

By: Zaffirini, Hinojosa
West

S.B. No. 43

A BILL TO BE ENTITLED

AN ACT

relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan; providing licensing and registration requirements; authorizing an administrative penalty.

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

SECTION 1. Section 156.202, Finance Code, is amended by amending Subsection (a-1) and adding Subsection (b) to read as follows:

(a-1) The following entities are exempt from this chapter:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) a mortgage banker registered under Chapter 157;

(3) subject to Subsection (b), any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of

1 the property for all or part of the purchase price of the
2 residential real estate against which the mortgage is secured; and

3 (4) an entity that is:

4 (A) a depository institution;

5 (B) a subsidiary of a depository institution that
6 is:

7 (i) owned and controlled by the depository
8 institution; and

9 (ii) regulated by a federal banking agency;

10 or

11 (C) an institution regulated by the Farm Credit
12 Administration.

13 (b) In determining eligibility for an exemption under
14 Subsection (a-1)(3), two or more owners of residential real estate
15 are considered a single owner for the purpose of computing the
16 number of mortgage loans made within the period specified by that
17 subdivision if any of the owners are affiliates, as defined by
18 Section 1.002, Business Organizations Code, or if any of the owners
19 have substantially common ownership, as determined by the
20 commissioner.

21 SECTION 2. Section 157.0121, Finance Code, is amended by
22 amending Subsection (c) and adding Subsection (f) to read as
23 follows:

24 (c) Employees of the following entities, when acting for the
25 benefit of those entities, are exempt from the licensing and other
26 requirements of this chapter applicable to residential mortgage
27 loan originators:

1 (1) a nonprofit organization:

2 (A) providing self-help housing that originates
3 zero interest residential mortgage loans for borrowers who have
4 provided part of the labor to construct the dwelling securing the
5 loan; or

6 (B) that has designation as a Section 501(c)(3)
7 organization by the Internal Revenue Service and originates
8 residential mortgage loans for borrowers who, through a self-help
9 program, have provided at least 200 labor hours or 65 percent of the
10 labor to construct the dwelling securing the loan;

11 (2) subject to Subsection (f), any owner of
12 residential real estate who in any 12-consecutive-month period
13 makes no more than five residential mortgage loans to purchasers of
14 the property for all or part of the purchase price of the
15 residential real estate against which the mortgage is secured; and

16 (3) an entity that is:

17 (A) a depository institution;

18 (B) a subsidiary of a depository institution that
19 is:

20 (i) owned and controlled by the depository
21 institution; and

22 (ii) regulated by a federal banking agency;

23 or

24 (C) an institution regulated by the Farm Credit
25 Administration.

26 (f) In determining eligibility for an exemption under
27 Subsection (c)(2), two or more owners of residential real estate

1 are considered a single owner for the purpose of computing the
2 number of mortgage loans made within the period specified by that
3 subdivision if any of the owners are affiliates, as defined by
4 Section 1.002, Business Organizations Code, or if any of the owners
5 have substantially common ownership, as determined by the
6 commissioner.

7 SECTION 3. Subtitle E, Title 3, Finance Code, is amended by
8 adding Chapter 159 to read as follows:

9 CHAPTER 159. WRAP MORTGAGE LOAN FINANCING

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 159.001. DEFINITIONS. In this chapter:

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

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

16 (3) "Residential mortgage loan" has the meaning
17 assigned by Section 180.002.

18 (4) "Residential real estate" has the meaning assigned
19 by Section 180.002.

20 (5) "Wrap borrower" means a person obligated to pay a
21 wrap mortgage loan.

22 (6) "Wrap lender" means:

23 (A) a person who makes a wrap mortgage loan; or

24 (B) an owner of residential real estate who
25 contracts with another person to make a wrap mortgage loan to a wrap
26 borrower on the owner's behalf to finance the purchase of the
27 owner's residential real estate.

1 (7) "Wrap mortgage loan" means a residential mortgage
2 loan:

3 (A) made to finance the purchase of residential
4 real estate that will continue to be subject to an unreleased lien
5 that:

6 (i) attached to the residential real estate
7 before the loan was made; and

8 (ii) secures a debt incurred by a person
9 other than the wrap borrower that was not paid off at the time the
10 loan was made; and

11 (B) obligating the wrap borrower to the wrap
12 lender for payment of a debt the principal amount of which includes:

13 (i) the outstanding balance of the debt
14 described by Paragraph (A)(ii); and

15 (ii) any remaining amount of the purchase
16 price financed by the wrap lender.

17 Sec. 159.002. INAPPLICABILITY OF CHAPTER. (a) In this
18 section, "unimproved residential real estate" means residential
19 real estate on which a dwelling has not been constructed.

20 (b) Notwithstanding any other provision of this chapter,
21 this chapter does not apply to a wrap mortgage loan:

22 (1) made by or on behalf of an owner of unimproved
23 residential real estate to a purchaser of that residential real
24 estate if:

25 (A) the residential real estate purchased will
26 not continue to be subject to any unreleased lien described by
27 Section 159.001(7)(A) that secures a debt that is subject to a

1 due-on-sale clause in connection with which the lienholder may
2 foreclose the lien; or

3 (B) the residential real estate purchased will
4 continue to be subject to an unreleased lien described by Paragraph
5 (A) and the holder of that unreleased lien has consented to the sale
6 of the residential real estate; or

7 (2) for a sale of residential real estate that is the
8 wrap lender's homestead.

9 Sec. 159.003. EXEMPTIONS. (a) The following persons are
10 exempt from this chapter:

11 (1) a federally insured bank, savings bank, savings
12 and loan association, Farm Credit System Institution, or credit
13 union;

14 (2) a subsidiary of a federally insured bank, savings
15 bank, savings and loan association, Farm Credit System Institution,
16 or credit union;

17 (3) the state or a governmental agency, political
18 subdivision, or other instrumentality of the state, or an employee
19 of the state or a governmental agency, political subdivision, or
20 instrumentality of the state who is acting within the scope of the
21 person's employment; or

22 (4) subject to Subsection (b), an owner of residential
23 real estate if the owner does not in any 12-consecutive-month
24 period make, or contract with another person to make, more than five
25 wrap mortgage loans to purchasers of the property for all or part of
26 the purchase price of the residential real estate against which the
27 mortgage is secured.

1 (b) In determining eligibility for an exemption under
2 Subsection (a)(4), two or more owners of residential real estate
3 are considered a single owner for the purpose of computing the
4 number of wrap mortgage loans made within the period specified by
5 that subdivision if any of the owners are affiliates, as defined by
6 Section 1.002, Business Organizations Code, or if any of the owners
7 have substantially common ownership, as determined by the
8 commissioner.

9 SUBCHAPTER B. LICENSING OR REGISTRATION

10 Sec. 159.051. LICENSE OR REGISTRATION REQUIRED. A person
11 may not originate or make a wrap mortgage loan unless the person is
12 licensed or registered to originate or make residential mortgage
13 loans under Chapter 156, 157, or 342 or is exempt from licensing or
14 registration as provided under an applicable provision of those
15 chapters.

16 SUBCHAPTER C. TRANSACTION REQUIREMENTS; REMEDIES

17 Sec. 159.101. DISCLOSURE STATEMENT; OPTION TO RESCIND. (a)
18 A wrap lender must, on or before the seventh day before the wrap
19 mortgage loan agreement is entered into, provide to the wrap
20 borrower a separate written disclosure statement in at least
21 12-point type that:

22 (1) contains the information required for a written
23 disclosure statement under Section 5.016, Property Code; and

24 (2) includes a statement in a form substantially
25 similar to the following:

26 NOTICE REGARDING PROPERTY INSURANCE: ANY INSURANCE MAINTAINED BY A
27 SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THIS

1 PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS
2 A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO
3 ENSURE THE BUYER'S INTERESTS ARE PROTECTED, THE BUYER SHOULD
4 PURCHASE THE BUYER'S OWN PROPERTY INSURANCE. BEFORE PURCHASING
5 THIS PROPERTY, YOU MAY WISH TO CONSULT AN INSURANCE AGENT REGARDING
6 THE INSURANCE COVERAGE AVAILABLE TO YOU AS A BUYER OF THE PROPERTY.

7 (b) The disclosure statement required under Subsection (a)
8 must be dated and signed by the wrap borrower when the wrap borrower
9 receives the statement.

10 (c) The finance commission by rule shall adopt a model
11 disclosure statement that satisfies the requirements of Subsection
12 (a).

13 (d) If the disclosure statement required under Subsection
14 (a) and any disclosure required by Section 159.102 are received by
15 the wrap borrower on or before the closing date of the wrap mortgage
16 loan, the wrap borrower may rescind the wrap mortgage loan
17 agreement and any related purchase agreement or other agreement
18 relating to the loan transaction not later than the seventh day
19 after the date of receipt of the disclosure statement, regardless
20 of whether the disclosure is timely made. On rescission under this
21 subsection, the wrap borrower is entitled to a return of any earnest
22 money, escrow amounts, down payment, or other fees or charges paid
23 in connection with the wrap mortgage loan, the related purchase
24 transaction, and any other related transaction.

25 Sec. 159.102. FOREIGN LANGUAGE REQUIREMENT. If the
26 negotiations that precede the execution of the wrap mortgage loan
27 agreement are conducted primarily in a language other than English,

1 the wrap lender shall provide a copy of a written disclosure
2 statement required under Section 159.101 of this code or Section
3 5.016, Property Code, in that language to the wrap borrower.

4 Sec. 159.103. FAILURE TO PROVIDE DISCLOSURE: TOLLING OF
5 LIMITATIONS. If a wrap lender fails to provide the disclosure
6 statement as required by Section 159.101 or fails to provide the
7 disclosure statement in the language required by Section 159.102,
8 the limitations period applicable to any cause of action of the wrap
9 borrower against the wrap lender arising out of the wrap lender's
10 violation of a law of this state in connection with the wrap
11 mortgage loan transaction is tolled until the 120th day after the
12 date the required disclosure statement is provided.

13 Sec. 159.104. FAILURE TO PROVIDE DISCLOSURE BEFORE CLOSING;
14 RIGHT OF RESCISSION. (a) Subject to Subsection (b), if a wrap
15 mortgage loan is closed without the wrap lender providing the
16 disclosure statement required by Section 159.101 or any disclosure
17 required by Section 159.102, the wrap borrower may rescind the wrap
18 mortgage loan agreement and the related purchase agreement at any
19 time by providing the wrap lender notice of rescission in writing.

20 (b) If the wrap borrower receives a required disclosure
21 statement under Section 159.101 or 159.102 after the date the wrap
22 mortgage loan is closed but before the wrap borrower provides
23 notice of rescission, the wrap borrower may rescind the wrap
24 mortgage loan agreement and the related purchase agreement in
25 writing on or before the 21st day after the date of receipt of the
26 disclosure statement.

27 (c) Not later than the 30th day after the date the wrap

1 borrower provides notice of rescission under this section, the wrap
2 lender shall return to the wrap borrower:

3 (1) all principal and interest payments made by the
4 wrap borrower on the wrap mortgage loan;

5 (2) any money or property given as earnest money, a
6 down payment, or otherwise in connection with the wrap mortgage
7 loan or related purchase transaction; and

8 (3) any escrow amounts for the wrap mortgage loan or
9 related purchase transaction.

10 (d) On the date on which all of the returned money or
11 property described by Subsection (c) is received by the wrap
12 borrower, the wrap borrower shall convey to the wrap lender or the
13 wrap lender's designee the residential real estate described by
14 Section 159.001(7)(A). The wrap borrower shall surrender
15 possession of the residential real estate not later than the 30th
16 day after the date of the wrap borrower's receipt of the money or
17 property returned as described by this subsection.

18 (e) Notwithstanding Subsection (a) or (b), the wrap lender
19 may avoid rescission if not later than the 30th day after the date
20 of receipt of notice of rescission under Subsection (a), the wrap
21 lender:

22 (1) pays the outstanding balance due on any debt
23 described by Section 159.001(7)(A)(ii);

24 (2) pays any due and unpaid taxes or other government
25 assessment on the residential real estate described by Section
26 159.001(7)(A);

27 (3) pays to the wrap borrower as damages for

1 noncompliance the sum of \$1,000 and any reasonable attorney's fees
2 incurred by the wrap borrower; and

3 (4) provides to the wrap borrower evidence of
4 compliance with Subdivisions (1) and (2).

5 Sec. 159.105. ENFORCEABILITY OF WRAP LIEN. A lien securing
6 a wrap mortgage loan is void unless the wrap mortgage loan and the
7 conveyance of the residential real estate securing the loan are
8 closed by an attorney or a title company.

9 Sec. 159.106. BORROWER'S RIGHT OF ACTION. (a) A wrap
10 borrower may bring an action to:

11 (1) obtain declaratory or injunctive relief to enforce
12 this subchapter;

13 (2) recover any actual damages suffered by the wrap
14 borrower as a result of a violation of this subchapter; or

15 (3) obtain other remedies available under this
16 subchapter or in an action under Section 17.50, Business & Commerce
17 Code, as otherwise authorized under this subchapter.

18 (b) A wrap borrower who prevails in an action under this
19 section may recover court costs and reasonable attorney's fees.

20 Sec. 159.107. WAIVER OR AVOIDANCE PROHIBITED. (a) Any
21 purported waiver of a right of a wrap borrower under this subchapter
22 or purported exemption of a person from liability for a violation of
23 this subchapter is void.

24 (b) A person who is a party to a residential real estate
25 transaction may not evade the application of this subchapter by any
26 device, subterfuge, or pretense, and any attempt to do so is void
27 and a deceptive trade practice under Subchapter E, Chapter 17,

1 Business & Commerce Code, and is actionable under that subchapter.

2 Sec. 159.108. RULEMAKING AUTHORITY. The finance commission
3 may adopt and enforce rules necessary for the intent of or to ensure
4 compliance with this subchapter.

5 SUBCHAPTER D. DUTIES OWED TO WRAP BORROWER

6 Sec. 159.151. MONEY HELD IN TRUST. A person who collects or
7 receives a payment from a wrap borrower under the terms of a wrap
8 mortgage loan holds the money in trust for the benefit of the
9 borrower.

10 Sec. 159.152. FIDUCIARY DUTY. A person who collects or
11 receives a payment from a wrap borrower under the terms of or in
12 connection with a wrap mortgage loan owes a fiduciary duty to the
13 wrap borrower to use the payment to satisfy the obligations of the
14 obligee under each debt described by Section 159.001(7)(A)(ii) and
15 the payment of taxes and insurance for which the wrap lender has
16 received any payments from the wrap borrower.

17 SUBCHAPTER E. WRAP BORROWER'S RIGHTS

18 Sec. 159.201. APPLICABILITY OF SUBCHAPTER. This subchapter
19 applies only to a wrap mortgage loan for a purchase of residential
20 real estate to be used as the wrap borrower's residence.

21 Sec. 159.202. WRAP BORROWER'S RIGHT TO DEDUCT. The wrap
22 borrower, without taking judicial action, may deduct from any
23 amount owed to the wrap lender under the terms of the wrap mortgage
24 loan:

25 (1) the amount of any payment made by the wrap borrower
26 to an obligee of a debt described by Section 159.001(7)(A)(ii) to
27 cure a default by the wrap lender caused by the lender's failure to

1 make payments for which the lender is responsible under the terms of
2 the wrap mortgage loan; or

3 (2) any other amount for which the wrap lender is
4 liable to the wrap borrower under the terms of the wrap mortgage
5 loan.

6 SUBCHAPTER F. ENFORCEMENT OF CERTAIN REGISTRATION REQUIREMENTS

7 Sec. 159.251. APPLICABILITY OF SUBCHAPTER. This subchapter
8 applies only to a wrap lender who is required to register as a
9 residential mortgage loan servicer under Chapter 158.

10 Sec. 159.252. INSPECTION; INVESTIGATION. (a) The
11 commissioner may conduct an inspection of a wrap lender registered
12 under Chapter 158 as the commissioner determines necessary to
13 determine whether the wrap lender is complying with that chapter
14 and applicable rules. The inspection may include an inspection of
15 the books, records, documents, operations, and facilities of the
16 wrap lender. The commissioner may share evidence of criminal
17 activity gathered during an inspection or investigation with any
18 state or federal law enforcement agency.

19 (b) For reasonable cause, the commissioner at any time may
20 investigate a wrap lender registered under Chapter 158 to determine
21 whether the lender is complying with that chapter and applicable
22 rules.

23 (c) The commissioner may conduct an undercover or covert
24 investigation only if the commissioner, after due consideration of
25 the circumstances, determines that the investigation is necessary
26 to prevent immediate harm and to carry out the purposes of Chapter
27 158.

1 (d) The finance commission by rule shall provide guidelines
2 to govern an inspection or investigation under this section,
3 including rules to:

4 (1) determine the information and records of the wrap
5 lender to which the commissioner may demand access during an
6 inspection or investigation; and

7 (2) establish what constitutes reasonable cause for an
8 investigation.

9 (e) Information obtained by the commissioner during an
10 inspection or investigation under this section is confidential
11 unless disclosure of the information is permitted or required by
12 other law.

13 (f) The commissioner may share information gathered during
14 an investigation under this section with a state or federal agency.
15 The commissioner may share information gathered during an
16 inspection with a state or federal agency only if the commissioner
17 determines there is a valid reason for the sharing.

18 (g) The commissioner may require reimbursement of expenses
19 for each examiner for an on-site examination or inspection of a
20 registered wrap lender under this section if records are located
21 out of state and are not made available for examination or
22 inspection by the examiner in this state. The finance commission by
23 rule shall set the maximum amount for the reimbursement of expenses
24 authorized under this subsection.

25 Sec. 159.253. ISSUANCE AND ENFORCEMENT OF SUBPOENA.

26 (a) During an investigation conducted under this subchapter, the
27 commissioner may issue a subpoena that is addressed to a peace

1 officer of this state or other person authorized by law to serve
2 citation or perfect service. The subpoena may require a person to
3 give a deposition, produce documents, or both.

4 (b) If a person disobeys a subpoena or if a person appearing
5 in a deposition in connection with the investigation refuses to
6 testify, the commissioner may petition a district court in Travis
7 County to issue an order requiring the person to obey the subpoena,
8 testify, or produce documents relating to the matter. The court
9 shall promptly set an application to enforce a subpoena issued
10 under Subsection (a) for hearing and shall cause notice of the
11 application and the hearing to be served on the person to whom the
12 subpoena is directed.

13 SUBCHAPTER G. ENFORCEMENT OF CHAPTER

14 Sec. 159.301. CEASE AND DESIST ORDER. (a) The
15 commissioner, if the commissioner has reasonable cause to believe
16 that a wrap lender or wrap mortgage loan originator to whom this
17 chapter applies has violated or is about to violate this chapter,
18 may issue without notice and hearing an order to cease and desist
19 from continuing a particular action or an order to take affirmative
20 action, or both, to enforce compliance with this chapter.

21 (b) An order issued under Subsection (a) must contain a
22 reasonably detailed statement of the facts on which the order is
23 made. If a person against whom the order is made requests a
24 hearing, the commissioner shall set and give notice of a hearing
25 before the commissioner or a hearings officer. The hearing shall be
26 governed by Chapter 2001, Government Code. Based on the findings of
27 fact, conclusions of law, and recommendations of the hearings

1 officer, the commissioner by order may find a violation has
2 occurred or not occurred.

3 (c) If a hearing is not requested under Subsection (b) on or
4 before the 30th day after the date on which an order is made, the
5 order is considered final and not appealable.

6 (d) The commissioner, after giving notice and an
7 opportunity for hearing, may impose against a person who violates a
8 cease and desist order an administrative penalty in an amount not to
9 exceed \$1,000 for each day of the violation. In addition to any
10 other remedy provided by law, the commissioner may institute in
11 district court a suit for injunctive relief and to collect the
12 administrative penalty. A bond is not required of the commissioner
13 with respect to injunctive relief granted under this subsection.

14 SECTION 4. Section 180.003, Finance Code, is amended by
15 amending Subsection (a) and adding Subsection (d) to read as
16 follows:

17 (a) The following persons are exempt from this chapter:

18 (1) a registered mortgage loan originator when acting
19 for an entity described by Section 180.002(16)(A)(i), (ii), or
20 (iii);

21 (2) an individual who offers or negotiates terms of a
22 residential mortgage loan with or on behalf of an immediate family
23 member of the individual;

24 (3) a licensed attorney who negotiates the terms of a
25 residential mortgage loan on behalf of a client as an ancillary
26 matter to the attorney's representation of the client, unless the
27 attorney:

1 (A) takes a residential mortgage loan
2 application; and

3 (B) offers or negotiates the terms of a
4 residential mortgage loan;

5 (4) an individual who offers or negotiates terms of a
6 residential mortgage loan secured by a dwelling that serves as the
7 individual's residence;

8 (5) subject to Subsection (d), an owner of residential
9 real estate who in any 12-consecutive-month period makes no more
10 than five residential mortgage loans to purchasers of the property
11 for all or part of the purchase price of the residential real estate
12 against which the mortgage is secured; and

13 (6) subject to Subsection (d), an owner of a dwelling
14 who in any 12-consecutive-month period makes no more than five
15 residential mortgage loans to purchasers of the property for all or
16 part of the purchase price of the dwelling against which the
17 mortgage or security interest is secured.

18 (d) In determining eligibility for an exemption under
19 Subsection (a)(5) or (6), two or more owners of residential real
20 estate or a dwelling, as applicable, are considered a single owner
21 for the purpose of computing the number of mortgage loans made
22 within the period specified by those subdivisions if any of the
23 owners are affiliates, as defined by Section 1.002, Business
24 Organizations Code, or if any of the owners have substantially
25 common ownership, as determined by the savings and mortgage lending
26 commissioner.

27 SECTION 5. This Act takes effect January 1, 2022.