

1-1 By: Carona S.B. No. 17
1-2 (In the Senate - Filed March 8, 2011; March 8, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 March 24, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 1; March 24, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 17 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of residential mortgage loan servicers;
1-11 providing an administrative penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle E, Title 3, Finance Code, is amended by
1-14 adding Chapter 158 to read as follows:

1-15 CHAPTER 158. RESIDENTIAL MORTGAGE LOAN SERVICERS

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 158.001. SHORT TITLE. This chapter may be cited as the
1-18 Residential Mortgage Loan Servicer Registration Act.

1-19 Sec. 158.002. DEFINITIONS. In this chapter:

1-20 (1) "Commissioner" means the savings and mortgage
1-21 lending commissioner.

1-22 (2) "Finance commission" means the Finance Commission
1-23 of Texas.

1-24 (3) "Person" means an individual, corporation,
1-25 company, limited liability company, partnership, or association.

1-26 (4) "Registrant" means a person registered under this
1-27 chapter.

1-28 (5) "Residential mortgage loan" means a loan primarily
1-29 for personal, family, or household use that is secured by a
1-30 mortgage, deed of trust, or other equivalent consensual security
1-31 interest on a dwelling or on residential real estate.

1-32 (6) "Residential mortgage loan servicer" means a
1-33 person who:

1-34 (A) receives scheduled payments from a borrower
1-35 under the terms of a residential mortgage loan, including amounts
1-36 for escrow accounts; and

1-37 (B) makes the payments of principal and interest
1-38 to the owner of the loan or other third party and makes any other
1-39 payments with respect to the amounts received from the borrower as
1-40 may be required under the terms of the servicing loan document or
1-41 servicing contract.

1-42 (7) "Residential real estate" means real property
1-43 located in this state on which a dwelling designed for occupancy for
1-44 one to four families is constructed or intended to be constructed.

1-45 Sec. 158.003. PURPOSE; RULES. (a) The purpose of this
1-46 chapter is to provide regulatory authority to ensure that
1-47 residential mortgage loan servicers registered under this chapter
1-48 comply with federal and state laws, rules, and regulations.

1-49 (b) The finance commission may adopt and enforce rules
1-50 necessary for the purposes of or to ensure compliance with this
1-51 chapter.

1-52 (c) The finance commission shall consult with the
1-53 commissioner when proposing and adopting rules under this chapter.

1-54 [Sections 158.004-158.050 reserved for expansion]

1-55 SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN SERVICERS

1-56 Sec. 158.051. REGISTRATION REQUIRED. A person may not act
1-57 as a residential mortgage loan servicer, directly or indirectly,
1-58 for a residential mortgage loan secured by a lien on residential
1-59 real estate in this state unless the person is registered under this
1-60 chapter or is exempt under Section 158.052.

1-61 Sec. 158.052. EXEMPTIONS; APPLICABILITY. (a) This
1-62 chapter does not require registration by:

1-63 (1) a federal or state depository institution, or a

2-1 subsidiary or affiliate of a federal or state depository
2-2 institution;

2-3 (2) a person registered under Chapter 157;

2-4 (3) a person licensed under Chapter 342 or regulated
2-5 under Chapter 343, if the person does not act as a residential
2-6 mortgage loan servicer servicing first-lien secured loans; or

2-7 (4) a person making a residential mortgage loan with
2-8 the person's own funds, or to secure all or a portion of the
2-9 purchase price of real property sold by that person.

2-10 (b) This chapter applies only to a residential mortgage loan
2-11 servicer that services at least one residential mortgage loan.

2-12 (c) Nothing in this chapter permits a person who is not
2-13 otherwise exempt from this chapter to act as a residential mortgage
2-14 loan originator, as defined by Section 180.002, without obtaining a
2-15 license under the applicable provisions of law.

2-16 Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) To
2-17 register under this chapter, a residential mortgage loan servicer
2-18 shall file with the commissioner an application for registration
2-19 that must:

2-20 (1) be in writing;

2-21 (2) be under oath;

2-22 (3) be in the form prescribed by the commissioner; and

2-23 (4) contain:

2-24 (A) the name and the address of the principal
2-25 place of business of the applicant; and

2-26 (B) the name, title, and address of the person
2-27 authorized by the applicant to respond to complaints.

2-28 (b) At the time of making application, the applicant shall
2-29 pay to the commissioner a registration fee in an amount not to
2-30 exceed \$500 as determined by the finance commission.

2-31 Sec. 158.054. UPDATE OF REGISTRATION. A registrant shall
2-32 notify the commissioner of a change in any of the information
2-33 provided in the registration application not later than the 30th
2-34 day after the date the information changes.

2-35 Sec. 158.055. BOND. (a) Before approval of the
2-36 registration, an applicant for registration under this chapter
2-37 shall file with the commissioner, and shall keep in force while the
2-38 registration remains in effect, a surety bond meeting the
2-39 requirements of this section or, if a surety bond is not available
2-40 to the applicant from a surety company authorized to do business in
2-41 this state, other collateral of like kind as determined by the
2-42 commissioner.

2-43 (b) The bond must be:

2-44 (1) in an amount not to exceed \$200,000, except as
2-45 provided by Subsection (c); and

2-46 (2) payable to the commissioner.

2-47 (c) This subsection applies only to an applicant who
2-48 services only residential mortgage loans secured by unimproved
2-49 residential real estate or services only residential mortgage loans
2-50 secured by foreclosed property with a dwelling, or both. If sales
2-51 of the property described by this subsection do not exceed \$1
2-52 million annually, the bond for an applicant described by this
2-53 section must be in an amount not to exceed \$25,000.

2-54 (d) If a registrant fails to comply with a final order of the
2-55 commissioner, the commissioner may make a claim on the bond to
2-56 recover and pay a consumer the amount to which the consumer was
2-57 entitled under the commissioner's order.

2-58 (e) When an action is commenced on a registrant's bond, the
2-59 commissioner may require the filing of a new acceptable bond.
2-60 Immediately on recovery on any action on the bond, the registrant
2-61 shall file a new bond.

2-62 (f) The bond procedures established by this section are
2-63 created to specifically exclude the participation of registrants in
2-64 the recovery fund established under Chapter 156.

2-65 (g) The finance commission may adopt rules establishing the
2-66 terms and conditions of the surety bond and the qualifications of
2-67 the surety.

2-68 Sec. 158.056. APPROVAL OF REGISTRATION. The commissioner
2-69 shall approve an application for registration under this chapter on

the applicant's payment of the required fees and the commissioner's approval of the surety bond.

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

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

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

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

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

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

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

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

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

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

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

(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:

"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)."

Sec. 158.102. INVESTIGATION OF COMPLAINTS AGAINST

REGISTRANT; SURCHARGE. (a) On receipt of a signed written complaint concerning a registrant by the Department of Savings and Mortgage Lending, the commissioner or the commissioner's designee:

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

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

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

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

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

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

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

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

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

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

Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. To ensure that residential mortgage loan servicers to whom this chapter applies 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 examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

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

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

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

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

(e) The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$2,500 for each

day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

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

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

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

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

(B) is an approved or authorized:

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

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

(iii) issuer for the Government National Mortgage Association.

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

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

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

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

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

* * * * *