortgage loan secured by a lien on residential real estate unless the person is:

(1) registered under this chapter;

1           (2) licensed under Chapter 156 or registered or  
2 licensed under Chapter 157 and, through the license or registration  
3 approval process, is authorized to act as a residential mortgage  
4 loan servicer; or

5           (3) exempt under Section 158.052.

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

8           (1) a federal or state depository institution, or a  
9 subsidiary of a federal or state depository institution;

10          (2) a person licensed under Chapter 156 or 157 and  
11 assigned a unique identifier, as defined by Section 180.002, if the  
12 person does not act as a residential mortgage loan servicer  
13 servicing loans for third parties;

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

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

20          (b) This chapter does not apply to the servicing of  
21 commercial loans.

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

26          Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) To  
27 register under this chapter, a residential mortgage loan servicer

1 shall file with the commissioner an application for registration  
2 that must:

3 (1) be in writing;

4 (2) be under oath;

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

6 (4) contain:

7 (A) the name and the address of the principal  
8 place of business of the applicant; and

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

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

14 Sec. 158.054. UPDATE OF REGISTRATION. A registrant  
15 registered under this chapter shall notify the commissioner of a  
16 change in any of the information provided in the registration  
17 application not later than the 30th day after the date the  
18 information changes.

19 Sec. 158.055. BOND. (a) Before approval of the  
20 registration, an applicant for registration under this chapter  
21 shall file with the commissioner, and shall keep in force while the  
22 registration remains in effect, a surety bond meeting the  
23 requirements of this section.

24 (b) The bond must be:

25 (1) in the amount of \$200,000; and

26 (2) payable to the commissioner.

27 (c) If a registrant fails to comply with a final order of the

1 commissioner, the commissioner may make a claim on the bond to  
2 recover and pay a consumer the amount to which the consumer was  
3 entitled under the commissioner's order.

4 (d) When an action is commenced on a registrant's bond, the  
5 commissioner may require the filing of a new acceptable bond.  
6 Immediately on recovery on any action on the bond, the registrant  
7 shall file a new bond.

8 (e) The bond procedures established by this section are  
9 created to specifically exclude the participation of registrants  
10 registered under this chapter in the recovery fund established  
11 under Chapter 156.

12 (f) The finance commission may adopt rules establishing the  
13 terms and conditions of the surety bond and the qualifications of  
14 the surety.

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

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

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

22 (1) the filing for bankruptcy or reorganization of the  
23 registrant;

24 (2) the filing of a criminal indictment related in any  
25 manner to the registrant's activities; or

26 (3) the receipt of notification of the issuance of a  
27 final order to cease and desist, a final order of the suspension or

1 revocation of a license or registration, or another final formal or  
2 informal regulatory action taken against the registrant in this or  
3 another state.

4 (b) The notification required by Subsection (a)(3) must  
5 include the reasons for a final regulatory action described by that  
6 subdivision.

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

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

18 (1) must reapply for registration as provided by  
19 Section 158.053; and

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

22 (c) The commissioner may refuse to renew a registration if  
23 the registrant:

24 (1) has failed to pay any fees or penalties imposed  
25 under this chapter;

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



1 necessary to ensure compliance with this section.

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

6 (1) shall notify the representative designated by the  
7 registrant in the registration application in writing of the  
8 complaint and provide a copy of the complaint to the  
9 representative;

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

13 (3) may request that the registrant provide  
14 documentary and other evidence considered by the commissioner  
15 necessary to effectively evaluate the complaint, including  
16 correspondence, loan documents, and disclosures.

17 (b) A registrant shall promptly provide any evidence  
18 requested by the commissioner.

19 (c) Information obtained by the commissioner during an  
20 investigation is confidential unless disclosure of the information  
21 is permitted or required by other law or court order. The  
22 commissioner may share information gathered during an  
23 investigation with any state or federal agency.

24 (d) In addition to the registration fee, the finance  
25 commission by rule may impose on each registrant a surcharge based  
26 on complaint activity to cover the costs incurred by the Department  
27 of Savings and Mortgage Lending resulting from complaints against



1 residential mortgage loan servicers.

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

6 (1) issue an order to the registrant to resolve the  
7 complaint by paying to the consumer the damages to which the  
8 consumer would be entitled under law; or

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

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

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

23 Sec. 158.105. CEASE AND DESIST ORDER. (a) If the  
24 commissioner has reasonable cause to believe that a person who is  
25 not registered or exempt under this chapter has engaged, or is about  
26 to engage, in an act or practice for which registration is required  
27 under this chapter, the commissioner may issue without notice and

1 hearing an order to cease and desist from continuing a particular  
2 action or an order to take affirmative action, or both, to enforce  
3 compliance with this chapter.

4 (b) An order issued under Subsection (a) must contain a  
5 reasonably detailed statement of the facts on which the order is  
6 issued.

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

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

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

23 Sec. 158.106. RESTITUTION. The commissioner may order a  
24 residential mortgage loan servicer to pay to a complainant any  
25 compensation received by the servicer in a violation cited in a  
26 final order of the commissioner.

27 SECTION 2. This Act takes effect September 1, 2011.