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Office of Consumer Credit
Commissioner

Industry

and

Departmental Operations

and

Legislative Activities

Office of
Consumer
Credit
Commissioner



Leslie L. Pettijohn
Commissioner
MEMORANDUM

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TO: Finance Commission Members
FROM: Steven O'Shields, Director of Administration
DATE: October 1, 2007
SUBJECT: Licensing and Administrative Activities

Administration

The agency met or exceeded nine of its eleven key performance measures for the FY '07. The agency exceeded the following performance measure targets: Complaints Closed, Number of Field Investigations, Number of Business Applications Processed, Number of Employee Licenses Processed, Percent of Complaints Resolved within 90 Days, % Examinations in Compliance, Monies Returned to Consumers, Percent New Licensees undergoing Background Checks, when needed, and Percent Texans Reached through Media. A copy of the performance measure submission is located within this report.

I continue to work with other state regulators and the Conference of State Banking Supervisors (CSBS) on the national licensing database project. The database is scheduled to be available for use January 2, 2008; there are currently seven states that have committed to begin using the system then. There continues to be some concerns/issues that will need to be resolved before the agency can begin using the system. Some of these issues could require statutory, rule, and/or agency policy changes. Following this memo is a press release regarding the national system sent out by CSBS.

The agency has been working with the Department of Information Resources (DIR) - TexasOnline to try and implement the registration of Refund Anticipation Loan facilitators through the use of their online system. The agency and DIR have been working on the language and the process for getting the information we need for the registration. DIR through BearingPoint, the service provider, is working on finding a contractor to work on the interface needed to accommodate the business model that we need to collect the registration data.

On October 10th the agency held its annual staff meeting. The agency recognized seven individuals for their dedication and service to the agency. Robert L. Moran and Chris Jones have achieved five years of service with the agency. David Chick and George Stevens have achieved ten years of service with the agency. Rudy Aguilar and Chester Ong have achieved fifteen years of service with the agency. Leslie Pettijohn has achieved twenty years of service with the agency. During the meeting we had training relating to data security, e-mail usage, and business writing. Each area of the agency gave a status report on the activities conducted in its area for FY '07.

The agency continues to work on the implementation of the new regulatory programs, established by the 80th Legislature.

Licensing Activities

For the FY '07 the licensing section met or exceeded three out of three of its key performance measures. The key performance measures for this area are: Number of business applications processed, Number of employee license applications processed, and Percentage of new licensees undergoing background check when required.

During the fiscal year this section processed 1,854 business applications, (regulated lenders, pawnshops, and motor vehicle sales finance), 2,936 pawnshop employee applications, and registered 1,426 registered creditors. The licensing section mailed the renewal notices to registered creditors. Second notices will be mailed to those registered creditors who have not renewed at the end of October.

The licensing section is preparing and amending application forms for the new entities that the agency will begin regulating in FY '08. The amended forms for Debt Management Service Providers, to include for-profit companies, are now available. The forms for Refund Anticipation Loan Providers will be available early this fall. Property Tax Lender application forms will be available late this fall.

As of August 31, 2007, the agency had the following number of licensees and registrants:

Licensees	
4,737	Regulated Lenders
1,505	Pawnshops
5,779	Pawnshop Employees
6,975	Motor Vehicle Sales Finance (5,562 Licensed locations) (1,413 Registered Offices)
Registrants	
55	Debt Management Service Providers
7,653	Registered Creditors

Accounting and Human Resources

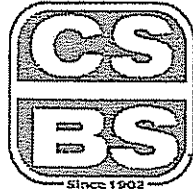
The accounting section recently finished preparing the Annual Financial Report. Again this year, the staff participated in the shortened time frame to complete the report and met the deadline. A copy of the report was provided with your packet.

The agency has prepared a Finding of Fact to prove that sufficient revenues can be generated to cover its expenditures to include the additional expense of TexasOnline. By proving that sufficient revenues exist the agency will be able to utilize TexasOnline to implement the registration of Refund Anticipation Loan facilitators. A copy of the Finding of Fact is located within this packet.

The agency is currently working on job postings for the new positions that we will be hiring relating to our new authorities. The agency has the following jobs posted: Financial Examiner I (3), and Research Specialist I (1).

Credit Education

The credit education section was able to exceed one of its two key performance measures. The agency did not meet the in-person services performance measure as set in the General Appropriations Act. The agency provided the Legislative Budget Board (LBB) with a revised estimate for this performance measure goal. This revised estimate was approved by the LBB. Although, the LBB accepted the new estimated the existing performance measure goal was not changed. The agency did not anticipate meeting the performance measure goal as set for the fiscal year, but did attain the revised estimate. The agency exceeded the Percent of Texans Reached through Media. During FY '07 the credit education area had media contact with 12.55% or 2,990,748 of the Texas population. This outreach is mainly done through the distribution of consumer education pamphlets and public service announcements through mass media.



CSBS/AARMR Nationwide Mortgage Licensing System

Improving Supervision of the Mortgage Industry through Collaboration and Technology

In order to protect their citizens and bring greater accountability and transparency to the mortgage industry, state mortgage regulators have been working together since 2004 to develop the Nationwide Mortgage Licensing System that will increase and centralize information available to state regulators, the industry and the general public about the people and companies that originate and make home mortgages.

Supervision of the mortgage industry began at the state level and last year alone, state mortgage regulators took over 6,000 enforcement actions against mortgage companies and professionals. The modern evolution of the mortgage industry and the increased importance of protecting consumers and neighborhoods, though, are signs that states' historic role demands new tools and authorities.

Building a Modern System of Oversight for the Mortgage Industry

State regulators have worked through their professional organizations, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), to develop four uniform mortgage licensing forms that gather comprehensive information about mortgage lenders, bankers, and brokers, their owners and executive officers, branches, and loan officers:

- Uniform Mortgage Lender/Mortgage Broker Form (Form MU1)
- Uniform Mortgage Biographical Statement & Consent Form (Form MU2)
- Uniform Mortgage Branch Office Form (Form MU3)
- Uniform Individual Mortgage License/Registration & Consent Form (Form MU4)

Starting in January 2008, these each state licensed mortgage lender, banker, and broker company will electronically complete a *single* Form MU1 (regardless of the number of states they are licensed in) and each of their owners and executive officers will complete a *single* Form MU2 (regardless of the number of companies they are affiliated with). This information will be housed in a centralized database available to state mortgage regulators. Licensees will be able to electronically access their own record over a secure website to amend their record, renew their licenses, or apply for a new license.

Likewise, each mortgage company branch and each loan officer will electronically complete a *single* Form MU3 or Form MU4 (respectively) for use in those states that require branch and/or loan officer licensing.

Increasing Transparency and Accountability in the Mortgage Industry

As each mortgage company, owner or executive officer, branch and loan officer completes a record for themselves and submits it to their regulator, the Nationwide Mortgage Licensing System will assign that record a unique identifying number. This number will be permanently assigned to the entity or person in perpetuity and will definitively allow state regulators to track companies and person across states and over time.

Additionally, consumers and the mortgage industry will be able to check on the license status and license history of the companies and/or persons with which they wish to do business with.

Contact

If you would like more information about the nationwide licensing system, please contact Tim Doyle at (202) 728-5728 or tim.doyle@csbs.org or Bill Matthews at (202) 728-5711 or bill.matthews@csbs.org

Raising Standards and Garnering Efficiencies

A result of states' collaborative efforts in building the Nationwide Mortgage Licensing System is the raising and standardizing of licensing requirements. In adopting the uniform forms, states have reviewed their requirements accepting higher reporting standards incorporated into the forms and eliminating unnecessary requirements. Additionally, states are gaining the authority to conduct criminal background checks on their licensees.

Additionally, the SRR announced in the Fall of 2006 an initiative to create improved educational and testing requirements across states. The initiative, named the Mortgage Industry National Uniform Testing and Education System (MINUTES), is a complementary initiative of the Nationwide Mortgage Licensing System that will increase standardization of educational and testing requirements and improve compliance.

The Status of the Nationwide Licensing System

As of July 2007, 35 state agencies have signed onto a Statement of Intent indicating their commitment to participate in the CSBS/AARMR Nationwide Mortgage Licensing System ("the System"). The System will begin operations on January 2, 2008. It is expected that 4-6 state agencies will transition onto the System on approximately a quarterly basis during 2008 and 2009. Each state will individually announce its participation date and communicate with licensees in advance of its participation onto the System.

In 2005, CSBS and AARMR formed a Residential Mortgage Regulator Taskforce (RMRT) that has met monthly to create the uniform applications and discuss functionality and regulatory matters that are being incorporated into the System. Currently, eleven states are using the MU Forms in paper format.

In 2006, a contract was signed with the National Association of Securities Dealers (NASD) to build the System. The NASD has tremendous experience in operating nationwide licensing and database systems for the securities and investment advisory industries and has an impeccable record of managing protecting information.

Licensees and applicants will be able to access the System through a secure website over the Internet to create a record and manage all of their state mortgage license authorities. Licensees will be able to apply for, amend, renew, and surrender one or more licenses using their single record in the System. The System also provides for a streamlined license renewal and annual report process.

In September 2006, CSBS formed a wholly owned operating subsidiary called the State Regulatory Registry LLC (SRR) to develop and operate the licensing System. SRR is governed by a Board of Managers comprised of five state mortgage regulators that are members of CSBS and AARMR. In March 2007, the SRR Board of Managers amended the operating agreement to create a Mortgage Advisory Council comprised of industry companies and associations. The purpose of the Mortgage Advisory Council is to advise and assist the SRR Board of Managers in providing substantive input on appropriate areas of SRR activities.

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The Conference of State Bank Supervisors is the national organization for state banking, representing the bank regulators of the 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands, and approximately 6,200 state-chartered financial institutions. The Conference is responsible for defending state authority to determine banking structure and the products and services state-chartered institutions can offer and for improving the quality of state bank supervision by providing department performance evaluation and accreditation programs and supervisory education/training programs for state banking department personnel.

AARMR is the national organization representing state residential mortgage regulators. AARMR's mission is to promote the exchange of information between and among the executives and employees of the various states who are charged with the responsibility for the administration and regulation of residential mortgage lending, servicing and brokering.

OFFICE OF CONSUMER CREDIT COMMISSIONER

EXECUTIVE SUMMARY

As of August 31, 2007

	FY 2005	FY 2006	FISCAL YEAR 2007				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	1,992	4,222	1,707	6,362	197	120	8,386
Regulated Lender Examinations	1,113	1,049	237	215	418	341	1,211
Pawnshop Examinations	500	685	176	139	173	168	656
Motor Vehicle Examinations	1,059	658	161	133	240	292	826
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,163	1,331	425	338	351	258	1,372
Written Complaints Received	1,606	1,437	333	321	365	321	1,340
Total Complaints Resolved	2,787	2,705	786	673	692	620	2,771
% of Written Complaints Closed within 90 Calendar Days	96.11%	96.55%	97.73%	93.73%	98.92%	94.58%	96.27%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	161	112	13	10	24	87	134
Finalized	154	121	11	10	29	86	136
LICENSING AND REGISTRATION							
Number of Institutions – Active							
Registered Creditors	8,288	8,395	8,592	7,328	7,548	7,653	7,653
Regulated Loan Licenses	4,879	4,557	4,738	3,949	3,989	3,930	3,930
Pawnshop Licenses	1,209	1,212	1,210	1,206	1,205	1,196	1,196
Pawnshop Employee Licenses	5,108	5,537	6,146	6,429	6,337	5,679	5,679
Motor Vehicle Sales Finance Licenses	5,280	5,442	5,631	5,700	5,841	5,548	5,548
Business – New	1,537	1,443	328	273	273	293	1,167
Business – Change of Ownership	421	791	261	67	96	540	964
Pawnshop Employee – New	2,538	2,654	761	681	541	720	2,703
HUMAN RESOURCES DATA							
Field Examiner Staffing	24	24	23	24	24	24	24
Total Staffing	52	54	51	53	54	54	54

Actual Performance for Outcome Measures
 79th Regular Session, Performance Reporting
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 10/3/2007
 TIME: 1:28:23PM
 PAGE: 1 OF 1

Agency code: 466 Agency name: CONSUMER CREDIT COMM

Type/Objective/Measure	2007 Target	2007 YTD	Percent of Annual Target	Target Range
<u>1-1 CONSUMER COMPLAINTS</u>				
1 % COMPLAINTS RESOLVED W/TN 90 DAYS	95.00 %	96.30 %	101.37 %	90.25 - 99.75
<u>2-1 ENSURE COMPLIANCE</u>				
1 % EXAMINATIONS IN COMPLIANCE	95.00 %	91.50 %	96.32 %	90.25 - 99.75
2 MONIES RETURNED	890,000.00	8,386,000.00	942.25 % *	845,500.00 - 934,500.00
<u>Explanation of Variance:</u> The majority, approximately 98%, of the restitution to Texas consumers was a result of errors found during examinations of the motor vehicle sales finance area. The remainder of the restitution was made by the other areas that are regulated by the agency.				
<u>2-2 APPLICATION PROCESSING</u>				
4 % NEW LICENSEES - BACKGROUND CHECKS	100.00 %	100.00 %	100.00 %	95.00 - 105.00
<u>3-1 ACCESS TO CREDIT INFORMATION</u>				
1 % TEXANS REACHED THROUGH MEDIA	12.00 %	12.55 %	104.58 %	11.40 - 12.60

* Varies by 5% or more from target.

Actual Performance for Output/Efficiency Measures
 79th Regular Session, Performance Reporting
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 10/3/2007
 TIME: 1:33:29PM
 PAGE: 1 OF 5

4
1
8

Agency code: 466 Agency name: CONSUMER CREDIT COMM

Type/Strategy/Measure	2007 Target	2007 Actual	2007 YTD	Percent of Annual Target	Target Range
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Output Measures

1-1-1 COMPLAINT RESOLUTION

1 # COMPLAINTS CLOSED

Quarter 1	2,650.00	777.00	777.00	29.32 %	530.00 - 795.00
Quarter 2	2,650.00	680.00	1,457.00	54.98 %	1,192.50 - 1,457.50
Quarter 3	2,650.00	703.00	2,160.00	81.51 % *	1,855.00 - 2,120.00

Explanation of Variance: The agency has received an increased number of complaints being filed regarding the following areas: motor vehicle sales finance, mortgage lending, and credit service organization.

Quarter 4	2,650.00	615.00	2,775.00	104.72 %	2,517.50 - 2,782.50
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2 # FIELD INVESTIGATIONS

Quarter 1	80.00	17.00	17.00	21.25 %	16.00 - 24.00
Quarter 2	80.00	25.00	42.00	52.50 %	36.00 - 44.00
Quarter 3	80.00	26.00	68.00	85.00 % *	56.00 - 64.00

Explanation of Variance: An increased number of reports of unlicensed activity in the motor vehicle sales finance and pawn industries has resulted in the increase in the number of investigations assigned.

Quarter 4	80.00	10.00	78.00	97.50 %	76.00 - 84.00
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2-1-1 EXAMINATION AND ENFORCEMENT

* Varies by 5% or more from target.

Actual Performance for Output/Efficiency Measures
79th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

DATE: 10/3/2007
TIME: 1:33:37PM
PAGE: 2 OF 5

Agency code: 466 Agency name: CONSUMER CREDIT COMM

Type/Strategy/Measure	2007 Target	2007 Actual	2007 YTD	Percent of Annual Target	Target Range
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Output Measures

1 # COMPLIANCE EXAMINATIONS PERFORMED

Quarter 1 3,175.00 574.00 574.00 18.08 % * 635.00 - 952.50

Explanation of Variance: The Agency recently provided the LBB with a revised estimate for this performance measure goal of 2,879. This revised estimate has been approved by the LBB. When the original performance goal was set an incorrect assumption was used and therefore a higher goal was set. We have re-evaluated our assumptions and believe that the revised estimate to be more accurate. Although, the LBB has accepted the new estimate the existing performance measure target was not changed. The Agency does not anticipate meeting the performance measure target as currently set this fiscal year, but expects to attain the revised estimate.

Quarter 2 3,175.00 487.00 1,061.00 33.42 % * 1,428.75 - 1,746.25

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 2,879. This revised estimate has been approved by the LBB. When the original performance goal was set an incorrect assumption was used and therefore a higher goal was set. We have re-evaluated our assumptions and believe that the revised estimate to be more accurate. Although, the LBB has accepted the new estimate the existing performance measure target was not changed. The Agency does not anticipate meeting the performance measure target as currently set this fiscal year, but expects to attain the revised estimate.

Quarter 3 3,175.00 831.00 1,892.00 59.59 % * 2,222.50 - 2,540.00

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 2,879. This revised estimate has been approved by the LBB. When the original performance goal was set an incorrect assumption was used and therefore a higher goal was set. We have re-evaluated our assumptions and believe that the revised estimate to be more accurate. Although, the LBB has accepted the new estimate the existing performance measure target was not changed. The Agency does not anticipate meeting the performance measure target.

Quarter 4 3,175.00 801.00 2,693.00 84.82 % * 3,016.25 - 3,333.75

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 2,879. This revised estimate has been approved by the LBB. When the original performance goal was set an incorrect assumption was used and therefore a higher goal was set. We have re-evaluated our assumptions and believe that the revised estimate to be more accurate. Although, the LBB has accepted the new estimate the existing performance measure target was not changed.

During the first and second quarter of the fiscal year the number of examinations performed was hindered by the training of examiners and holiday scheduling. Also the average time for conducting examinations has been higher than anticipated and therefore the projected revised target goal was not met. As indicated by the performance in the third and fourth quarter, the agency increased the number of examinations being conducted. We feel that this is attributable to the training and a better familiarity by our examination staff of the industries that the agency regulates; specifically, the newest and largest area, motor vehicle sales finance.

2-2-1 LICENSING INVESTIGATION

4 *Varies by 5% or more from target.

Actual Performance for Output/Efficiency Measures
 79th Regular Session, Performance Reporting
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 10/3/2007
 TIME: 1:33:37PM
 PAGE: 3 OF 5

4-110

Agency code: 466 Agency name: CONSUMER CREDIT COMM

Type/Strategy/Measure	2007 Target	2007 Actual	2007 YTD	Percent of Annual Target	Target Range
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Output Measures

1 # BUSINESS APPLICATIONS PROCESSED

Quarter 1 1,000.00 712.00 712.00 71.20 % * 200.00 - 300.00

Explanation of Variance: The Agency recently provided the LBB with a revised estimate for this performance measure goal of 2,100. This revised estimate has been approved by the LBB. The Agency has seen an increase in the number of applications being filed; therefore, the higher estimate was requested. Although, the LBB has accepted the new estimate, the existing performance measure goal was not changed. The Agency anticipates exceeding the performance measure goal as currently set this fiscal year and expects to attain the revised estimate.

Quarter 2 1,000.00 191.00 903.00 90.30 % * 450.00 - 550.00

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 2,100. This revised estimate has been approved by the LBB. The Agency has seen an increase in the number of applications being filed; therefore, the higher estimate was requested. Although, the LBB has accepted the new estimate, the existing performance measure goal was not changed. The Agency anticipates exceeding the performance measure goal as currently set this fiscal year and expects to attain the revised estimate.

Quarter 3 1,000.00 539.00 1,442.00 144.20 % * 700.00 - 800.00

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 2,100. This revised estimate has been approved by the LBB. The Agency has seen an increase in the number of applications being filed; therefore, the higher estimate was requested. Although, the LBB has accepted the new estimate, the existing performance measure goal was not changed. The Agency anticipates exceeding the performance measure goal as currently set this fiscal year and expects to attain the revised estimate.

Quarter 4 1,000.00 412.00 1,854.00 185.40 % * 950.00 - 1,050.00

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 2,100. This revised estimate has been approved by the LBB. The Agency has seen an increase in the number of applications being filed; therefore, the higher estimate was requested. Although, the LBB has accepted the new estimate, the existing performance measure goal was not changed. The agency anticipated exceeding the revised performance measure goal, but due to competing priorities (other licensing processes and audit work) during the third and fourth quarter, we were unable to meet the revised projected goal. Although, the agency did not meet the projected revised goal, it did exceed the original target by 85% for the year.

* Varies by 5% or more from target.

Actual Performance for Output/Efficiency Measures
 79th Regular Session, Performance Reporting
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 10/3/2007
 TIME: 1:33:37PM
 PAGE: 4 OF 5

Agency code: 466 Agency name: CONSUMER CREDIT COMM

Type/Strategy/Measure	2007 Target	2007 Actual	2007 YTD	Percent of Annual Target	Target Range
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Output Measures

2 # EMPLOYEE LICENSES PROCESSED

Quarter 1 2,100.00 863.00 863.00 41.10 % * 420.00 - 630.00

Explanation of Variance: Typically, the first quarter of the fiscal year has an increased number of applications processed; this is due to competing tasks required at the end of each fiscal year. The diverting of resources to complete year end tasks impacts the processing of employee license applications. The Agency anticipates meeting and exceeding this goal for the fiscal year.

Quarter 2 2,100.00 699.00 1,562.00 74.38 % * 945.00 - 1,155.00

Explanation of Variance: Applications for pawnshop employee licenses are not evenly received throughout the year. Typically, they are submitted in cycles; therefore, the number of applications processed is ultimately affected in the same manner. The Agency anticipates meeting and exceeding this goal for the fiscal year.

Quarter 3 2,100.00 506.00 2,068.00 98.48 % * 1,470.00 - 1,680.00

Explanation of Variance: Applications for pawnshop employee licenses are not evenly received throughout the year. Typically, they are submitted in cycles; therefore, the number of applications processed is ultimately affected in the same manner. The Agency anticipates meeting and exceeding this goal for the fiscal year.

Quarter 4 2,100.00 868.00 2,936.00 139.81 % * 1,995.00 - 2,205.00

Explanation of Variance: Applications for pawnshop employee licenses are not evenly received throughout the year. Typically, they are submitted in cycles; therefore, the number of applications processed is ultimately affected in the same manner. As indicated the Agency met and exceeded this performance measure goal for the fiscal year.

3-1-1 CONSUMER EDUCATION

Actual Performance for Output/Efficiency Measures
 79th Regular Session, Performance Reporting
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 10/3/2007
 TIME: 1:33:37PM
 PAGE: 5 OF 5

4-1-12

Agency code: 466 Agency name: CONSUMER CREDIT COMM

Type/Strategy/Measure	2007 Target	2007 Actual	2007 YTD	Percent of Annual Target	Target Range
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Output Measures

1 # CONSUMERS RECEIVING SERVICES

Quarter 1 100,000.00 50.00 50.00 0.05 % * 20,000.00 - 30,000.00

Explanation of Variance: The Agency recently provided the LBB with a revised estimate for this performance measure goal of 250. This revised estimate has been approved by the LBB. Although, the LBB accepted the new estimate the existing performance measure goal was not changed. The Agency does not anticipate meeting the performance measure goal as currently set this fiscal year, but expects to attain the revised estimate.

The significant change in the goal is due to the approved change in focus relating to this performance measure, Consumers Receiving Services. The change in focus is to provide more in-depth and comprehensive financial literacy training.

Quarter 2 100,000.00 17.00 67.00 0.07 % * 45,000.00 - 55,000.00

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 250. This revised estimate has been approved by the LBB. Although, the LBB accepted the new estimate the existing performance measure goal was not changed. The Agency does not anticipate meeting the performance measure goal as currently set this fiscal year, but expects to attain the revised estimate.

The significant change in the goal is due to the approved change in focus relating to this performance measure, Consumers Receiving Services. The change in focus is to provide more in-depth and comprehensive financial literacy training.

Quarter 3 100,000.00 176.00 243.00 0.24 % * 70,000.00 - 80,000.00

Explanation of Variance: The Agency provided the LBB with a revised estimate for this performance measure goal of 250. This revised estimate has been approved by the LBB. Although, the LBB accepted the new estimate the existing performance measure goal was not changed. The Agency does not anticipate meeting the performance measure goal as currently set this fiscal year, but expects to attain the revised estimate.

The significant change in the goal is due to the approved change in focus relating to this performance measure, Consumers Receiving Services. The change in focus is to provide more in-depth and comprehensive financial literacy training.

Quarter 4 100,000.00 15.00 258.00 0.26 % * 95,000.00 - 105,000.00

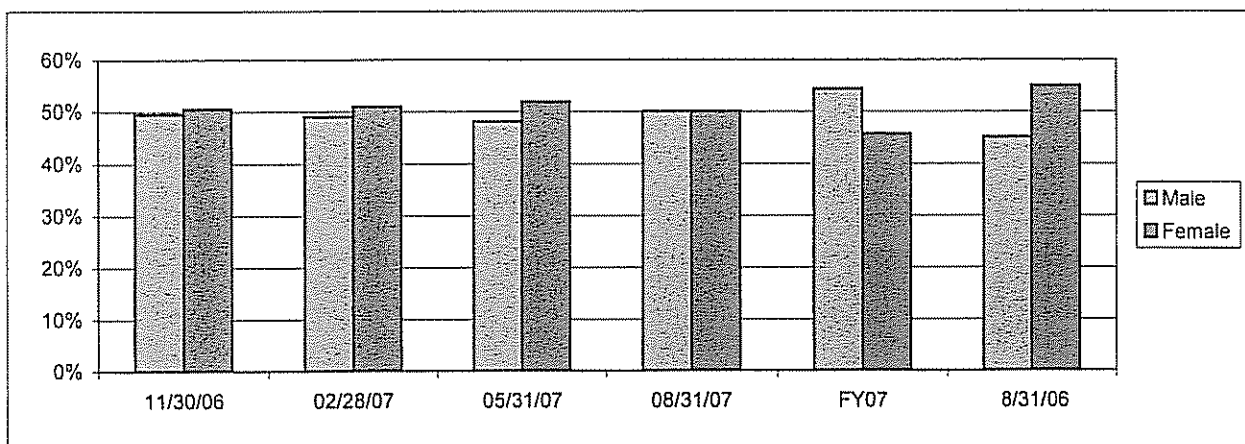
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The significant change in the goal is due to the approved change in focus relating to this performance measure, Consumers Receiving Services. The change in focus is to provide more in-depth and comprehensive financial literacy training.

* Varies by 5% or more from target.

Office of Consumer Credit Commissioner Workforce Analysis by Gender

	11/30/06	02/28/07	05/31/07	08/31/07	Civilian Workforce FY07	Other State Agencies 8/31/06
Male	50%	49%	48%	50%	54%	45%
Female	50%	51%	52%	50%	46%	55%
Total	100%	100%	100%	100%	100%	100%



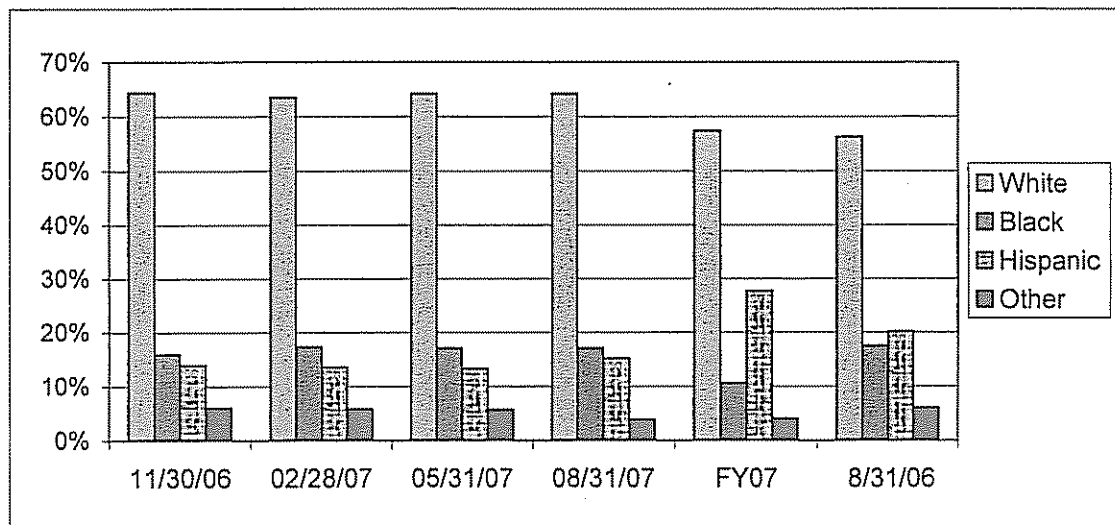
Office of Consumer Credit Commissioner New Hires by Quarter

	(1) Net Under Representation at 8/31/05	11/30/06	02/28/07	05/31/07	08/31/07	(1) Net Under Representation at 08/31/07
Male	0	1	1.5	0	1	0
Female	0	0	1	2	0	2
Total	0	1	2.5	2	1	2

(1) As compared to the applicable Civilian Workforce data.

**Office of Consumer Credit Commissioner
Workforce Analysis by Ethnicity**

	11/30/06	02/28/07	05/31/07	08/31/07	Civilian Workforce FY07	Other State Agencies 8/31/06
White	64%	63%	64%	64%	57%	56%
Black	16%	17%	17%	17%	11%	17%
Hispanic	14%	13%	13%	15%	28%	20%
Other	6%	6%	6%	4%	4%	6%
Total	100%	100%	100%	100%	100%	100%



**Office of Consumer Credit Commissioner
New Hires by Quarter**

	(1) Net Under Representation at 8/31/06	11/30/06	02/28/07	05/31/07	08/31/07	(1) Net Under Representation at 08/31/07
White	8	1	1.5	2	0	2
Black	0	0	1	0	0	0
Hispanic	0	0	0	0	1	0
Other	0	0	0	0	0	n/a
Total	8	1	2.5	2	1	2



MEMORANDUM

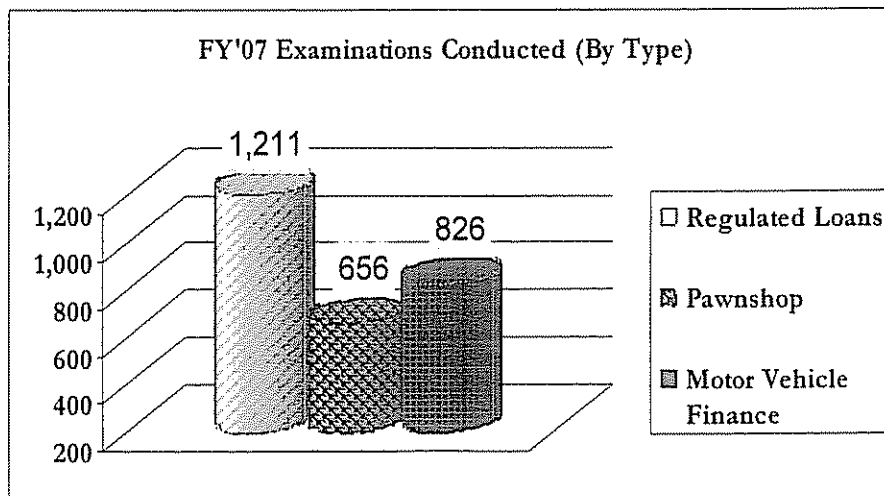
TO: Finance Commission Members
FROM: Rudy Aguilar, Director of Consumer Protection
DATE: October 2, 2007
SUBJECT: Consumer Protection Activities

EXAMINATION AND ENFORCEMENT

We have completed a total of 2,693 examinations for the 2007 fiscal year. The percentage of licensees receiving an acceptable level of compliance rating, as a result of these examinations, is 91.50% compared to 91.11% for the 2006 fiscal year. The percentage of re-exams resulting in an acceptable level of compliance was 86.81 % for the 2007 fiscal year. The percentage of re-exams resulting in an acceptable level of compliance was 91.11 % for the 2006 fiscal year. The total number of exams conducted for the 2007 fiscal year was 2,693 compared to 2,392 for the 2006 fiscal year.

As of September 30, 2007, we have completed 161 examinations for the beginning of the 2008 fiscal year. The projected goal for examinations to be conducted is 3,020 for the 2008 fiscal year.

The chart below lists the number of examinations completed for the 2007 fiscal year, by licensee type.



The examination process changes recommended by State Auditor's Office, as a result of their audit, have been documented and implemented.

Personnel: Ms. Erica Harrigan, has filled the position for Administrative Technician II. Ms. Harrigan joined the Examination and Enforcement Section on October 1, 2007. Also joining the Examination and Enforcement Section are six financial examiners. The Dallas region welcomes Rodney Hassell and Scott Fried. The San Antonio region welcomes Samantha Fidelman, Chelsea Dickey, and Aracely Portillo. The Houston region welcomes Karl Hubenthal. Initial examiner training began on September 17, 2007, and will be concluded by the end of October 17, 2007. These examiners will be training in the field with experienced examiners into the spring of 2008.

Currently, there are three financial examiner positions open for the Houston region. Interviews are being scheduled and conducted for these positions. These two groups of new examiners will begin contributing to examination productivity in pawnshop and signature loan examinations by the summer of 2008. This will allow more experienced examiners to conduct complex examinations in the areas of mortgage loans and motor vehicle sales finance.

Training: I attended the American Association of Residential Mortgage Regulators Annual Regulatory Conference August 18-22, 2007, in Salt Lake City, Utah and the National Association of Consumer Credit Administrators Annual Conference September 25-28, 2007, in Santa Fe, New Mexico. Both meetings spent significant time on the current condition of the mortgage industry.

The funding limitations for out-of-state examinations for the 2008 fiscal year have been removed and our goal is to conduct 12 or more of these examinations in the fiscal year. This examination activity for the 2008 fiscal year began with a mortgage licensee in Missouri. The next examination has been scheduled for October 2007 in Nevada. The majority of these examinations will be mortgage examinations.

We have registered three examiners to attend the advance mortgage training conducted by the American Association of Residential Mortgage Regulators. This training will be held in New Orleans, Louisiana during the month of November, 2007. Topics to be discussed are privacy and security issues during examinations, exotic mortgagees, sub-prime mortgages, suspicious activity reports, tragedy and disaster recovery, mortgage servicing, and reverse mortgages. This training is timely in light of the current mortgage industry conditions.

Our annual examiner meeting was held September 10-14, 2007, in Fredericksburg. This meeting focused on the administrative processing of examinations, follow-up examinations, motor vehicle sales finance statutes, regulations, and examination

procedures. The Commissioner discussed the legislative issues and held an open forum exchange with examiners on a wide array of topics.

CONSUMER ASSISTANCE

The Consumer Assistance division received a total of 2,712 complaints for the 2007 fiscal year. Total resolved complaints were 2,771 for the 2007 fiscal year. The total number of written complaints resolved within 90 days for the 2007 fiscal year was 1,369 a percentage of 96.27% compared to 1,484 a percentage of 97.64% for the 2006 fiscal year. Motor vehicle sales finance was the top complaint category for the 2006 and 2007 fiscal year.

Mr. Gary Meissner has continued outreach efforts to the auto dealers in coordination with the Texas Department of Transportation. Mr. Meissner gave a presentation in Amarillo August 30, 2007, and his next Texas Department of Transportation presentation is scheduled for October 11, 2007 in Midland.

Mr. Meissner has amended and implemented written complaint procedures for the consumer assistance division. These recommended changes resulted from the recent audit conducted by State Auditor's Office.

INVESTIGATION/LITIGATION

The Examination and Enforcement division has assigned 78 investigations resulting from consumer complaints for the 2007 fiscal year with a total of 74 investigations completed.

We continue to monitor the remaining identified but unlicensed motor vehicle dealers to assure they apply for a Motor Vehicle Sales Finance License or cease all financing activities.

Office of
Consumer
Credit
Commissioner



Leslie L. Pettijohn
Commissioner

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512-936-7600
Fax: 512-936-7610
Consumer Helpline: 800-538-1579

MEMORANDUM

TO: Members, Finance Commission

FROM: Sealy Hutchings
General Counsel

DATE: October 1, 2007

SUBJECT: Legal Division Report

The Office of Consumer Credit Commissioner recently concluded a lengthy and complex negotiation with Texas EZPawn LP. The agreement resolved an administrative penalty issued against Texas EZPawn LP for failure to file pawnshop employee license applications within the statutory deadline. The pawnshop chain revised their procedures for filing the applications and paid an administrative penalty of \$70,000 for violation of the Texas Pawnshop Act.

The Office of Consumer Credit Commissioner is engaged in implementing recently passed legislation. Under the property tax legislation, we are presenting for publication rules on disclosure requirements, reasonable closing cost fees. We are presenting for adoption rules regarding the application and licensing process for the property tax lending industry. In addition, under the refund tax anticipation legislation, rules regarding the registration process are being presented for adoption during this meeting. We are also presenting amendments for publication that modify our plain language home improvement contracts to comply with legislation affecting the Texas Residential Construction Commission.

Our department worked closely with the Attorney General's office in obtaining a permanent injunction against an unlicensed lender based in El Paso. Advance Internet was providing rebate cash advances in return for internet access only available through the company's locations. Our agency provided expert testimony on behalf of the state and worked very closely with James A. Daross, the Assistant Attorney General who represented the state. The Trial Court determined the true nature of this transaction to be a loan and that the transaction exceeded the usury limits in Texas. Advance Internet was also found in violation of the Deceptive Trade Practices Act for misrepresenting the true nature of their service. In addition to the permanent injunction, the Trial Court also ordered Advance Internet to pay over \$5 million dollars in restitution and \$5 million in civil penalties. Mr. William Purce, Senior Administrative Review Examiner, provided the expert testimony for this case and deserves recognition for his efforts.

Unlicensed motor vehicle finance activities continue to be discovered by our agency. During an investigation, our examination department determined that a certain finance company was purchasing retail installment contracts from motor vehicle dealers that were not licensed to enter into such contracts. Through information supplied by this finance company, the agency was able to construct a list of unlicensed dealerships that sold retail installment contracts to this company. At this time, we have issued two cease & desist orders as a result of that investigation.

Oral arguments were heard in July in the agency's Motion for Summary Judgment against an unlicensed lender engaged in sale-leaseback transactions. Judge Craddock requested a transcript of the oral argument and instructed the parties to file additional briefing. The transcript and the briefing have been provided to Judge Craddock. This is our department's first case in which a business has challenged the application of the sale-leaseback section of the statute.

Our department is in the final stages of an enforcement action against a motor vehicle dealer who, among other violations, allegedly failed to timely pay-off the vehicles that were traded-in by the customers. This enforcement action has involved thousands of pages of exhibits, days of testimony presented in a hearing before the administrative law judge, and lengthy settlement negotiations between the parties. This action has been under an agreed open-ended continuance as our office works towards an efficient and satisfactory resolution to this enforcement action. A settlement has been entered into for four of the six licenses held by the licensee. The parties reached an agreement in principle last week on the remaining two licenses. The resolution should be resolved and documented by the December meeting.

The following chart is an overview of enforcement actions completed by the Office of Consumer Credit Commissioner for the last two fiscal years and the current fiscal year-to-date. These figures only reflect enforcement actions that have been fully resolved with a final order; actions that are still pending are not included in the table. Our data does not reflect the work done by our office to successfully bring businesses into compliance before a final administrative action is necessary. This data also does not account for actions to deny applications of those who fail to show eligibility for a license or work with license applicants requiring additional documentation to complete their applications. Our agency has completed three application denial actions this fiscal year to date.

Enforcement Actions Completed			
	FYTD 2008	FY 2007	FY 2006
Revocation / Suspension Actions			
Regulated Loan	3	38	37
Pawnshop License	0	3	1
Pawnshop Employee License	0	5	2
Motor Vehicle License	0	0	5
Total Revocation / Suspension Actions	3	46	45
Other Actions			
Cease & Desist Regulated	0	0	0
Cease & Desist Pawn	0	0	0
Cease & Desist Pawn Employee	0	0	0
Cease & Desist Motor Vehicle	0	0	0
Cease & Desist Unlicensed	0	13	23
Administrative Penalty Regulated	0	38	28
Administrative Penalty Pawn	0	5	1
Administrative Penalty Employee	1	16	0
Administrative Penalty Motor Vehicle	1	8	36
Total Other Actions	2	80	88
Total Enforcement Actions Closed	5	126	133

Final Orders Rendered

The following final orders were issued since our last report:

1. L04-93 – *In the Matter of Texas EZPawn LP, 1901 Capital Parkway, Austin, TX 78746*, Administrative Penalty paid for not timely filing Pawnshop Employee License applications within 75 day statutory period.
2. L07-45 – *In the Matter of Bent Tree Sports and Imports, Inc., 15812 Addison Road, Addison, TX 75001*, Administrative Penalty paid by a motor vehicle dealer for overcharging consumers on fees.
3. L07-103 – *In the Matter of Home Capital, Inc., 9000 Central Park West, Suite 500, Atlanta, GA 30328*, Revocation of a Regulated Loan License for failure to file Annual Report for 2006. Order is final.
4. L07-123 – *In the Matter of Apreva Financial Corporation, 3535 Factoria Boulevard Southeast, Suite 600, Bellevue, WA 98006*, Revocation of a Regulated Loan License for failure to file Annual Report for 2006. Order is final.

Final Orders Rendered (continued)

5. L07-124 – *In the Matter of Merchant's Home Loan, Inc., 1600 South Airport, Suite 209, Bedford, TX 76022*, Revocation of a Regulated Loan License for failure to file Annual Report for 2006. Order is final.
6. L07-142 – *In the Matter of David Alberto Moreno, First Cash Pawn, 7750A North Loop Drive, El Paso, TX 79915*, Preliminary Report issued against pawnshop employee who accepted property into pawn marked as owned by a third party. Order is final.
7. L07-143 – *In the Matter of Bear Motor Sales, Inc., Highway 277 West, Carrizo Springs, TX 78834*, Injunction issued against suspected unlicensed Chapter 348 dealer. Injunction was withdrawn.
8. L07-151 – *In the Matter of Charles R. Davis d/b/a Affordable Used Cars, 3730 East Lucas, Beaumont, TX 77708*, Licensee paid penalty for previous unlicensed Chapter 348 activity. Order is final.
9. L07-152 - *In the Matter of Yoav Bardugo d/b/a Auto Spot, 6441 Bissonnet Street, Houston, TX 77074*, Licensee paid penalty for previous unlicensed Chapter 348 activity. Order is final.

Administrative Injunctions Rendered

The following administrative injunction was rendered since the date of our last report:

1. L08-01 – *In the Matter of Keith Cruthers d/b/a C & C Car Co., 2020 East Division, Arlington, TX 76011*, Injunction issued against an unlicensed Chapter 348 dealer.
2. L08-02 – *In the Matter of Golden State Debt Management Corp., 23848 Hawthorne Boulevard, Suite 101, Torrance, CA 90505*, Injunction issued against an unregistered debt management service provider.
3. L08-04 – *In the Matter of Chappell Auto Brokers LP, 312 West Dallas Street, Canton, TX 75103*, Injunction issued against an unlicensed Chapter 348 dealer.
4. L08-05 – *In the Matter of Apex Financial Group, Inc., 213 West Bloomingdale Avenue, Brandon, FL 33511*, Injunction issued against regulated lender to cease false, misleading, or deceptive advertising.

Administrative Hearings Held

The following administrative hearings were held since the date of our last report:

1. August 28, 2007 – L07-150 – *In the Matter of Michael Justin Marsh, EZPawn, 3202 North First Street, Suite F, Abilene, TX 79603*, Hearing on Pawnshop Employee License application denial.
2. September 14, 2007 – L07-149 – *In the Matter of Hubert Otis Thomas, Mike Smith Enterprises, 4505 Gulfway Drive, Port Arthur, TX 77642*, Hearing on Pawnshop Employee License application denial.

Administrative Hearings Dismissed

The following administrative hearings have been dismissed since the date of our last report.

1. L07-144 – *In the Matter of Allstate Home Loans, Inc. d/b/a Allstate Funding, 8 Hughes Drive, Suite 250, Irvine, CA 92618*, Hearing on Regulated Loan License transfer application denial.
2. L07-146 – *In the Matter of Alexander Cantu, Jr., National Pawn & Jewelry, 111 West William Cannon Drive, Suite C1, Austin, TX 78745*, Hearing on denial of a Pawnshop Employee License application.
3. L07-147 – *In the Matter of Thomas James Wallis, National Pawn & Jewelry, 11304 North Interstate 35, Austin, TX 78753*, Hearing on denial of a Pawnshop Employee License application.
4. L07-148 – *In the Matter of Jenieve Gamez, Cash America Pawn, 3602 Fredericksburg Road, San Antonio, TX 78201*, Hearing on denial of a Pawnshop Employee License application.

Administrative Hearings Scheduled

The following administrative hearings are scheduled during the next 60 days:

1. October 25, 2007 – L08-05 – *In the Matter of Diana Christine Holstein, EZPawn, 1001 North Beckley Road, De Soto, TX 75115*, Hearing on denial of a Pawnshop Employee License application.

Preliminary Reports on Administrative Penalties Rendered

The following preliminary reports were issued since the date of our last report:

1. L07-151 – *In the Matter of Charles R. Davis d/b/a Affordable Used Cars, 3730 East Lucas, Beaumont, TX 77708*, Administrative penalty issued against a Chapter 348 motor vehicle dealer for previous unlicensed activity.
2. L07-152 - *In the Matter of Yoav Bardugo d/b/a Auto Spot, 6441 Bissonnet Street, Houston, TX 77074*, Administrative penalty issued against a Chapter 348 motor vehicle dealer for previous unlicensed activity.

Litigation

1. Civil Action No. A99CA198, *Today Publishing, Inc., Cash Today of the U.S.A., Inc., Nobel Craft and Junell Craft v. Crowder, et al.*, in the United States District Court for the Western District of Texas, Austin Division and Cause No. 99-03,673, *Today Publishing, Inc., Cash Today of Denton, Inc., Cash Today of Texas, Inc., and Cash Today of the USA, Inc. v. Leslie Pettijohn and the Office of the (sic) Consumer Credit Commissioner*, in Travis County District Court. Both of these cases have been settled. The federal court lawsuit has been dismissed, while the state court lawsuit remains open until the plaintiff fulfills the terms of the settlement.
2. Cause No. D-1-GV-07-000011, *Consumer Credit Commissioner and The State of Texas v. Renato M. Ramirez and Renato M. Ramirez, Jr. d/b/a Charro Auto Sales*, in the 53RD Judicial District Court of Travis County, Texas. Seeking to enforce administrative injunction issued by the Consumer Credit Commissioner against unlicensed Chapter 348 dealer. Hearing set July 31, 2007. Parties agreed to permanent injunction before hearing concluded.
3. Cause No. D-1-GN-06-003996, *Consumer Credit Commissioner and The State of Texas v. Daniel Thomas Bass d/b/a Wheelz*, in the 98TH Judicial District Court of Travis County, Texas. Seeking to enforce administrative injunction issued by the Consumer Credit Commissioner against unlicensed Chapter 348 dealer. Parties agreed to permanent injunction before hearing.

Interpretation Requests

The Office of Consumer Credit Commissioner has not received any requests for interpretation of the Texas Finance Code since the date of our last report.

Open Records Requests

Since the date of our last report, the agency has processed and responded to thirty-one (31) requests for information under the Texas Public Information Act, with one referral to the Attorney General.

Rule Item	Proposal Date	Adoption Date	Current Status
Property Tax Lenders-Proposed New 7 TAC, Part 5, Chapter 89, Subchapter E, Concerning Disclosures, and Subchapter F, Concerning Costs and Fees	10/19/07		
Chapter 342, Plain Language Contract Provisions-Proposed Amendments 7 TAC, Part 5, Chapter 90, Subchapter F, Concerning Second Lien Home Improvement Contracts (Subchapter G), §§90.602, Concerning Purpose, 90.603, Concerning Model Clauses, and 90.604, Concerning Permissible Changes	10/19/07		
Tax Refund Anticipation Loans-Adopt New 7 TAC, Part 5, Chapter 87, Subchapter A, Concerning Registration Procedures	08/17/07		Presented for adoption at 10/19/07 FC mtg
Property Tax Lenders-Adopt New 7 TAC, Part 5, Chapter 89, Subchapter A, Concerning General Provisions, Subchapter B, Concerning Authorized Activities, Subchapter C, Concerning Application Procedures, and Subchapter D, Concerning License	08/17/07		Presented for adoption at 10/19/07 FC mtg
Motor Vehicle Installment Sales-Adopted Amendments 7 TAC, Part 5, Chapter 84, §84.209, Concerning Model Clauses	06/15/07	08/17/07	Amendmts effective 09/06/07
Consumer Debt Management Services-Adopted Amendments 7 TAC, Part 5, Chapter 88, §88.102, Concerning Filing of New Application, §88.202, Concerning Annual Report, and §88.304, Concerning Credit Counseling Standards	06/15/07	08/17/07	Amendmts effective 09/06/07
Consumer Debt Management Services-Adopted New 7 TAC, Part 5, Chapter 88, §88.306, Concerning Fees for Debt Management Services, and §88.307, Concerning Consumer Education	06/15/07	08/17/07	New rules effective 09/06/07
Chapter 342, Plain Language Contract Provisions-Adopted Amendments 7 TAC, Part 5, Chapter 90, §§90.403-90.404, 90.503-90.504, and 90.603-90.604, each respectively Concerning Model Clauses and Permissible Changes	06/15/07	08/17/07	Amendmts effective 09/06/07, with compliance date of 01/01/08

<p>Consumer Debt Management Services-<i>Amendments</i> 7 TAC, Part 5, Chapter 88-plan to propose amendments to existing rules to clarify applicability of Chapter 394, Subchapter C (Consumer Debt Management Services) to for-profit entities</p>	<p>12/14/07</p>		
<p>Property Tax Lenders-<i>New Rules</i> 7 TAC, Part 5, Chapter 89-plan to propose additional new rules to establish post-closing fees</p>	<p>12/14/07</p>		
<p>Rule Review 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures</p>	<p>02/15/08</p>		
<p>Rule Review 7 TAC, Part 5, Chapter 82, Concerning Administration, §82.1, Concerning Custody of Criminal History Record Information, and §82.2, Concerning Public Information Requests; Charges</p>	<p>04/18/08</p>		
<p>Rule Review 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending</p>	<p>06/20/08</p>		
<p>Tax Refund Anticipation Loans-<i>New Rule</i> 7 TAC, Part 5, Chapter 87-plan to propose new rule to establish grounds for revocation of a registration</p>	<p>06/20/08</p>		

OCCC Legislative Rule Plan
 October 19, 2007

Legislative Bill No. and Description	Purpose of Rule Item	Proposal Date	Adoption Date
House Bill 1344 Relating to the regulation of refund anticipation loans; providing an administrative penalty	To Adopt New Rules to establish registration procedures for the newly regulated industry of tax refund anticipation loan (RAL) facilitators (anticipated number of registrants = approximately 10,000)	08/17/07	Presented for adoption at 10/19/07 FC mtg
House Bill 2138 Relating to regulation of property tax lenders; providing a penalty	To Adopt New Rules to establish licensing requirements for the newly regulated industry of property tax lenders (anticipated number of licensees = approximately 30)	08/17/07	Presented for adoption at 10/19/07 FC mtg
House Bill 1038 Relating to the operation of the Texas Residential Construction Commission; providing penalties	To Propose Amendments to existing rules in order to establish model language for disclosures required in certain second lien home improvement contracts	10/19/07	
Senate Bill 1520 Relating to ad valorem tax lien transfers	To Propose New Rules to establish disclosure requirements and fees for closing costs for the newly regulated industry of property tax lenders	10/19/07	
Senate Bill 884 Relating to the regulation of consumer debt management services	To Propose Amendments to existing rules in order to clarify the applicability of Chapter 394, Subchapter C (Consumer Debt Management Services) to for-profit entities	12/14/07	
Senate Bill 1520 Relating to ad valorem tax lien transfers	To Propose New Rules to establish post-closing fees for the newly regulated industry of property tax lenders	12/14/07	
House Bill 1344 Relating to the regulation of refund anticipation loans; providing an administrative penalty	To Propose New Rule to establish grounds for revocation of a registration for the newly regulated industry of tax refund anticipation loan (RAL) facilitators	06/20/08	

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D. Office of Consumer Credit Commissioner

2. Consideration of and Possible Vote to Adopt a Resolution that Sufficient Revenue can be Generated by the Office of Consumer Credit Commissioner to Participate in TexasOnline.

**Office of Consumer Credit Commissioner
Revenue Generation vs. Revenue Requirements**

FY2008-09
Projected

Revenue Generation:

Regulated Loan Industry - Licensing and Regulation

Annual Assessment Fees	\$4,614,394
Application & Other Fees	\$437,500

Regulated Lender Industry Subtotal	\$5,051,894
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Pawnshop Industry - Licensing and Regulation

Annual Assessment Fees	\$1,643,134
Application & Other Fees	\$650,000

Pawnshop Industry Subtotal	\$2,293,134
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Motor Vehicle Sales Finance Industry - Licensing and Regulation

Annual Assessment Fees	\$997,560
Application & Other Fees	\$1,275,500

Motor Vehicle Sales Finance Industry Subtotal	\$2,273,060
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Registered Creditor Industry - Registration

Annual Registration Fees	\$300,000
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Registered Creditor Industry Subtotal	\$300,000
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Debt Management Services Industry - Registration

Annual Registration Fees	\$98,900
Application & Other Fees	\$20,000

Debt Management Services Industry Subtotal	\$118,900
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Refund Anticipation Loan Facilitators - Registration

Annual Registration Fees	\$1,000,000
Application & Other Fees	\$50,000

Refund Anticipation Loan Facilitators Industry Subtotal	\$1,050,000
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Estimated Total Revenue Generation	\$11,086,988
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Revenue Requirements:

Base Appropriations (less Regulatory Response Rider)	\$8,779,203
Direct & Indirect Costs Appropriated Elsewhere	\$1,675,243

Revenue Requirements Subtotal	\$10,454,446
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Article IX - Sec. 19.12 - HB1344 - Refund Anticipation Loan Facilitators. (Includes estimated indirects)	\$426,738
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Article IX - Sec. 19.36 - SB884 - Debt Management Service Providers. (Includes estimated indirects)	\$106,304
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Article IX - Sec. 19.62 - Appropriation for a Salary Increase for State Employees.	\$99,500
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Total Revenue Requirements	\$11,086,988
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Note: The agency is "self-leveling, self-funding" and the actual revenues to be collected will be adjust appropriately to achieve this directive.

Office of Consumer Credit Commissioner

Workforce Diversity
Equal Employment Opportunity Plan

September 1, 2007 to August 31, 2008

Preface

The Equal Employment Opportunity (EEO) Plan for the Office of Consumer Credit Commissioner has been developed to delineate the agency's commitment to equal employment opportunity and to assure implementation of policies and procedures. The goal of this plan is to ensure genuine achievement of equal employment opportunity for all qualified persons.

The agency recognizes that full and equal participation of minorities, women, and disabled persons in all employment opportunities is a necessary component of any effective EEO plan. Establishing goals, objectives and timetables as well as assigning specific responsibilities and results-oriented tasks to management implements the plan in practical terms.

The EEO plan is designed to conform to the Affirmative Action Guidelines adopted by the U. S. Equal Employment Opportunity Commission. The Agency shall review the plan annually and identify and implement any new initiatives deemed appropriate. In addition in accordance with the Texas Labor Code, the plan will be submitted to the Finance Commission every two years for approval.

Office of Consumer Credit Commissioner Equal Opportunity Employment Plan

Policy Statement

The Office of Consumer Credit Commissioner (OCCC) is an equal employment opportunity employer. Employment decisions are based on merit and business needs, and not on race, color, citizenship status, national origin, ancestry, gender, age, religion, creed, physical or mental disability, marital status, veteran status, political affiliation, or any other factor protected by law. OCCC complies with the law regarding reasonable accommodation for handicapped and disabled employees.

Plan

The OCCC is committed to the principle of equal employment opportunity and the spirit of affirmative action. The plan has been prepared to ensure that the agency's workforce diversity policy is properly implemented and no artificial barriers are created which deny applicants for employment or employees of the agency an equal employment opportunity.

It is the policy of the OCCC to comply with all the relevant and applicable provisions of the Americans with Disabilities Act (ADA). The agency will not discriminate against any qualified employee or job applicant with respect to any terms, privileges, or conditions of employment because of a person's physical or mental disability. Reasonable accommodation will be made by the agency wherever necessary for all employees or applicants with disabilities, provided the individual is otherwise qualified to safely perform the essential duties and assignments connected with the job and provided that any accommodations made do not impose an undue hardship on OCCC.

Applicants for employment may review the plan at the Office of Consumer Credit Commissioner located at 2601 North Lamar Boulevard, Austin, Texas 78705 between the hours of 8:00 AM to 5:00 PM. The plan is also available to the general public upon receipt of an open records request. Employees may review the plan in the employee manual or on the agency's network.

Responsibilities

Management is primarily responsible for seeing that OCCC's equal employment opportunity policies are implemented, but all members of the staff share in the responsibility for assuring that by their personal actions the policies are effective and apply uniformly to everyone.

The Commissioner is ultimately responsible for establishing affirmative action policies and monitoring plan implementation. For purposes of revision or modification, the Commissioner will annually review the plan, personnel policies and procedures, or other terms and conditions affecting the equal employment opportunities of applicants for employment.

To ensure a diverse workforce, the plan will establish monitoring and reporting systems and action programs to achieve goals.

Action Programs

Recruitment Policy

The Office of Consumer Credit Commissioner actively recruits qualified applicants, especially minorities and women, for all job postings to better reflect the civilian workforce. All job postings are:

- ❖ entered into "Work in Texas" website;
- ❖ posted to the agency website;
- ❖ faxed to various Texas colleges and universities, especially ones with high minority enrollment statistics;
- ❖ advertised in various Texas newspapers across the state with emphasis in the geographic area of the job vacancy, where unemployment is high, where universities are located, and in publications targeted at minority populations; and
- ❖ advertised through any credit education fair in which the agency participates.

The agency will endeavor to hire employees from all backgrounds. In calculating demographic data for measuring agency diversity, the agency will use the following categories:

- ❖ **African American** - All persons having origins in any of the black racial groups of Africa.
- ❖ **American Indian or Alaskan Native** - All persons having origin in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.
- ❖ **Asian or Pacific Islander** - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
- ❖ **Caucasian American** - All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- ❖ **Hispanic American** - All persons of Mexican, Puerto Rican, Cuban, Central or South American or Spanish culture or origin, regardless of race.

The U. S. Equal Employment Opportunity Commission, the U. S. Civil Service Commission, the Department of Labor, and the Department of Justice have issued uniform guidelines on employee selection procedures. These guidelines address all phases of an employer's selection process and provide suggestions which, if adhered to, will greatly reduce an employer's exposure to charges of employment discrimination involving the selection process:

1. Position audits will be conducted on a continuing basis to ensure that current position description accurately reflect the actual duties, tasks, and responsibilities required to successfully perform the job. These audits will also be used to determine the appropriateness of the minimum qualifications for the positions and to ensure that only valid, job related qualifications are considered.
2. Any testing or screening procedures will be reviewed on a continuing basis (within resources available) to ensure their job relatedness and validity. Information acquired from the position audits will be used to construct valid job related tests and screening procedures.

3. All employment interview questions will be reviewed for job relatedness. Non-job related questions and those items which may tend to screen out a particular ethnic or racial group will be eliminated. All interview questions have to be approved prior to the interview.

4. Written interview results will be maintained for each posting. This information is used to assess the presence of artificial barriers to equal employment opportunities.

5. Training programs will be provided to increase promotional opportunities for employees. On-the-job training and cross-training will be provided to expose employees to a broad range of job duties and experiences.

Grievances

Any grievances or complaints should be directed to the Commissioner. Any employee acting in a manner contrary to the plan will be counseled and/or disciplined according to the disciplinary policy and procedures.

Monitoring

Annual EEO reports will be used to monitor the plan. This report analyzes the workforce by race, national origin, gender, and EEO category. Accomplishments and shortcomings will be noted and corrective actions recommended to the Commissioner.

Appeals and grievances are monitored by the Commissioner throughout the year.

Time Frame for Implementation

The Commissioner will review the program annually.

Workforce Analysis

Employees – August 31, 2007 (All employee FTE counts as of FYE)	African-American	Hispanic	Female
All Job Categories			
State Goals*	10.52%	27.65%	45.67%
2007 (53 FTEs)	16.98%	15.09%	50.00%
Official/Administration			
State Goals*	6.6%	14.2%	37.3%
2003 (3 FTEs)	0%	33.33%	33.33%
Professional			
State Goals*	8.3%	13.4%	53.2%
2007 (36 FTEs)	19.4%	11.1%	41.7%
Administrative Support			
State Goals*	11.2%	24.1%	64.7%
2007 (13 FTEs)	15.4%	23.1%	73.1%
Technical			
State Goals*	12.4%	20.2%	53.8%
2007 (1 FTE)	0%	0%	100%

*As reported by the Texas Workforce Commission Civil Rights Division, January 2007 Equal Employment Opportunity and Minority Hiring Practices Report.

D. **Office of Consumer Credit Commissioner**

4. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Chapter 87, Concerning Tax Refund Anticipation Loans, Subchapter A, Concerning Registration Procedures.

PURPOSE: In general, the purpose of new §§87.102 - 87.107 is to establish registration procedures as required under Texas Finance Code, Chapter 351, Tax Refund Anticipation Loans (Acts 2007, 80th Leg., ch. 135), as enacted by the Texas Legislature in House Bill 1344. The rules provide procedures for filing an application for a tax refund anticipation loan registration, processing procedures, procedures for relocation of a registered location, the fees associated with the registration, the designation of applications and notices as public records, and annual renewal procedures. The new rules are adopted with changes to the proposal published in the *Texas Register*.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve new 7 TAC, Chapter 87, Subchapter A with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve new 7 TAC, Chapter 87, Subchapter A, with changes to the proposal previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 87. Tax Refund Anticipation Loans
§§87.102 - 87.107

The Finance Commission of Texas (commission) adopts new 7 TAC, Chapter 87, Tax Refund Anticipation Loans, Subchapter A, concerning Registration Procedures.

In general, the purpose of new §§87.102 - 87.107 is to establish registration procedures as required under Texas Finance Code, Chapter 351, Tax Refund Anticipation Loans (Acts 2007, 80th Leg., ch. 135), as enacted by the Texas Legislature in House Bill 1344 (HB 1344). The rules provide procedures for filing an application for a tax refund anticipation loan registration, processing procedures, procedures for relocation of a registered location, the fees associated with the registration, the designation of applications and notices as public records, and annual renewal procedures. The new rules are adopted with changes to the proposal published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5566).

Section 87.102 describes the procedure for filing a new application for a tax refund anticipation loan registration, including instructions regarding what forms to use, what information is necessary on the application, and what information must be filed with the application.

In conjunction with the filing requirements under §87.102, the agency considered the submission of an applicant's disclosure forms, but instead plans to confirm that disclosures meet legal requirements through an attestation as part of the application process. The agency believes that an affirmative statement by the

applicant will serve as an appropriate mechanism to ensure that applicant disclosures are in compliance with state law. Thus, a comprehensive attestation concerning an applicant's disclosure forms will be included as part of the application for registration.

Section 87.103 outlines how an application for a tax refund anticipation loan registration is processed, including a description of when an application is complete.

Section 87.104 describes the procedures for relocating the registered location, outlining the information to be included in a notice to the commissioner.

Section 87.105 sets out the fees for new registered locations, registration amendments, and annual assessments.

Since the proposal, a clarification has been added to §87.105 regarding allocation of the fee for new registrations. The same amount of \$50 as contained in the proposal will be charged for each new registration, as the addition merely clarifies how a portion of the fee is to be allocated. The notation "(includes TexasOnline Program fee)" has been inserted directly after "\$50 fee" in §87.105(a) to specifically designate part of the new registration fee to the TexasOnline program. At the present time, this allocated fee portion is estimated to be \$2.00 per registration.

Section 87.106 describes how registration applications and notices are public records, citing the relevant provisions within the Texas Government Code.

Section 87.107 describes the procedures for annual renewal, including the payment of fees by December 1.

Compliance with these rules is optional prior to January 1, 2008. Tax refund anticipation loan facilitators under this chapter should apply for registration no later than January 1, 2008.

The commission received one written comment on the proposal from Representative Michael Villarreal. The commenter requests two additions to the proposal. First, the commenter encourages the commission "to require Refund Anticipation Loan facilitators to include a copy of their disclosure materials with the registration application." Although the commission disagrees with requiring an actual copy of the disclosure forms, the agency intends on verifying the legality of the facilitators' disclosures through "an attestation as part of the application process," as stated in the preamble. Additionally, during the 2007 legislative session and the evolution of HB 1344, the agency anticipated a streamlined registration process, which would not accommodate a submission of disclosure forms as presented by the commenter. The agency believes that verification through this comprehensive affirmative statement better fits with the intended registration scheme and accomplishes the same goal. As the agency gains experience with the tax refund anticipation loan industry, however, the issue of proper disclosures will be monitored to determine if amendments to the registration procedure are needed in the future.

In his second issue, the commenter requests that the commission "clarify that the grounds for revocation of a facilitator's registration include providing false

information in disclosure materials." As stated in the preamble of the proposal for this rule action, "[t]he agency plans to propose a rule regarding the grounds for revocation at a future meeting of the commission." The agency wishes to obtain some experience with the tax refund anticipation loan industry prior to proposing a revocation rule. With an increased understanding of and familiarity with the issues that may arise during a tax refund anticipation loan, the agency will be better equipped to propose a revocation rule at a later date. Therefore, the commission declines to adopt the commenter's suggested additions at this time.

These new sections are adopted under Texas Finance Code, §351.003, Registration of Facilitators (Acts 2007, 80th Leg., ch. 135), which authorizes the Finance Commission to adopt rules to prescribe procedures for the registration of and collection of processing fees from facilitators of tax refund anticipation loans.

The statutory provisions affected by the adopted new sections are contained in Texas Finance Code, Chapter 351, Tax Refund Anticipation Loans (Acts 2007, 80th Leg., ch. 135, eff. Sept. 1, 2007).

Subchapter A. Registration Procedures

§87.102. Filing of New Application.

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted as prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions.

(b) Required information. The application must include the following required forms and filings. All questions must be answered.

(1) Application for Registration of Tax Refund Anticipation Loan Facilitator.

(A) Each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a tax refund anticipation loan must be separately registered.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(2) Assumed names. For any applicant that does business under an assumed name as that term is defined in Texas Business & Commerce Code, §36.02(7), the applicant must provide all assumed names used.

§87.103. Processing of Application.

Complete application. An application is complete when it:

(1) conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

§87.104. Relocation of Registered Location.

A registered tax refund anticipation loan facilitator may move the business office from the registered location to any other location by giving notice of intended

relocation to the commissioner. The notice must include the present address of the registered location, the contemplated new address of the registered location, and the approximate date of relocation.

§87.105. Fees.

(a) New registrations. A \$50 fee (includes TexasOnline Program fee) is assessed each time an application for a new registration under this chapter is filed and is non-refundable.

(b) Registration amendments. A fee of \$25 must be paid each time a registered facilitator seeks to amend a registration by changing the assumed name of the registrant or relocating an office.

(c) Annual assessments. An annual fixed fee of \$50 is required for each registered tax refund anticipation loan location. The agency may provide a discount or credit to an assessment as necessary to appropriately allocate and recover the requisite costs of administration.

§87.106. Applications and Notices as Public Records.

Once a registration application or notice is filed with the Office of Consumer Credit Commissioner (OCCC), it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any

original documents associated with a tax refund anticipation loan facilitator application or notice to the applicant or registered facilitator. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

§87.107. Annual Renewal.

Not later than December 1, a registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the fees required by §87.105(c) of this title (relating to Fees); and

(2) any other information required by the commissioner.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 19, 2007.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

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TEXAS HOUSE OF REPRESENTATIVES
MICHAEL U. VILLARREAL
STATE REPRESENTATIVE
DISTRICT 123

September 28, 2007

Leslie Pettijohn
Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

Dear Commissioner Pettijohn,

I am writing to comment on the proposed new rules for the implementation of HB 1344.

In order to strengthen compliance with the legislation, I encourage the Finance Commission of Texas to require Refund Anticipation Loan facilitators to include a copy of their disclosure materials with the registration application. Additionally, I urge the Commission to clarify that the grounds for revocation of a facilitator's registration include providing false information in disclosure materials.

I appreciate your attention to these comments and your efforts to ensure the successful implementation of HB 1344.

Sincerely,

A handwritten signature in black ink that reads "Michael U. Villarreal".

Michael U. Villarreal

MV/pc

D. **Office of Consumer Credit Commissioner**

5. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Chapter 89, Concerning Property Tax Lenders, Subchapter A, Concerning General Provisions, Subchapter B, Concerning Authorized Activities, Subchapter C, Concerning Application Procedures, and Subchapter D, Concerning License.

PURPOSE: In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138. The rules also address applicability issues and authorized activities. The new rules are adopted with changes to the proposal published in the *Texas Register*

RECOMMENDED ACTION: The agency requests that the Finance Commission approve new 7 TAC, Chapter 89, Subchapters A through D with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve new 7 TAC, Chapter 89, Subchapters A through D, with changes to the proposal previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 89. Property Tax Lenders
§§89.101 - 89.409

The Finance Commission of Texas (commission) adopts new 7 TAC, Chapter 89, §§89.101-89.409, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.101-89.409 outline Subchapter A, concerning General Provisions, Subchapter B, concerning Authorized Activities, Subchapter C, concerning Application Procedures, and Subchapter D, concerning License. The new rules are adopted with changes to the proposal published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5568).

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). The rules also address applicability issues and authorized activities. The individual purposes of each rule are provided below.

The commission received one written comment on the proposal from the Texas Property Tax Lenders Association. The commenter offered several suggested changes and concerns. Since the proposal, the commission has incorporated some changes to address the commenter's concerns and has declined to adopt other suggestions. The commission's responses to each specific comment are included after the individual rule purposes in the paragraphs that follow.

Section 89.101 outlines the purpose, scope, and applicability of the chapter. In particular, §89.101(d) clarifies that the exemption from other licensing as provided in Texas Finance Code, §351.051(d) is limited to authorized property tax lending. In other words, in order to conduct property tax lending under Chapter 351, a person is not required to have a license under Chapter 156, Chapter 342, or any other provision of the Finance Code, aside from the Chapter 351 property tax lender license. A person may, however, still need another license to conduct other regulated activity, as Chapter 156, Chapter 342, and any other chapter of the Finance Code, or other law, would apply independently of Chapter 351.

Section 89.102 provides general definitions to be used throughout the chapter.

The commenter suggests that definitions be added to §89.102 for "loan," "lender," and "borrower," including references to Texas Tax Code, §32.06. The Texas Legislature defined the terms "Property tax lender" and "Property tax loan" in HB 2138, as enacted in Texas Finance Code, §351.002. In the first sentence of §89.102, the rule specifically incorporates the words and terms as defined in Texas Finance Code, Chapter 351, to have the same meanings in 7 TAC, Chapter 89. The commission has consistently deferred to statutory definitions when present and cannot conflict with those definitions. In contrast, the commission agrees that a definition of "borrower" is necessary in order to clarify that the

borrower in a property tax loan is the property owner. Consequently, the commission has added a definition of "Borrower" as the new §89.102(1) and has renumbered the remaining definitions accordingly. Thus, while the commission declines to add the commenter's definitions of "loan" and "lender," it agrees to add a definition of "borrower" for clarification purposes.

Under §89.102, regarding the proposed definitions of "Making a loan" and "Transacting a loan," the commenter recommends that the word "borrower" be deleted and replaced with the following phrase "taxing unit(s) and other payees." The commenter maintains that this change is necessary because "[n]o funds or money is ever transferred to a property owner in a tax lien transfer; all funds go to third parties" The commission recognizes this concern and agrees that property tax loans are unique in that money is never transferred to the property owner. Although the commission believes that clarifying revisions are needed for these definitions, the commission has decided to modify the language to track the definition of "Loan" contained in Texas Finance Code, §301.002(10). Therefore, the commission accepts the reasoning and issue presented by the commenter, but has incorporated this recommendation through changes modeled after the established definition in §301.002(10).

Also concerning a definition, the commenter suggests that the term "Negotiating a loan" in §89.102 be clarified "so that it does not include initial advertising, such as postcards and letters." The commission declines to adopt this change, as this definition is intended to include such initial advertising.

Section 89.201 provides for the responsibility of licensees for the acts of their agents.

Section 89.202 requires that each officer, director, employee, and agent of a licensee have a working knowledge of the laws and regulations applicable to the licensee's business.

The commenter offers two changes regarding §89.202. First, the commenter recommends that following the word "employee," the phrase "who deals with potential borrowers" should be added. The commenter states that "[n]ot every employee needs to know about the Finance Code, e.g., janitors, runners." The commission agrees with the commenter that this is a reasonable clarification on the applicability of this section. Thus, the commission has added a clarifying sentence to the end of §89.202, expanding on the suggested phrase of the commenter. Even without this revised language, however, the agency reviews each enforcement decision on a case-by-case basis. Sections parallel to §89.202 in other chapters have been consistently applied on a fact-specific basis. Consequently, the agency would not seek to enforce §89.202 against a janitor who does not have any contact with borrowers or potential borrowers.

Second, also in reference to §89.202, the commenter suggests that a reference to Texas Tax Code, §§32.06 and 32.065 be added after the phrase "its implementing regulations." The commission agrees with the addition of a reference to the Tax Code and has included that change in this adoption.

Section 89.203 outlines transactions that are considered to constitute a "device, subterfuge, or pretense" under Texas

Finance Code, §351.051(b), and attempted evasion of the applicability of 7 TAC, Chapter 89.

Section 89.204 defines particular terms applicable to licensees with multiple licenses, and also outlines situations in which multiple licenses are required.

Section 89.205 outlines situations where licenses are required to conduct loans by mail, refers the reader to §89.204 for definitions, and provides that loans conducted via the Internet are considered to be loans by mail.

Section 89.206 provides the procedures for an individual to apply for an exemption from licensing as a qualifying individual under Texas Finance Code, §351.051(c)(2). Upon receipt of an individual's signed, dated, and notarized affidavit containing the required information, the agency will issue a certificate of exemption to the individual.

The commenter believes that the procedure under §89.206 should be revised, stating: "This procedure might be a little too cumbersome and end up hindering the ability of someone to do a transfer without going to a licensed property tax lender." The commission disagrees with the commenter and maintains that the §89.206 procedure as proposed is a streamlined process, requests the basic information required to issue an exemption, and merely tries to implement the statute. Therefore, while the commission declines to revise this procedure, as exemption applications are received by the agency, special attention will be paid to the time-sensitive nature of property tax loan transactions.

Another suggestion with regard to §89.206 is presented by the commenter. The commenter recommends that the phrases "street address" and "legal description" be switched in §89.206(a)(4), "so that the application must include the legal description, but they need only supply the street address in supplement thereof." The commenter supports this change with the following: "All taxation and collection operates by legal description. Appraisal districts often do not have full or complete street addresses. . . . Therefore, street addresses are not relied upon and often, not even used in the assessment/collection process." As proposed, §89.206 tracks the statutory language as enacted by HB 2138. From a practical standpoint, however, the commenter presents a persuasive argument. Thus, for practical use by the industry, the commission has made the suggested change to §89.206(a)(4) to address this concern.

Section 89.301 defines particular terms, including "Principal party." The definition of "Principal party" contains a breakdown by entity type, outlining individuals considered to be principal parties for each type of legal business entity.

Section 89.302 describes the procedures for filing a new application for a property tax lender license, including instructions regarding what information is necessary on the application and what information must be filed with the application.

Regarding §89.302(2)(B), the commenter believes that the requirement of providing loan forms with the application should be eliminated, and that these forms should instead be required as part of the annual report. Furthermore, the commenter states: "Property tax lenders consider these

proprietary, and as such, have a vested interest in keeping them confidential." As with all of its other licensees, the agency requires the submission of loan forms at the time of application. The commission believes that these loan forms are critical to the proper evaluation of the application in order to determine if the business will operate fairly and lawfully. Should the agency receive an open records request for a property tax lender's loan forms, there is an exception for proprietary information under the Texas Public Information Act. Under that exception, the property tax lender would have the opportunity to protect any proprietary interest it might have in the loan form documents. Therefore, the commission declines to adopt the suggested change.

Section 89.303 describes the procedures for filing an application for transfer of a property tax lender license, including the filing requirements and a definition of "transfer of ownership." "Transfer of ownership" is broken down by entity type and situation to outline the circumstances when a transfer will be required.

Section 89.304 outlines what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity, and lists the time frame within which the licensee must notify the commissioner.

Section 89.305 requires each applicant to supplement its application upon request by the agency.

Section 89.306 requires each applicant, upon discovery of new or changed information, to supplement its application within 10 calendar days of discovery of the new or changed information.

Section 89.307 outlines how an application for a property tax lender license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 89.308 describes the procedures for relocating a licensed office, including deadlines for notification.

Section 89.309 describes how a licensee may change its license status, including changing a license from active to inactive status and activating an inactive license. This section also clarifies the procedures for a licensee to voluntarily surrender its license, resulting in cancellation, as well as when a license will expire.

Section 89.310 sets out the fees for new licenses, license transfers, fingerprint processing, license amendments, license duplication, costs of hearings, and annual assessments.

Section 89.311 states that, upon filing with the Office of Consumer Credit Commissioner, an application for a property tax lender license or a notice submitted by an applicant or licensee becomes a state record and public information subject to the Texas Public Information Act.

Section 89.401 discusses the authorized activities of licensed lenders operating multiple branches.

Section 89.402 explains the requirement for displaying licenses.

Section 89.403 describes the agency's procedure for providing delinquent notices to licensees who have failed to pay an annual assessment fee.

Section 89.404 requires each licensee to file an annual report by March 31 for the prior calendar year.

Section 89.405 describes the effect of criminal history information on applicants and licensees, including what information must be provided on arrests, charges, indictments, and convictions. As per Texas Occupations Code, §53.022, subsection (c) of the rule outlines the factors the agency will consider in determining whether a conviction relates to the occupation of being a property tax lender.

Section 89.406 is a companion rule to §89.405. Section 89.406 describes the crimes directly related to the fitness for holding a license, as well as mitigating factors that will be considered, as per Texas Occupations Code, §53.023.

Section 89.407 details the effect of a license revocation, suspension, or surrender upon the authority to collect existing contracts.

Section 89.408 prescribes the process for a new application after a former licensee has surrendered its license or had a license revoked.

Section 89.409 provides the procedure for returning license certificates upon the reissuance of a license.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders

under this chapter should apply for licensure no later than March 1, 2008.

These new sections are adopted under Texas Finance Code, §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the adopted new sections are contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

Subchapter A. General Provisions

§89.101. Purpose, Scope, and Applicability.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220).

(b) Scope. This chapter applies to all persons engaged in the business of making, transacting, or negotiating property tax loans subject to Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act." As such, this chapter only applies to lenders in the business of making, transacting or negotiating property tax loans that:

(1) are secured by a special lien against property transferred from a taxing unit to the property tax lender; and

(2) may be further secured by the lien or security interest created by a deed of

trust, security deed, or other security instrument.

(c) License required for authorized property tax lending. Texas Finance Code, Chapter 351, authorizes a property tax lender to engage in the business of making, transacting, or negotiating property tax loans, as provided in subsection (b) of this section. Texas Finance Code, §351.051 (Acts 2007, 80th Leg., ch. 1220) and this chapter require that property tax lenders hold a license in order to conduct authorized property tax lending under Chapter 351.

(d) Exemption from other licensing limited to authorized property tax lending. Texas Finance Code, §351.051(d) (Acts 2007, 80th Leg., ch. 1220) provides that a property tax lender licensed under Chapter 351 is not required to be licensed under Chapter 156, Chapter 342, or any other provision of the Finance Code in order to conduct authorized property tax lending under Chapter 351. If a person engages in regulated activity otherwise subject to Chapter 156, Chapter 342, any other chapter of the Finance Code, or other law, the other chapter or law pertaining to the type of regulated activity conducted would apply independently of Chapter 351.

(e) License not required. National banks and federally-chartered thrifts and credit unions, wherever located, and federally-insured state banks, state thrifts and state credit unions with offices located outside of Texas may make property tax loans to Texas residents without obtaining a property tax lender license from the OCC under Texas Finance Code, §351.051 et seq.

§89.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Borrower--The borrower in a property tax loan is the property owner.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(3) Date of consummation--The date of closing or execution of a loan contract.

(4) Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220).

(5) Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, the act of funding the loan, or the act of advancing money on behalf of a borrower to a third party. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(6) Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by

itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(7) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(8) Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents, and an advancement of money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

Subchapter B. Authorized Activities

§89.201. Responsibility for Acts of Agents.

A licensee is responsible for the acts and omissions of its officers, directors, employees, and agents in the conduct of the licensee's business.

§89.202. Knowledge of Laws and Regulations Required.

Each officer, director, employee, and agent of a licensee shall have a working knowledge of Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), its implementing regulations, Texas Tax Code, §§32.06 and 32.065, and other pertinent state and federal statutes and regulations that apply to the licensee's business. This section applies to the listed parties to the extent that the individual has contact with borrowers or potential borrowers, or has responsibility for compliance with Texas Finance Code,

Chapter 351, or other laws or regulations governing the licensee's business.

§89.203. Attempted Evasion of Applicability of Chapter.

A "device, subterfuge, or pretense to evade the application" of this chapter, as used in Texas Finance Code, §351.051(b) (Acts 2007, 80th Leg., ch. 1220) refers to any transaction that in form may appear on its face to be something other than a property tax loan, but in substance meets the definition of a property tax loan as defined in Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220).

§89.204. Multiple Licenses.

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §351.052(b) (Acts 2007, 80th Leg., ch. 1220) are to be construed as follows.

(1) Made or Make--Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or Arranged; Negotiate or Arrange--Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or Collect--Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) Application. Any office making, negotiating, arranging, servicing, holding, or collecting loans must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

§89.205. Loans by Mail.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §351.053(b) (Acts 2007, 80th Leg., ch. 1220) are to be construed according to the definitions contained in §89.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Internet loans. For purposes of Texas Finance Code, §351.053(b), a loan made, negotiated, arranged, or collected by or through the Internet is considered a "loan by mail."

§89.206. Application for Exemption.

(a) For an individual to apply for exemption from licensing under this chapter as a qualifying individual under Texas Finance Code, §351.051(c)(2) (Acts 2007, 80th Leg., ch. 1220), the individual must provide a signed, dated, and notarized affidavit containing the following:

(1) the individual's name and address;

(2) the individual's social security number;

(3) the anticipated date of the property tax loan;

(4) a description of the property by legal description, and if applicable, street address; and

(5) a sworn statement that the individual is someone who:

(A) is making a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money; or

(B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.

(b) Upon receipt of an affidavit fulfilling the requirements of subsection (a) of this section, the commissioner will issue a certificate of exemption to the individual.

(c) Individuals applying for exemption under Texas Finance Code, §351.051(c)(2) must submit an application according to this

section for each property tax loan transaction.

Subchapter C. Application Procedures

§89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days.

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are considered to be principal parties:

(A) proprietors, including spouses with community property interest;

(B) general partners;

(C) officers of privately-held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 351;

(D) directors of privately-held corporations;

(E) individuals associated with publicly-held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately-held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 351. One of the persons designated shall be responsible for assembling and providing the information required on behalf of the applicant and shall sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) trustees and executors; and

(H) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§89.302. Filing of New Application.

An application for issuance of a new property tax lender license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for Property Tax Lender License.

(i) Location. A physical street address must be listed for the applicant's proposed lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.

(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.

(I) If the applicant is a proprietor, each owner must sign.

(II) If the applicant is a partnership, each general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnerships. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 5% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporations. Each officer and director must be named. Each shareholder holding 5% or more of the voting stock must be named if the corporation is privately-held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(v) Limited liability companies. Each "manager," "officer," and "member" owning 5% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 5% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(vi) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(vii) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

(C) Application Questionnaire. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Appointment of Statutory Agent and Consent to Service. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(E) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(F) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment History. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of Experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Business Operation Plan. Each applicant must provide a brief narrative explaining the type of lending

operation that is planned. This narrative should discuss each of the following topics:

(i) the source of customers;

(ii) the purpose(s) of loans;

(iii) the size of loans;

(iv) the source of working capital for planned operations;

(v) whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(vi) if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

(I) a list of the lenders for whom the applicant will be arranging or negotiating loans;

(II) whether the loans will be collected at the location where the loans are made; or

(III) if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(J) Financial Statement and Supporting Financial Information.

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application.

Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the

corporation or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(K) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), an Assumed Name Certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.10, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.11, as

amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §89.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (1)(B)(iii)(I) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and

principal parties of entities currently licensed, fingerprints are not required.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002, as amended.

(B) Loan forms. The applicant must provide information regarding all loan forms it intends to use.

(i) Custom forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(C) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of incorporation and any amendments;

(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the corporation identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly-held corporations. In addition to the items required for corporations, a publicly-held corporation

must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(III) a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the company identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of company meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the company identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that

created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide:

(I) a certificate of authority to do business in Texas, if applicable; and

(II) a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.

(viii) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.

(D) Bond. The commissioner may require a bond under Texas Finance Code, §351.102 (Acts 2007, 80th Leg., ch. 1220), when the commissioner finds that it would serve the public interest. When a bond is required, the commissioner shall give written notice to the applicant. Should a

bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location, including the Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(J) of this section. The person responsible for the day-to-day operations of the applicant's proposed new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§89.303. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's

entire interest or a new general partner obtains an ownership interest:

(3) any change in ownership of a licensed limited partnership interest:

(A) in which a limited partner owning 10% or more relinquishes that owner's entire interest:

(B) in which a new limited partner obtains an ownership interest of 10% or more:

(C) in which a general partner relinquishes that owner's entire interest: or

(D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner):

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately-held corporation:

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately-held corporation:

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately-held corporation: or

(D) any stock ownership changes that result in a change of control (i.e., 51%

or more) for a licensed publicly-held corporation:

(5) any change in the membership interest of a licensed limited liability company:

(A) in which a new member obtains an ownership interest of 10% or more:

(B) in which an existing member owning 10% or more relinquishes that member's entire interest: or

(C) in which a purchase or acquisition of control of 51% or more of any company which is the parent or controlling member of a licensed limited liability company occurs:

(6) any acquisition of a license by gift, devise, or descent: and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of subsection (a)(1) - (6) of this section, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No property tax lender license may be sold, transferred or assigned without written approval by the commissioner.

(c) Filing requirements. An application for transfer of a property tax lender license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions.

The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §89.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §89.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(J) of §89.302 of this title. The instructions in §89.302 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the Application for Property Tax lender License for the transfer event must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(2) Evidence of transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(d) Permission to operate. No business under the license shall be conducted by any license transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the license transferee the authority to operate under the transferor's license pending approval of the license transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the license transferee in connection with the operation of the lending business. The permission to operate must be submitted before the license transferee takes control of the licensed operation. The agreement shall set a definite period of time for the license transferee to operate under the transferor's license. A request for permission to operate may be denied even if

it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

§89.304. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 10 calendar days by filing the appropriate transfer application documents as provided in §89.303 of this title (relating to Transfer of License). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §89.303 of this title. A merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity requires a transfer application pursuant to §89.303 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity

level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership. This subsection does not apply to a publicly-held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly-held parent corporation, although a transfer application may be required under §89.303 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §89.303 of this title.

§89.305. Amendments to Pending Application.

Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

§89.306. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported within 10 calendar days after the person has knowledge of the action, fact or information.

§89.307. Processing of Application.

(a) Initial review. A response to an application will ordinarily be made within 14 calendar days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative

Procedure Act, Texas Government Code, Chapter 2001, and §9.1 et seq. of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee shall be refunded to the applicant. The investigation fee and the fingerprint processing fee in §89.310 of this title (relating to Fees) shall be forfeited.

(f) Processing time.

(1) A license application will ordinarily be approved or denied within a maximum of 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing shall be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application shall be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§89.308. Relocation of Licensed Offices.

(a) Notice to commissioner. A licensee may move the licensed office from the

licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be filed on the Amendment to Property Tax lender License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §89.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice shall waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices shall identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§89.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a property tax lender license and choose to inactivate the license. A license may be

inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be filed on the Amendment to Property Tax lender License or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be filed on the Amendment to Property Tax lender License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) Voluntary surrender of license. Subject to §89.407(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate. A voluntary surrender will result in cancellation of the license.

(d) Expiration. A license will expire on December 31 unless a fee is paid by the due date for license renewal. A licensee that pays the annual assessment fee will

automatically be renewed even though a new license may not be issued.

§89.310. Fees.

(a) New licenses.

(1) Investigation fees. A \$200 non-refundable investigation fee is assessed each time an application for a new license is filed.

(2) Assessment fees. An assessment fee of \$430 per active license and \$125 per inactive license is assessed each time an application for a new license is filed. This assessment fee will be refunded if the application is not approved.

(b) License transfers. An applicant must pay a \$200 non-refundable investigation fee for the first license transfer and a \$50 non-refundable investigation fee on each additional license transfer filed simultaneously.

(c) Fingerprint processing. The non-refundable fee to investigate each principal party's fingerprint record is \$40 per individual.

(d) License amendments. A fee of \$25 must be paid each time a licensee amends a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office.

(e) License duplicates. The fee for a license duplicate is \$10.

(f) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under

§89.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) Annual assessments.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee of \$430; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount that is \$0.03 per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 (Acts 2007, 80th Leg., ch. 1220), in accordance with the most recent annual report filing required by Texas Finance Code, §351.164 (Acts 2007, 80th Leg., ch. 1220).

(2) An annual assessment fee of \$125 is required for each inactive license.

(3) The maximum annual assessment fee for each licensed entity shall not average more than \$1,000 per active licensed location.

§89.311. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and

notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a property tax lender license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

Subchapter D. License

§89.401. Branch Networks.

For purposes of Texas Finance Code, §351.151(b) (Acts 2007, 80th Leg., ch. 1220), an authorized lender with multiple licensed offices is authorized to make, negotiate, arrange, and collect loans from any of its licensed locations. Any action relating to a single account may occur at different licensed locations as long as every action is made by a licensed branch operated by the same licensed lender.

§89.402. License Display.

Licenses must be prominently displayed in a licensee's office in a conspicuous location visible to the general public.

§89.403. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §351.155 (Acts 2007, 80th Leg., ch. 1220), notice of delinquency in the payment of an annual assessment fee is given upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope,

in a post office or official depository under the care and custody of the United States Postal Service.

§89.404. Annual Report.

Each licensee must file the required annual report by March 31 for the prior year's calendar loan activity on forms prescribed by the commissioner and must comply with all instructions relating to submitting the report.

§89.405. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character and the information gathered is relevant to the

licensing or enforcement action decision as described below.

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions must be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (d) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the principal party of the applicant has maintained a record of steady employment, has supported the principal party's dependents, and has otherwise maintained a record of good conduct. At a minimum, the principal party must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects negatively on an applicant's honesty and moral character.

(c) Factors in determining whether conviction relates to occupation of property tax lender. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner shall consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the principal party previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(d) Effect of criminal conviction on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220). For purposes of this section, the crimes listed below are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;

(B) Breach of trust or other fiduciary duty;

(C) Dishonesty or theft;

(D) Assault;

(E) Violation of a statute governing lending of this or another state;

(F) Failure to file a required report with a governmental body, or filing a false report;

(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes; or

(H) Attempt, preparation, or conspiracy to evade Texas Finance Code, Chapter 351 and its provisions.

(2) Effect of other criminal convictions. The commissioner may deny an application for a license, or revoke an existing license if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a property tax lender who originates or obtains loans written under Texas Finance Code, Chapter 351. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §89.406 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§89.406. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, collecting due amounts in a legal manner, and foreclosing on real

property in compliance with state and federal law. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, a crime involving failure to file a governmental report or filing a false report, or a crime involving the use or threat of force against another person, is a crime directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner shall consider, in addition to the factors listed in §89.405 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the following factors, as specified in Texas Occupations Code, §53.023:

(1) the extent and nature of the principal party's past criminal activity;

(2) the age of the principal party at the time of the commission of the crime;

(3) the time elapsed since the principal party's last criminal activity;

(4) the conduct and work activity of the principal party prior to and following the criminal activity;

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party, the sheriff or chief of police in the community where the principal party resides, and other persons in contact with the convicted principal party.

§89.407. Effect of Revocation, Suspension, or Surrender of License.

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a lender and a borrower, except no interest may be charged or received by the lender following the revocation, suspension, or surrender of its license. Alternatively, a lender whose license is revoked or suspended may transfer or sell its accounts to a licensed property tax lender who may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, §351.001, et seq. (Acts 2007, 80th Leg., ch. 1220).

(b) Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC.

§89.408. Application Process After Surrender or Revocation.

To obtain a license after surrender or revocation, the former licensee is required to file an application for a new license pursuant

to the procedures set forth in §89.302 of this title (relating to Filing of New Application).

§89.409. License Reissuance.

In the event of reissuance of a license for any reason, the licensee shall return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g. lost, destroyed).

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 19, 2007.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

Laurie Hobbs - TPTLA Comments to Licensing Rules

From: "Mary Doggett" [REDACTED]
To: "Laurie Hobbs" <Laurie.Hobbs@occc.state.tx.us>, "Sealy Hutchings" <Sealy.Hutchings@occc.state.tx.us>
Date: 8/28/2007 3:43 PM
Subject: TPTLA Comments to Licensing Rules
CC: "Allen Beinke" [REDACTED] "Bruce W. Anderson (E-mail)" [REDACTED] "Phil" [REDACTED] "Charles Brown"
Attachments: TPTLA Comments to Licensing Rules 3.doc

Sealy and Laurie,

On behalf of the TPTLA, attached please find a table listing several suggested changes to the licensing rule. We would appreciate your taking a second opportunity to review the issues raised in the document, so that hopefully they can be incorporated into the rule before it is adopted by the Finance Commission.

While some of these concerns would be important only to the property tax lenders themselves, the majority of them are designed to incorporate requests from other parties involved in the transactions. For example, 89.206(a)(4) currently requires that street addresses be included to describe properties. As you heard from several tax assessors yesterday, however, they operate solely on the basis of legal descriptions as provided by their appraisers. The TPTLA therefore suggests that language in the section be reversed, so that legal descriptions are required and street addresses are optional.

Other changes are requested to eliminate incorrect references to how tax lien transfers operate. For example, 89.102(4) currently mentions funds that are distributed to property owners. This should be changed, as no funds are ever distributed to property owners in a transfer of lien transaction.

Thank you for your attention to this matter, as well as for your time yesterday. The Association and its members greatly appreciate the opportunity to work with you, and in light of all you have going on this week, we really want to thank you for both allowing us to come meet with you at your office as well as for you coming to the TAAO meeting.

Please let me know if you have any questions or comments.

-mbd

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TPTLA Comments to OCCC Proposed Licensing Rules

Updated Tuesday, August 28, 2007

SEC.	SUGGESTED CHANGE	COMMENT
89.102	Add definitions for the following, to be applied in this chapter: “loan” – a transfer of funds pursuant to sec. 32.06, Tax Code “lender” – a transferee of a property tax lien pursuant to sec. 32.06, Tax Code. “borrower” – a property owner who consents to the transfer of a tax lien from a taxing unit to a transferee pursuant to sec. 32.06, Tax Code.	Because taxes are not debt and transfers are not true loans, these definitions eliminate the ambiguity that would otherwise exist if traditional definitions of these terms were applied to transfers.
89.102(4)	Delete the word “borrower” and substitute “taxing unit(s) and other payees.”	No funds or money is ever transferred to a property owner in a tax lien transfer; all funds go to third parties, e.g., taxing units, district clerk, sheriff’s office, attorneys, newspapers.
89.102(5)	Clarify “negotiating a loan” so that it does not include initial advertising, such as postcards and letters.	
89.102(7)	Delete the word “borrower or to a third party” and substitute “taxing unit(s) and other payees.”	No funds or money is ever transferred to a property owner in a tax lien transfer; all funds go to third parties, e.g., taxing units, district clerk, sheriff’s office, attorneys, newspapers.
89.202	After the word “employee” add “who deals with potential borrowers”	Not every employee needs to know about the Finance Code, e.g., janitors, runners.
89.202	Add “sections 32.06 and 32.065, Tax Code,” after “its implementing regulations,”	
89.206	Revise procedure	This procedure might be a little too cumbersome and end up hindering the ability of someone to do a transfer without going to a licensed property tax lender. At a minimum, set a deadline for the certificate’s issuance. Otherwise, the property owner might be harmed by the addition of significant penalties and interest or by a foreclosure action.
89.206(a)(4)	Switch the phrases “street address” and “legal description” so that the application must include the legal description, but they need only supply the street address in supplement thereof.	All taxation and collection operates by legal description. Appraisal districts often do not have full or complete street addresses. Multiple properties can have the same street address. Some properties have no street address. Therefore, street addresses are not relied upon and often, not even used in the assessment/collection process.
89.302(2)(B)	Eliminate requirement for loan forms to be included at this point.	Instead, require them as part of annual report. Property tax lenders consider these proprietary, and as such, have a vested interest in keeping them confidential.

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D. **Office of Consumer Credit Commissioner**

6. Discussion of and Possible Vote to Take Action on the Publication for Comment of Proposed New 7 TAC, Chapter 89, Concerning Property Tax Lenders, Subchapter E, Concerning Disclosures and Subchapter F, Concerning Cost and Fees.

PURPOSE: As a note of background regarding these rules, the property tax lender industry is a fairly young industry (approximately 10-12 years old) and an industry newly regulated by the agency. In general, the purpose of the new rules is to establish for property tax lenders certain disclosures and reasonable fees for closing costs required under Senate Bill 1520 (SB 1520), as enacted by the 80th Texas Legislature.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve proposed new 7 TAC, Chapter 89, Subchapters E through F for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment proposed new 7 TAC, Chapter 89, Subchapters E through F.

*Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 89. Property Tax Lenders
§§89.501 - 89.601*

The Finance Commission of Texas (commission) proposes new 7 TAC, Chapter 89, §§89.501-89.601, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.501-89.601 outline Subchapter E, concerning Disclosures, and Subchapter F, concerning Costs and Fees.

As a note of background regarding these rules, the property tax lender industry is a fairly young industry (approximately 10-12 years old) and an industry newly regulated by the agency. The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission on the issues of disclosures and fees. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from several interested stakeholders. Subsequently, the agency held a stakeholders meeting where several stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the thorough and insightful commentary provided, the agency also distributed two proposed rule drafts to the growing list of stakeholders for specific early or pre-comment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting proposal.

The agency carefully evaluated the stakeholders' comments and has incorporated numerous recommendations offered by the stakeholders. Some suggestions, however, are not included in the agency's proposal. Regarding certain comments that the agency decided not to incorporate in this proposal, the agency has provided some initial explanation as to the reasoning behind those drafting decisions. During the official comment period, stakeholders are welcome to resubmit any comments regarding issues not incorporated into the proposal.

In general, the purpose of the new rules is to establish for property tax lenders certain disclosures and reasonable fees for closing costs required under Senate Bill 1520 (SB 1520), as enacted by the 80th Texas Legislature. The individual purposes of each rule are provided below.

Section 89.501 outlines the purpose of Subchapter E, which is to provide disclosures for property tax loan transactions.

Section 89.502 provides definitions to be used in Subchapter E, including the incorporation of definitions contained in the Texas Finance Code and the Texas Tax Code.

Section 89.503 prescribes the general format of the disclosures contained in Subchapter E, including readable typefaces and point sizes.

Section 89.504 outlines the requirements for the disclosure statement provided to a property owner under Texas Tax Code, §32.06(a-4)(1). Subsection (a) describes the required elements that must be included in the disclosure statement.

It was suggested that the element contained in §89.504(a)(5) read as follows: "a statement that the property tax loan is superior to any other preexisting lien on the property, except a preexisting property tax loan." The agency recognizes that a preexisting property tax loan could certainly exist and would have equal superiority to a property tax loan currently being entered into by the property owner. The agency chose not to include this technical exception in order to align with the plain language approach of the disclosure statement. The agency believes that most owners will not have an existing tax lien on the same property when they are reviewing the disclosure. Additionally, there are certain concepts which are not completely explained in order for the disclosure to fit on a single page. The current language focuses on the property tax loan before the owner and its relation to any existing mortgage.

Subsection (b) of §89.504 requires that the disclosure statement fit on one standard-size sheet of paper. Subsection (c) details how the disclosure statement must be delivered, and subsection (d) explains how that delivery must be verified. Subsection (d) also includes provisions for married property owners and property owned by a legal entity.

The issue was raised that §89.504(c) be revised to allow an exception where the mailed delivery prior to closing could be waived for good cause, which would include

situations of imminent foreclosure or imposition of additional penalties on the property owner. The agency believes that the delivery provision as proposed would provide the majority of property owners a copy of the disclosure statement in a timely manner before closing, thus allowing the property owner to absorb the information and make an informed decision. While disallowing the suggested exception may delay certain property owners from obtaining a property tax loan at the most beneficial time, the agency believes that the greater interest of the majority of property owners would best be served through timely delivery prior to closing. But in the interest of obtaining more complete information, the agency invites comments on the issue of the delivery timing of the disclosure statement.

Section 89.505 outlines the requirements for the notice of delinquency sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien under Texas Tax Code, §32.06(f-1). Subsection (a) lists the required elements that must be included in the notice of delinquency. Subsection (b) outlines the delivery requirements, and subsection (c) describes how that delivery must be verified.

Section 89.506 provides the required disclosure statement under Texas Tax Code, §32.06(a-4)(1), and a sample model notice of delinquency under Texas Tax Code, §32.06(f-1).

Section 89.507 describes the permissible changes that may be made to each of the disclosures. The disclosure statement is a strict, prescribed form that may only be changed according to the exclusive list outlined in §89.507(a). In contrast, the notice of delinquency form is simply a

model disclosure that may experience several modifications, as outlined in §89.507(b), which offers flexibility to the provider of the notice. The different approaches utilized for the two disclosures echo the statute, as the disclosure statement is mandated by the statute, whereas the notice of delinquency is optional.

Section 89.601 provides the requirements regarding fees for closing costs that may be charged, contracted for, or received by property tax lenders.

Subsection (a) of §89.601 outlines the applicability of the fee limitations to property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

Section 89.601(a) establishes what reasonable fees for closing costs are for a property tax loan secured by real property that is designed for single-family residential use. Agency staff advised a representative of the Texas Association of Assessing Officers concerning the intended scope of this rule and was directed to the Property Classification Guide published by the Texas Comptroller of Public Accounts. The two selected categories capture the majority of property used for single-family residential use. Furthermore, utilizing these two categories, as defined by the Comptroller, provides certainty to the industry and consumers on the applicability of the fee limitations.

Subsection (b)(1) explains the scope of the closing costs, which includes costs

incurred by a property tax lender from the time of application through the time of closing. Under §89.601(b)(2), a non-comprehensive list of examples of closing costs is provided. Again, the list contained in subsection (b)(2) is not an exhaustive or comprehensive list. The rule limits what an owner may be charged on a property tax loan. The list in the rule contains examples of the types of fees for closing costs a property tax lender might incur. Just because a particular fee is not contained in the list does not mean that it can be used to charge an owner more than the maximums or that the omitted fee cannot be charged.

Subsection (c) describes provisions related to the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender. Subsection (c)(1) explains that the maximum fees include funds received by third parties or those retained by the property tax lender. Consequently, a maximum fee amount or ceiling is determined by the total amount of fees for closing costs paid by the property owner.

Under §89.601(c)(2), the maximum fee limits for closing costs are outlined, according to the total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien, which is known as the "total tax lien payment amount." Subsection (c)(3) states that the maximum fees contained in subsection (c)(2) constitute "reasonable closing costs" under Texas Tax Code, §32.06.

The agency was asked to give consideration to using a cost of living adjustment with the fees. At this time, the agency has decided not to include a cost of living provision within this proposal. One

reason is that the current version of the proposed rule provides the property tax lender with a larger fee for a larger property tax loan. If property values increase, then the effect would be similar to the incorporation of a cost of living adjustment. Additionally, even if property values do not increase, the agency has the ability to revise the rule in the future. The issue of a cost of living provision may be revisited at a future date after the agency has had an opportunity to observe the industry.

Subsection (d) of §89.601 provides a limited exception to the fee maximums, where a property tax lender may charge for attorney's fees "that are reasonable and necessary to establish in court the correct title to the property to which the property tax loan relates."

It was requested that the words "in court" be removed from proposed §89.601(d), in part because the attorney's fees related to curative title issues for property tax loans often do not require a lawsuit or court proceeding. The agency intends this exception to cover the more unusual or special title situations that a property tax lender may encounter. For that reason, the agency believes that title issues not requiring a court proceeding should be included under the maximum fee amounts, absorbed by the lender, or paid by the property owner to an outside attorney. Thus, the agency decided to include "in court" within the proposed language.

The issue was brought forth of requiring that the property tax lender obtain a written authorization from the property owner before charging additional attorney's fees under proposed §89.601(d). The agency believes that the suggested written

authorization would not be obtained by the proper party, i.e., the attorney. It is not within the scope of these rules to regulate the relationship between a property owner and that owner's attorney. The agency, however, would like to study this issue further and invites comments concerning the requirement of a written authorization prior to the charging of attorney's fees to establish correct title in court.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be consistency and clarity in the disclosures provided and fees charged for closing costs, benefiting both lenders and consumers alike. An additional public benefit of the proposed rules is enhanced compliance with the credit laws.

Regarding the rules proposed in new Subchapter E, additional economic costs may be incurred by a person required to comply with this proposal. For those who will be required to comply, the anticipated costs related to disclosures would include the costs associated with copying and delivering the disclosure forms, and costs attributable to the loss of obsolete forms inventory. Additional copy costs are estimated to be approximately \$0.10-\$0.20 per new form. The additional cost of delivery is estimated to be the cost of first-class U.S. postage, which is currently \$0.41 per mailed disclosure form.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the forms. Whether programmers will use the proposed forms or create their own utilizing the permissible changes is not predictable. Whether the programmers will charge an additional fee for a document they do not have to draft is also not predictable.

Additional economic costs may be incurred by a person required to comply with the fees for closing costs proposed in §89.601. The anticipated costs related to the fee limitations are not predictable, as the current practice in the property tax lender industry includes a wide range of fees. The variance for closing cost fees is both above and below the fee maximums proposed within this rule. Thus, some lenders will have to reduce their fees in order to comply and other lenders will be able to continue charging the same amount as their fees are less than the fees permitted by the proposal. Obviously, the lender whose current fees are greater than the fees proposed would incur the difference between the fees as proposed and the lender's current fees as a cost to continue engaging in a property tax loan that is secured by real property designed for single-family use.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these new rules, the agency invites comments from interested stakeholders and the public on any

economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed rules should that effect be adverse to small businesses.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Tax Code, §32.06(a-4) and (f-1), which authorize the Finance Commission to adopt rules to establish certain disclosures and reasonable fees for property tax lenders.

The statutory provisions affected by the proposed new sections are contained in Texas Tax Code, §§32.06 and 32.065, and Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

Subchapter E. Disclosures.

§89.501. Purpose.

The purpose of the rules contained in this subchapter is to provide disclosures for property tax loan transactions. These rules prescribe the form and content of the disclosures under Texas Tax Code, §32.06(a-4)(1) and §32.06(f-1).

§89.502. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Property tax lender--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax lender" is a "transferee" as defined by Texas Tax Code, §32.06(2), and these terms may be used synonymously.

(2) Property tax loan--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(3) Tax lien transfer--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(4) Transferee--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220) and Texas Tax Code, §32.06(2).

Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

§89.503. Format.

(a) Disclosures for property tax loan transactions must be printed in an easily readable font and type size. If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must be at least as large as 11 point in the Times New Roman typeface. The typeface for the headings must be in boldface type and at least as large as 12 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

PROPOSED NEW
7 TAC, PART 5, CHAPTER 89,
SUBCHAPTERS E & F
Page 7 of 12

(1) the property tax lender's name, principal business address, and license number;

(2) a statement that the property owner currently has a lien against the owner's property for unpaid property taxes;

(3) a statement that the property owner can pay the taxing unit(s) directly;

(4) a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;

(5) a statement that the property tax loan is superior to any other preexisting lien on the property;

(6) a statement that if the property is a homestead, disabled persons or persons age 65 or older may be eligible for tax deferral under Texas Tax Code, §33.06;

(7) a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g., entering into a payment installment agreement with the taxing unit(s), financing options through an existing mortgage lender or other private lenders, borrowing from savings or family members);

(8) a statement that if the property owner does not pay, the property owner may lose the property;

(9) a statement that the tax lien may be considered a default by any mortgage holder with a lien on the same property, and the only way to correct the default is to pay off the taxes and have the lien released;

(10) a statement that any secured loan may be foreclosed if the loan is in default, and the cost of a foreclosure, either tax lien or mortgage, may be added to the amount owed by the property owner;

(11) a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll-free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us; and

(12) a statement that the property owner may seek the advice of an attorney or another third party before signing a property tax loan.

(b) Single page required. The disclosure statement required by §89.506(a) of this title (regarding Disclosures) must fit on one standard-size sheet of paper (8 1/2 by 11 inches).

(c) Delivery.

(1) Face-to-face interview before closing. In the case of a face-to-face interview with one or more property owners who are applying for a property tax loan, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by 7 TAC Figure: §89.506(a) of this title, to the property owner(s) at the time of the interview. A property owner present at the interview may sign an acknowledgment verifying receipt of the disclosure statement at that time. A property owner present at the interview also may accept delivery of the disclosure statement on behalf of other co-applicants.

(2) No face-to-face interview. If there is no face-to-face interview, a property tax lender must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by 7 TAC Figure: §89.506(a) of this title, to each owner of the property by placing it in the U.S. mail, with prepaid first-class postage, or via facsimile if available to the property owner. The disclosure statement must be mailed or faxed within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax lender. If property owners who are co-applicants provide the same mailing address, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants, a copy must be delivered to each of the co-applicants.

(d) Verification of delivery.

(1) At time of face-to-face interview before closing. At the time of a face-to-face interview, verification that a disclosure was provided under this section is not required, but may be established by a signed and dated acknowledgment of each owner of the property obtained at the time of the interview.

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must either mail or fax the disclosure statement to the each owner of the property as prescribed in subsection (c)(2) of this section. The property tax lender must allow a reasonable period of time for delivery by mail. A period of three

calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. For disclosures delivered via facsimile, a dated facsimile confirmation page indicating that the disclosure statement was successfully transmitted to the fax number provided by the property owner will constitute verification of delivery.

(3) At time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement prescribed by 7 TAC Figure: §89.506(a), but is not required to do so. The property tax lender must obtain a dated acknowledgment signed by each owner of the property stating that the property owner(s) received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the disclosure form as provided in §89.507(a)(4) of this title (relating to Permissible Changes).

(4) Married property owners. If the property is designated as a homestead, the signatures of both spouses must be obtained by the property tax lender in order to verify delivery of a disclosure under this section.

(5) Property owned by a legal entity. If the property is owned by a legal entity (e.g., a living trust), the signature of a person with authority to sign on behalf of the legal entity must be obtained by the property tax lender in order to verify delivery of a disclosure under this section.

§89.505. Requirements for Notice of Delinquency to Transferee.

(a) Required elements. If a notice of delinquency under Texas Tax Code, §32.06(f-1) is sent by the mortgage servicer

or the holder of the first lien to the transferee of a tax lien, it must contain the following required elements:

- (1) the date of the notice;
- (2) the name of the property owner;
- (3) the address of the property owner;
- (4) the address of the property;
- (5) the legal description of the property;
- (6) the tax account number or property tax loan number;
- (7) the name and address of the mortgage servicer or the first lien holder sending the notice; and
- (8) the sender's relationship to the preexisting lien, and if the sender is not the lien holder, the name and address of the lien holder.

(b) Delivery.

(1) Timing of delivery. If the mortgage servicer or the holder of the first lien sends a notice of delinquency under Texas Tax Code, §32.06(f-1) to the transferee of a tax lien, it must be sent within 30 days of the 90-day delinquency of the property owner.

(2) Method of delivery. At a minimum, a notice under this section must be sent by U.S. mail or via facsimile. Mortgage servicers or first lien holders may use certified mail or delivery by a

commercial delivery service with tracking abilities.

(c) Verification of delivery. Verification that a notice was sent under this section, at a minimum, must be established by a dated postmark of the U.S. Postal Service or by a dated facsimile confirmation page. Mortgage servicers or first lien holders who use certified mail or a commercial delivery service may verify delivery with a return receipt or tracking receipt.

§89.506. Disclosures.

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figure. 7 TAC Figure: §89.506(a)

(b) A sample model notice of delinquency under Texas Tax Code, §32.06(f-1) that may be sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien is presented in the following example. 7 TAC Figure: §89.506(b)

§89.507. Permissible Changes.

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by 7 TAC Figure: §89.506(a), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Substituting "transferee" for "property tax lender," or using pronouns such as "we" and "us";

(2) Substituting "borrower" for "property owner," or using pronouns such as "you" and "your";

(3) Substituting "tax lien transfer" for "property tax loan"; or

(4) Adding an optional, dated signature block at the very bottom of the disclosure form, which must include the following statement directly above the signature line of the property owner(s): "My signature indicates only that I have received a copy of this disclosure."

(b) A property tax lender may consider making the following types of changes to the model notice of delinquency under Texas Tax Code, §32.06(f-1) as provided by 7 TAC Figure: §89.506(b):

(1) Adding information related to information set forth in the model disclosures that is not otherwise prohibited by law;

(2) Substituting "property tax lender" for "transferee," or using pronouns such as "you" and "your";

(3) Substituting "borrower" for "property owner";

(4) Presenting the model clauses in any order, and combining or further segregating the model clauses, if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures;

(5) Inserting descriptive titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between

different levels of information or to provide emphasis; or

(6) Making other changes which do not affect the substance of the disclosures.

Subchapter F. Costs and Fees.

§89.601. Fees for Closing Costs.

(a) Applicability. The fee limitations contained in this section are applicable to property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

(b) Closing costs for which fees may be charged, contracted for, or received.

(1) Scope of closing costs. For purposes of this section, the term "closing costs" includes costs incurred by a property tax lender from the time of application through the time of closing.

(2) Examples of closing costs. The following is a non-comprehensive list of examples of closing costs for which a property tax lender may charge, contract for, or receive fees in connection with a property tax loan. Examples of some allowable fees for closing costs include the following:

(A) an application fee;

(B) an appraisal or inspection fee;

(C) a title examination fee;

(D) a property survey fee;

(E) a fee for flood and plat determinations;

(F) a document preparation fee;

(G) a closing or escrow fee;

(H) a fee for a tax certificate or tax payoff determination;

(I) a loan origination fee;

(J) a loan processing fee;

(K) an underwriting fee;

(L) a fee for obtaining credit reports;

(M) a fee for federally-mandated fees;

(N) a fee for courier and delivery services.

(c) Total maximum fees for closing costs. For purposes of this section, the "total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien" will be referred to as the "total tax lien payment amount."

(1) Maximum fees include funds received by third parties or retained by property tax lender. The maximum fees provided for by this section encompass fees related to closing costs, whether the charge is paid by a property owner directly to a third party, paid to a third party through a property tax lender, or paid by a property owner directly to and retained by a property tax lender. A property tax lender may absorb

any closing costs and may pay third parties out of the total compensation paid to it by a property owner.

(2) Maximum fee limits for closing costs. A property owner may not be charged, directly or indirectly, by a property tax lender an amount related to closing costs in excess of the amounts authorized by this section. A property tax lender may not directly or indirectly charge, contract for, or receive any amount related to closing costs from a property owner in excess of the amounts authorized by this section. The following subparagraphs contained in this paragraph outline the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender in connection with a property tax loan, based on the total tax lien payment amount.

(A) For a total tax lien payment amount that is less than \$2,500, the maximum fee for closing costs is \$1,000.

(B) For a total tax lien payment amount that is equal to or greater than \$2,500 but less than \$5,000, the maximum fee for closing costs is \$1,250.

(C) For a total tax lien payment amount that is equal to or greater than \$5,000 but less than \$7,500, the maximum fee for closing costs is \$1,500.

(D) For a total tax lien payment amount that is equal to or greater than \$7,500 but less than \$10,000, the maximum fee for closing costs is \$1,750.

(E) For a total tax lien payment amount that is equal to or greater than \$10,000, the maximum fee for closing costs

is \$2,000, or 10% of the total tax lien payment amount, whichever is greater.

(3) Reasonable closing costs. The maximum fees contained in paragraph (2) of this subsection constitute "reasonable closing costs" under Texas Tax Code, §32.06.

(d) Exception for attorney's fees required to establish correct title. In addition to the maximum fees outlined by subsection (c)(2) of this section, a property tax lender may include in a property tax loan attorney's fees incurred on behalf of a property owner that are reasonable and necessary to

establish in court the correct title to the property to which the property tax loan relates.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 19, 2007.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

Figure: 7 TAC §89.506(a)

DISCLOSURE TO PROPERTY OWNER ABOUT PROPERTY TAX LOANS

Property Tax Lender's Name: _____

Property Tax Lender's License #: _____

Property Tax Lender's Address: _____

What is a property tax loan?

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

The property tax loan is the superior lien.

If you default on any lien against your property, this property tax loan will be superior, i.e., "first in line" to be paid, over any other preexisting lien on your property (e.g., first or secondary mortgage).

You may have alternatives to this property tax loan.

If this property is your homestead and you are disabled or age 65 or older, you may be eligible for tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

Foreclosure is possible.

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

Contact the Office of Consumer Credit Commissioner if you have questions or problems.

For more information about property tax lenders, contact the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us.

Before you sign a property tax loan, be sure that you understand this document.

You may seek advice from an attorney or any third party before you enter into a property tax loan.

Figure: 7 TAC §89.506(b)

**DISCLOSURE TO TRANSFEREE
NOTICE OF 90-DAY DELINQUENCY OF PROPERTY OWNER**

The Property Owner listed below has been delinquent for at least 90 consecutive days in payment of the preexisting lien on the Property described below. The obligation has been referred to a collection specialist. This notice is provided under Texas Tax Code, §32.06(f-1).

Date of Notice: _____

Property Owner's Name: _____

Property Owner's Tax Account # or Property Tax Loan # (*indicate which #'s listed*):

Property Owner's Address: _____

Address of Property: _____

Legal Description of Property:

(Insert Legal Description of Property)

Name of Preexisting Lien Holder sending this notice (Sender):

Sender's Address: _____

Relationship of Sender to preexisting lien (e.g., mortgage servicer, holder of first lien, etc.):

If Sender is NOT the holder of the first lien, please identify the first lien holder below:

Name of First Lien Holder:

First Lien Holder's Address: _____

**Comparison of Positions, Property Tax Lenders Rules, 7 TAC Chapter 89
Subchapter E, Disclosures, §89.504, & Subchapter F, Fees for Closing Costs, §89.601**

§89.504- Delivery Timing of Disclosure Statement

RULE AS PROPOSED:

May deliver at face-to-face interview before closing, if applicable; or must deliver within 3 business days of application by U.S. mail or fax.

Stakeholder	Position
<i>Texas Property Tax Lenders Association (TPTLA)</i>	Rule should have exception where mailed delivery prior to closing could be waived for good cause (imminent foreclosure or imposition of additional penalties on property owner).
<i>Robert R. Wisner</i> (attorney who represents both mortgage & property tax lenders)	Lender should be able to determine how to establish that disclosure statement was sent (e.g., certificate of mailing); (otherwise, agrees w/rule proposal).
<i>Don Baylor, Center for Public Policy Priorities (CPPP)</i>	Disclosure statement must be provided at least 24 hours prior to execution of tax lien transfer.
<i>Kenneth M. Culbreth, Jr.</i> (attorney who represents both mortgage lenders & taxpayers)	Disclosure statement must be provided not later than 12th day before the earlier of (1) date property owner executes sworn authorization, or (2) date property owner executes application for credit with lender.

§89.601(c)-Maximum Fees

RULE AS PROPOSED:

Total tax lien payment amount is <\$2,500 = \$1,000 maximum fee; =or>\$2,500 but <\$5,000 = \$1,250 maximum fee; =or>\$5,000 but <\$7,500 = \$1,500 maximum fee; =or>\$7,500 but <\$10,000 = \$1,750 maximum fee; =or>\$10,000 = \$2,000 maximum fee, or 10% of total tax lien payment amount, whichever is greater.

Stakeholder	Position
<i>TPTLA</i>	Fees should be increased \$285 for each maximum fee listed above, but states that actual fees charged will be lower than proposed maximums due to market forces.
<i>Robert R. Wisner</i>	Rule should authorize additional charges for multiple tracts & maximum limitations should be adjusted annually, based on an indexed base year for COLA purposes.
<i>Don Baylor</i>	Rates are "excessive" & first tier should extend to \$3,000 or \$3,500 instead of \$2,500.

§89.601(d)-Exception for Attorney's Fees to Cure Title

RULE AS PROPOSED:

Limited to attorney's fees that are "reasonable and necessary to establish in court the correct title to the property to which the property tax loan relates."

Stakeholder	Position
<i>TPTLA</i>	Remove words "in court," to eliminate property owner from waiting for probate or other ownership change.
<i>Robert R. Wisner</i>	Remove words "in court," because these attorney's fees often do not require a lawsuit or involve a court proceeding.
<i>Don Baylor</i>	Lender should obtain written authorization from property owner before charging these attorney's fees.
<i>Kenneth M. Culbreth, Jr.</i>	Remove exception altogether, because these attorney's fees are unrelated to tax lien debt.

**ADVANCE NOTICE OF PROPOSED RULEMAKING
NOTICE OF STAKEHOLDERS MEETING**

From: Office of Consumer Credit Commissioner

To: Property Tax Lenders Rules Stakeholders

Date: August 23, 2007

RE: Advance Notice of Proposed Rulemaking & Notice of Stakeholders Meeting

Summary & Purpose

As required by Senate Bill 1520 ("SB 1520"), the Office of Consumer Credit Commissioner ("OCCC") plans to recommend that the Finance Commission ("commission") propose rules regarding certain disclosures and reasonable fees for property tax lenders. The OCCC is seeking input from interested stakeholders in order to prepare the best possible proposal for presentation to the commission at its October 19, 2007, meeting. The OCCC hopes that this notice, combined with the upcoming stakeholders meeting (see below), as well as follow-up communications will enable our agency to balance the needs of consumers and of lenders in promulgating these rules.

Stakeholders Meeting

The OCCC plans to hold a stakeholders meeting regarding this Advance Notice of Proposed Rulemaking ("ANPR") on Thursday, September 6, 2007, at 1:00 p.m. in the William F. Aldridge Hearing Room (third floor) of the Finance Commission Building, located at 2601 North Lamar Boulevard, Austin, Texas 78705. Interested parties are invited to attend and provide comments on this ANPR.

Submission of Comments

Comments on the ANPR may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. **Comments on the ANPR must be received by Friday, September 7, 2007.**

Subsequently, the OCCC plans on distributing the proposed rules for precomment. If the commission votes to approve the rules for comment at the October 19 meeting, then they would be published in the *Texas Register* around November 2. The public will be able to provide comments in compliance with the publication of the rules.

ISSUES RELATED TO DISCLOSURES

Below is a series of questions regarding the procedure and process of property tax lenders providing disclosures, as well as a request for submissions concerning the content of the disclosures. The first set of questions relates to the disclosure statement under Texas Tax Code, §32.06(a-4), and the second set of questions is with regard to the delinquency notice under §32.06(f-1). Both of these subsections were added to §32.06 by SB 1520. Please note that throughout this ANPR, the term "disclosures" will sometimes be used to collectively refer to the (a-4) "disclosure statement" as well as the (f-1) delinquency "notice" as provided in SB 1520. The OCCC invites comment on the following questions.

The (a-4) Disclosure Statement

SB 1520 revises Texas Tax Code, §32.06 by adding subsection (a-4)(1), which states in pertinent part:

*(a-4) The Finance Commission of Texas shall:
(1) prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer*

1. What information should be contained in an "appropriate disclosure statement" under §32.06(a-4)? (Note: If you intend on submitting a full draft, model, or example (a-4) disclosure statement as requested in question 3 below, please disregard this question.)
2. What "form" should the (a-4) disclosure statement follow, i.e. what required formatting should apply to the (a-4) disclosure statement (e.g. font, type-size, prominence or order of elements)?
3. Please submit suggested drafts, models, or examples for the "content" of the (a-4) disclosure statement.
4. What does "provided to a property owner" mean under §32.06(a-4)?
5. For the (a-4) disclosure statement, what should serve as proof or receipt in order to document that the disclosure has been "provided"?
6. In reference to the phrase "before the execution of a tax lien transfer," specifically when should the (a-4) disclosure statement "be provided to the property owner"?

The (f-1) Delinquency Notice

SB 1520 revises Texas Tax Code, §32.06 by adding subsection (f-1), as follows:

(f-1) If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. The Finance Commission of Texas by rule shall prescribe the form and content of the notice under this subsection.

1. What information should be contained in a "notice of the delinquency" under §32.06(f-1)? (Note: If you intend on submitting a full draft, model, or example (f-1) delinquency notice as requested in question 3 below, please disregard this question.)
2. What "form" should the (f-1) delinquency notice follow, i.e. what required formatting should apply to the (f-1) delinquency notice (e.g. font, type-size, prominence or order of elements)?
3. Please submit suggested drafts, models, or examples for the "content" of the (f-1) delinquency notice.

4. What constitutes "an obligation secured by a preexisting first lien on the property" being "delinquent" under §32.06(f-1)?
5. What is a "collection specialist" under §32.06(f-1)?
6. What does "send a notice of the delinquency to the transferee of a tax lien" mean under §32.06(f-1)?
7. For the (f-1) delinquency notice, what should serve as proof or receipt in order to document that the disclosure has been "sen[t]"?
8. In reference to the phrase "delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist," specifically when should the (f-1) delinquency notice be "sen[t] . . . to the transferee of a tax lien"?

ISSUES RELATED TO REASONABLE FEES

Below is a series of questions seeking to determine of scope of the closing costs, fees, and other charges charged by property tax lenders. Please note that throughout this ANPR, the term "fees" will sometimes be used to collectively refer to "closing costs, fees, and other charges" as provided in SB 1520. The OCCC believes that it is critical to first ascertain for what services the fees are used to compensate the lender. The second set of questions inquires as to reasonable amounts for each of the "closing costs, fees, and other charges" permitted by Texas Tax Code, §32.06 and SB 1520, and how those fees should be calculated. The OCCC invites comment on the following questions.

Scope of Fees

SB 1520 adds subsection (a-4)(2), which states in pertinent part:

(a-4) The Finance Commission of Texas shall:

. . . .

(2) adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section.

Texas Tax Code, §32.06(e) states the following:

(e) A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs.

(emphasis added)

The OCCC recognizes the above listed moneys that are paid by property tax lenders to the taxing unit. The only other amount, aside from interest, not paid to the taxing unit under this subsection is "reasonable closing costs."

1. Regarding that last phrase, what is the scope of "reasonable closing costs" under §32.06(e)? In other words, what are the services provided by property tax lenders that are covered by those "reasonable closing costs"?

Under Texas Tax Code, §32.06, the following "fees, and other charges permitted under this section" are as follows:

(b) The transferee may charge the property owner a reasonable fee for filing the release. (last sentence)

(f-3) A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. (last sentence)

(g) At any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, the transferee of the tax lien or the holder of the tax lien may require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner to the transferee or the holder of the tax lien.

(j) If a foreclosure suit results in foreclosure of the lien, the transferee is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment. (emphasis added)

2. What is the difference between the "reasonable fee" allowed for a "payoff statement" in §32.06(f-3) as opposed to the "reasonable fee" allowed for "providing information regarding the current balance owed" in §32.06(g)?

3. If no foreclosure suit is filed but attorney's fees are incurred by a property tax lender, may a property tax lender recoup those attorney's fees under §32.06(j) or under some other provision of §32.06?

4. Outside of the "reasonable closing costs" under §32.06(e) and the "fees, and other charges permitted under this section [§32.06]" (see list above), do you agree that no other non-interest charge is allowed by §32.06 and SB 1520?

5. For what services does the interest charged compensate property tax lenders?

Reasonable Amounts

For each of the questions listed below, please include in your answer how the reasonable amounts should be calculated for each type of fee (e.g. percentage, flat amount, flat amount in tiers, flat amount with minimums or maximums, combination of methods, or other calculation method). Also, for any fee that you suggest should be percentage-based, please list what should be included in the base amount upon which the fee is charged (e.g. amount of tax lien, amount of tax lien plus attorney's fees, or other base amount).

1. Under Texas Tax Code, §32.06(e) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for "closing costs"?

2. Under Texas Tax Code, §32.06(e), what do you believe "reasonable" amount(s) for "closing costs" should be?

3. Under Texas Tax Code, §32.06(b) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee for filing the release"?

4. Under Texas Tax Code, §32.06(b), what do you believe "reasonable" amount(s) for a "fee for filing the release" should be?
5. Under Texas Tax Code, §32.06(f-3) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee for a payoff statement"?
6. Under Texas Tax Code, §32.06(f-3), what do you believe "reasonable" amount(s) for a "fee for a payoff statement" should be?
7. Under Texas Tax Code, §32.06(g) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee before providing information regarding the current balance owed"?
8. Under Texas Tax Code, §32.06(g), what do you believe "reasonable" amount(s) for a "fee before providing information regarding the current balance owed" should be?
9. Under Texas Tax Code, §32.06(j) (quoted in Scope of Fees section), what should reasonable "attorney's fees" be based upon?

Conclusion

The OCCC greatly appreciates the stakeholders' interest in this ANPR, and thanks you in advance for your time and consideration of the issues presented. We look forward to working with you in order to formulate the best possible proposal for the commission.

For More Information

For more information about this ANPR, please contact in the following order: Laurie Hobbs, Assistant General Counsel, (512) 936-7621; Sealy Hutchings, General Counsel, (512) 936-7623; or Leslie Pettijohn, Commissioner, (512) 936-7640.

**ADVANCE NOTICE OF PROPOSED RULEMAKING
NOTICE OF STAKEHOLDERS MEETING**

From: Office of Consumer Credit Commissioner

To: Property Tax Lenders Rules Stakeholders

Date: August 23, 2007

RE: Advance Notice of Proposed Rulemaking & Notice of Stakeholders Meeting

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The OCCC plans to hold a stakeholders meeting regarding this Advance Notice of Proposed Rulemaking ("ANPR") on Thursday, September 6, 2007, at 1:00 p.m. in the William F. Aldridge Hearing Room (third floor) of the Finance Commission Building, located at 2601 North Lamar Boulevard, Austin, Texas 78705. Interested parties are invited to attend and provide comments on this ANPR.

Submission of Comments

Comments on the ANPR may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. **Comments on the ANPR must be received by Friday, September 7, 2007.**

Subsequently, the OCCC plans on distributing the proposed rules for precomment. If the commission votes to approve the rules for comment at the October 19 meeting, then they would be published in the *Texas Register* around November 2. The public will be able to provide comments in compliance with the publication of the rules.

ISSUES RELATED TO DISCLOSURES

Below is a series of questions regarding the procedure and process of property tax lenders providing disclosures, as well as a request for submissions concerning the content of the disclosures. The first set of questions relates to the disclosure statement under Texas Tax Code, §32.06(a-4), and the second set of questions is with regard to the delinquency notice under §32.06(f-1). Both of these subsections were added to §32.06 by SB 1520. Please note that throughout this ANPR, the term "disclosures" will sometimes be used to collectively refer to the (a-4) "disclosure statement" as well as the (f-1) delinquency "notice" as provided in SB 1520. The OCCC invites comment on the following questions.

The (a-4) Disclosure Statement

SB 1520 revises Texas Tax Code, §32.06 by adding subsection (a-4)(1), which states in pertinent part:

*(a-4) The Finance Commission of Texas shall:
(1) prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer . . .*

1. What information should be contained in an "appropriate disclosure statement" under §32.06(a-4)? (Note: If you intend on submitting a full draft, model, or example (a-4) disclosure statement as requested in question 3 below, please disregard this question.)

- Statement including the following language and typeface: "YOU COULD FACE FORECLOSURE AND LOSE YOUR PROPERTY OR HOME IF YOU MISS A SCHEDULED PAYMENT AND/OR VIOLATE THE TERMS OF THIS AGREEMENT."
- "You may have other alternatives other than taking out this property tax loan. You may use another credit instrument or negotiate with the taxing district to pay off or resolve your account (balance)."
- "You may choose to retain legal counsel or to seek advice from a 3rd party in advance of entering into this contract."

2. What "form" should the (a-4) disclosure statement follow, i.e. what required formatting should apply to the (a-4) disclosure statement (e.g. font, type-size, prominence or order of elements)?

The text of the disclosure statement should be at least 12pt typeface, and use BOLD for important disclosure features, as determined by the commission.

3. Please submit suggested drafts, models, or examples for the "content" of the (a-4) disclosure statement.

4. What does "provided to a property owner" mean under §32.06(a-4)?

No comment

5. For the (a-4) disclosure statement, what should serve as proof or receipt in order to document that the disclosure has been "provided"?

The property owner must sign the disclosure statement and mail, deliver, or transmit the form separately from the other documentation.

6. In reference to the phrase "before the execution of a tax lien transfer," specifically when should the (a-4) disclosure statement "be provided to the property owner"?

The disclosure statement must be provided at least 24 hours prior to the execution of a tax lien transfer.

The (f-1) Delinquency Notice

SB 1520 revises Texas Tax Code, §32.06 by adding subsection (f-1), as follows:

(f-1) If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. The Finance Commission of Texas by rule shall prescribe the form and content of the notice under this subsection.

1. What information should be contained in a "notice of the delinquency" under §32.06(f-1)? (Note: If you intend on submitting a full draft, model, or example (f-1) delinquency notice as requested in question 3 below, please disregard this question.)

No comment

2. What "form" should the (f-1) delinquency notice follow, i.e. what required formatting should apply to the (f-1) delinquency notice (e.g. font, type-size, prominence or order of elements)?

No comment

3. Please submit suggested drafts, models, or examples for the "content" of the (f-1) delinquency notice.

No comment

4. What constitutes "an obligation secured by a preexisting first lien on the property" being "delinquent" under §32.06(f-1)?

No comment

5. What is a "collection specialist" under §32.06(f-1)?

No comment

6. What does "send a notice of the delinquency to the transferee of a tax lien" mean under §32.06(f-1)?

No comment

7. For the (f-1) delinquency notice, what should serve as proof or receipt in order to document that the disclosure has been "sen[t]"?

No comment

8. In reference to the phrase "delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist," specifically when should the (f-1) delinquency notice be "sen[t] . . . to the transferee of a tax lien"?

ISSUES RELATED TO REASONABLE FEES

Below is a series of questions seeking to determine of scope of the closing costs, fees, and other charges charged by property tax lenders. Please note that throughout this ANPR, the term "fees" will sometimes be used to collectively refer to "closing costs, fees, and other charges" as provided in SB 1520. The OCCC believes that it is critical to first ascertain for what services the fees are used to compensate the lender. The second set of questions inquires as to reasonable amounts for each of the "closing costs, fees, and other charges" permitted by Texas Tax Code, §32.06 and SB 1520, and how those fees should be calculated. The OCCC invites comment on the following questions.

Scope of Fees

SB 1520 adds subsection (a-4)(2), which states in pertinent part:

(a-4) The Finance Commission of Texas shall:

*.....
(2) adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section.*

Texas Tax Code, §32.06(e) states the following:

(e) A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs.
(emphasis added)

The OCCC recognizes the above listed moneys that are paid by property tax lenders to the taxing unit. The only other amount, aside from interest, not paid to the taxing unit under this subsection is "reasonable closing costs."

1. Regarding that last phrase, what is the scope of "reasonable closing costs" under §32.06(e)? In other words, what are the services provided by property tax lenders that are covered by those "reasonable closing costs"?

Property tax lenders are not typically providing services that warrant substantial closing costs. Compared to other loan originators, property tax lenders often are not providing auxiliary services that could benefit consumers.

Under Texas Tax Code, §32.06, the following "fees, and other charges permitted under this section" are as follows:

(b) The transferee may charge the property owner a reasonable fee for filing the release. (last sentence)

(f-3) A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. (last sentence)

(g) At any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, the transferee of the tax lien or the holder of the tax lien may require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the

current balance owed by the property owner to the transferee or the holder of the tax lien.

(j) If a foreclosure suit results in foreclosure of the lien, the transferee is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment.
(emphasis added)

2. What is the difference between the "reasonable fee" allowed for a "payoff statement" in §32.06(f-3) as opposed to the "reasonable fee" allowed for "providing information regarding the current balance owed" in §32.06(g)?

For one, a "reasonable fee" charged to a lienholder or mortgage servicer should be considered and calculated differently than a "reasonable fee" charged to a property owner facing foreclosure. Accordingly, the latter fee should be negligible.

3. If no foreclosure suit is filed but attorney's fees are incurred by a property tax lender, may a property tax lender recoup those attorney's fees under §32.06(j) or under some other provision of §32.06?

No comment

4. Outside of the "reasonable closing costs" under §32.06(e) and the "fees, and other charges permitted under this section [§32.06]" (see list above), do you agree that no other non-interest charge is allowed by §32.06 and SB 1520?

Yes

5. For what services does the interest charged compensate property tax lenders?

No comment.

Reasonable Amounts

For each of the questions listed below, please include in your answer how the reasonable amounts should be calculated for each type of fee (e.g. percentage, flat amount, flat amount in tiers, flat amount with minimums or maximums, combination of methods, or other calculation method). Also, for any fee that you suggest should be percentage-based, please list what should be included in the base amount upon which the fee is charged (e.g. amount of tax lien, amount of tax lien plus attorney's fees, or other base amount).

1. Under Texas Tax Code, §32.06(e) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for "closing costs"?

Yes

2. Under Texas Tax Code, §32.06(e), what do you believe "reasonable" amount(s) for "closing costs" should be?

When settling on a "reasonable" amount of closing costs, the OCCC should consider an amalgam of related principles. First, the property tax loan should serve as a life preserver, instead of an anvil. As such, the loan should enable the property owner to repay the loan in a timely manner, and enable them to

meet other basic needs. As such, additional lender fees should be minimized in order to compel property tax lenders to compete primarily on the interest rate.

Second, the OCCC should establish closing costs that are line with other similar consumer loan products. Currently, no consumer loan in the marketplace charges in excess of 15% of the origination (property tax payoff) for closing costs. As mentioned, home mortgages (0-6%), payday loans (20-25%), credit cards (3%), and home equity regulations (3%) represent examples of similar consumer credit (secured or unsecured) that typically include closing costs for borrowing capital or transferring a financial obligation from entity to another. Insofar as extraordinary transactions compel property tax lenders to conduct atypical activities (e.g. title resolution, expedition), those fees and activities should not be considered within the scope of "reasonable" closing costs. In other words, the typical borrower (and transaction) should not be penalized with additional fees, and, in essence, subsidize the atypical borrower (and transaction) that is more expensive to serve. Property tax lenders have the option of declining these more time-consuming and complicated transactions, or referring them to other specialists to resolve non-core issues unrelated to the direct lending of capital, extension of credit, and tax lien transfer.

Third, borrowers with higher tax payoff amounts should pay proportionately more, and the borrowers with lower tax payoff amounts should pay proportionately less. However, we agree with many stakeholders in contending that each transaction carries a certain amount of invariable costs regardless of the property tax payoff amount. Moreover, property tax lenders should expect to recoup essential fees for typical transactions, but not for expenses associated with the cost of doing business. Accordingly, the OCCC should develop baseline "pass-through" fees that enable this expense recovery for lenders. We believe that a more reasonable schedule of closing costs will spur further innovation and efficiency that would improve service delivery and market competition.

Our proposal for calculating "reasonable" closing costs is as follows:

The greater of \$500 or 15% of the property tax payoff amount, with no additional fees.

3. Under Texas Tax Code, §32.06(b) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee for filing the release"?

The methodology for determining a reasonable fee for filing the release should depend on the fees charged by the taxing unit for such an activity. If the taxing units do not typically charge a fee for filing a release, then no additional fee shall be assessed for this activity. Property tax lenders have begun the practice of filing the release themselves in order to gain additional confidence about the validity of their transactions.

4. Under Texas Tax Code, §32.06(b), what do you believe "reasonable" amount(s) for a "fee for filing the release" should be?

See above. Notwithstanding the fees charged by the taxing unit, such a filing fee should not exceed \$20.

5. Under Texas Tax Code, §32.06(f-3) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee for a payoff statement"?

For clarification purposes, the rules should not permit a fee for an initial payoff statement. For an additional payoff statement provided via electronic transmission (email) or obtained in person by the property owner, the rules should not allow a fee.

6. Under Texas Tax Code, §32.06(f-3), what do you believe "reasonable" amount(s) for a "fee for a payoff statement" should be?

As mentioned above, no fee should be allowed for an email or in-person receipt of an additional payoff statement. If sent via mail, the fee shall not exceed \$10.

7. Under Texas Tax Code, §32.06(g) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee before providing information regarding the current balance owed"?

The commission should undertake an analysis to determine true additional costs that are not included in the "cost of doing business." The only obvious cost may be contacting the property owner to obtain authorization, which is not substantial. We argue that this requirement does not pose a considerable burden, and therefore should not warrant substantial fees, if any.

8. Under Texas Tax Code, §32.06(g), what do you believe "reasonable" amount(s) for a "fee before providing information regarding the current balance owed" should be?

For this subsection, such a "reasonable" fee should be limited, between \$0-\$20.

9. Under Texas Tax Code, §32.06(j) (quoted in Scope of Fees section), what should reasonable "attorney's fees" be based upon?

No comment.

Conclusion

The OCCC greatly appreciates the stakeholders' interest in this ANPR, and thanks you in advance for your time and consideration of the issues presented. We look forward to working with you in order to formulate the best possible proposal for the commission.

For More Information

For more information about this ANPR, please contact in the following order: Laurie Hobbs, Assistant General Counsel, (512) 936-7621; Sealy Hutchings, General Counsel, (512) 936-7623; or Leslie Pettijohn, Commissioner, (512) 936-7640.

To: Office of Consumer Credit Commissioner
From: Kenneth M. Culbreth, Jr.
Date: September 7, 2007
Re: Commentary Responsive to Advance Notice of Proposed Rulemaking & Notice of Stakeholders Meeting (Senate Bill 1520)

In response to the invitation by the Office of Consumer Credit Commissioner ("OCCC") to submit written commentary responsive to the Advance Notice of Proposed Rulemaking ("ANPR") & Notice of Stakeholders Meeting (Senate Bill 1520) dated August 23, 2007 and setting the meeting for stakeholders for September 6, 2007 at the Finance Commission Building in Austin, please accept the following as initial input responsive to the questions asked by the OCCC in the ANPR. The comments offered follow each question.

ISSUES RELATED TO DISCLOSURES

Below is a series of questions regarding the procedure and process of property tax lenders providing disclosures, as well as a request for submissions concerning the content of the disclosures. The first set of questions relates to the disclosure statement under Texas Tax Code, §32.06(a-4), and the second set of questions is with regard to the delinquency notice under §32.06(f-1). Both of these subsections were added to §32.06 by SB 1520. Please note that throughout this ANPR, the term "disclosures" will sometimes be used to collectively refer to the (a-4) "disclosure statement" as well as the (f-1) delinquency "notice" as provided in SB 1520. The OCCC invites comment on the following questions.

The (a-4) Disclosure Statement

SB 1520 revises Texas Tax Code, §32.06 by adding subsection (a-4)(1), which states in pertinent part:

*(a-4) The Finance Commission of Texas shall:
(1) prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer . . .*

1. What information should be contained in an "appropriate disclosure statement" under §32.06(a-4)? (Note: If you intend on submitting a full draft, model, or example (a-4) disclosure statement as requested in question 3 below, please disregard this question.)

The disclosure statement must, at the least,:

(1) specify the amount of all fees, charges and interest rate the proposed transferee will charge in connection with the transfer of the tax lien and any contract under Section 32.065, describing all of same with particularity so that the consumer property owner is aware upfront of

Comments to Advance Notice of Proposed Rulemaking
Office of Consumer Credit Commissioner

Page 1 of 11

the fees (closing costs) and the potential amount thereof, the monthly payment amount, the term of the loan (how long to pay it back), escrow amounts, late fees, attorney's fees (this allows the tax payer to shop around and compare);

(2) warn the property owner that the tax lien lender can foreclose its lien and the taxpayer can LOSE THEIR HOME; (the tax lien lenders send solicitation notices to property owners which may lead them to believe that property owners are about to lose their home to the governmental taxing entities by sheriff's sale which may lead the property owner to believe that they cannot lose their home to the foreclosure of the transferred tax lien);

(3) warn the property owner that entering into the tax lien transfer transaction may constitute a violation of agreements relating to existing liens encumbering the property, thereby permitting the holders of such liens to foreclose the property (informing the property owner of the fact that entering into this tax lien transfer transaction is a default under their current mortgage loan and the consequences thereof);

(4) advise the property owner that the holders of existing liens may, if requested, agree to pay outstanding taxes and charge a lower interest rate, or establish an escrow arrangement and charge no interest;

(5) advise the property owner that the taxing entities are authorized to enter into installment agreements with them to allow them to pay their property taxes over time;

(6) warn the property owner that unless they agree, in writing, the tax lien lender cannot pay/loan on the property owner's non-delinquent taxes (otherwise, the tax lien lender will escrow additional amounts for future (non-delinquent) taxes increasing the monthly payment by the property owner) (see §32.06 (a-2) (2) (B) requiring property owner to execute an authorization consenting to a transfer of the tax lien for both delinquent and non-delinquent taxes in order to allow tax lien lender to pay/loan and have tax lien transferred on non-delinquent taxes. THIS AUTHORIZATION SHOULD ALSO BE IN A SEPARATE DOCUMENT);

(7) recommend that if the property owner has any questions about the proposed transfer, or if the property owner has any complaints or questions about the proposed transferee, the owner may contact the OCCC and specify an address and toll-free contact number for that purpose.

2. What "form" should the (a-4) disclosure statement follow, i.e. what required formatting should apply to the (a-4) disclosure statement (e.g. font, type-size, prominence or order of elements)?

It should be conspicuously printed, typed in a size equal to at least 10-point boldface or the computer equivalent (at least as conspicuous as the various solicitation notices sent out by the tax lien lenders). Such notices may be reviewed upon request.

In that vein, the OCCC should regulate these solicitation notices being sent by the tax lien lenders to the property owners as follows:

- Tax lien lenders directly solicit property owners/taxpayers and induce them to take out a loan for what is represented to be the payment of delinquent taxes. However, the loan is for an amount greatly in excess of the delinquent taxes (and often for non-delinquent taxes). Once the taxpayer has defaulted, the tax lien lender adds additional post default late fees, collection charges and attorney's fees to the debt, making it very difficult for the property owner to cure the default. The entire debt is then accelerated and the transferred lien is foreclosed potentially causing the property owner to lose their homestead. (One tax lien lender testified at the stakeholder's meeting on September 6, 2007 that it had posted 60 homes for foreclosure in September 2007).
- Tax lien lenders send to homeowners these direct mass mailings with glossy depictions of sheriff's sales showing property being auctioned off for failure to pay taxes and with language in bold, underscored or all capital letters such as: "NOTICE OF TAX LIEN – URGENT NOTICE!!" and "TO PREVENT FURTHER ACTION AGAINST YOUR PROPERTY YOU MUST ACT TODAY!!" and "FINAL NOTICE - YOU MAY BE SUBJECT TO A LAWSUIT UNLESS YOU ACT NOW!!" and "FORECLOSURE COULD BE PENDING BECAUSE OF DELIQUENT PROPERTY TAXES" and "Legal action can begin at any time. Your mortgage company could pay your taxes which could more than double your mortgage payment."
- Such scare tactics have a tendency to deceive the homeowners and cause them to act under duress when entering into these tax lien loans.

For the above reasons, the OCCC should make sure the Disclosure Statement negates the potential for deception and duress which may be caused by the above mail solicitations. Additionally, and well within the authority of the OCCC, it should promulgate a uniform solicitation notice to be used by all tax lien lenders and regulate the tax lien lenders accordingly under HB 2138 (Chapter 351 of the Texas Finance Code).

3. Please submit suggested drafts, models, or examples for the "content" of the (a-4) disclosure statement.

I will respectfully defer to the OCCC.

4. What does "provided to a property owner" mean under §32.06(a-4)?

The disclosure statement should be hand-delivered to the property owner at the office of the tax lien lender, an attorney's office, or title company (compare Tex. Const. art. XVI, §50(a)(5)(D)) with a written acknowledgement (notarized) of receipt signed by the property owner at the end of the document. Further, the disclosure statement (and all documents signed by the tax payer/property owner relating to the transferred tax lien) must be signed by both spouses if the property owner is married. Compare §53.254 (c) of Property Code requiring both spouses to sign improvement contract to fix lien on homestead and Tex. Const. art. XVI, §50(a)(5)(A)] requiring both spouses to sign home equity lien on homestead).

5. For the (a-4) disclosure statement, what should serve as proof or receipt in order to document that the disclosure has been "provided"?

Same as answer to No. 4 above.

6. In reference to the phrase "before the execution of a tax lien transfer," specifically when should the (a-4) disclosure statement "be provided to the property owner"?

The disclosure statement must be provided to the property owner and signed by the property owner "not later than the 12th day before the earlier of (i) the date a property owner executes a sworn document described by Section 32.06(a-1) or (2) the property owner's executes an application for credit with the tax lien lender. Compare Tex. Const. art. XVI, §50(a)(6)(M)(i)] (12 day cooling-off period for home equity lending on homestead).

The (f-1) Delinquency Notice

SB 1520 revises Texas Tax Code, §32.06 by adding subsection (f-1), as follows:

(f-1) If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. The Finance Commission of Texas by rule shall prescribe the form and content of the notice under this subsection.

1. What information should be contained in a "notice of the delinquency" under §32.06(f-1)? (Note: If you intend on submitting a full draft, model, or example (f-1) delinquency notice as requested in question 3 below, please disregard this question.)

The "notice of delinquency" in 32.06(f-1) is the same notice required to be sent by the tax lien lender in §32.06(f). However, the notice of delinquency to be sent by the first lien holder to the tax lien lender under §32.06(f-1) is not mandatory, while the notice of delinquency to be sent by the tax lien lender to the first lien holder under 32.06(f) is mandatory. Accordingly and logically (to again establish uniformity), the notices should be identical in form, regardless of the fact that OCCC is required to prescribe the form and content of the permissive notice sent by the first lien holder in §32.06(f-1), yet §32.06(f) does not reference this prescription by the OCCC for the required notice.

2. What "form" should the (f-1) delinquency notice follow, i.e. what required formatting should apply to the (f-1) delinquency notice (e.g. font, type-size, prominence or order of elements)?

It should, at the least, contain the information set forth in a payoff statement defined by Section 12.017, Property Code (as stated in §32.06(f-3)). Further, because the tax lien lender is required to give the first lien holder notice of delinquency between the 90th and 120th day of delinquency (see §32.06 (f)), the "current balance owed" to cure the default (with itemized amounts owed) should be set forth therein along with a payment history to confirm the delinquency and the pay-off statement information.

3. Please submit suggested drafts, models, or examples for the "content" of the (f-1) delinquency notice.

I will respectfully defer to the OCCC.

4. What constitutes "an obligation secured by a preexisting first lien on the property" being "delinquent" under §32.06(f-1)?

As to the homestead, any mechanic's lien, vendor's lien or deed of trust lien and other liens allowed to encumber the homestead under Section 41.001 of the Texas Property Code which are recorded in the appropriate real property records prior in time to the recording of the transferred tax lien (as required by Section 32.06(d) in each county in which the property encumbered by the transferred tax lien is located).

5. What is a "collection specialist" under §32.06(f-1)?

I will respectfully defer to the OCCC.

6. What does "send a notice of the delinquency to the transferee of a tax lien" mean under §32.06(f-1)?

Since the notices in both (f) and (f-1) should be identical in form, it would be logical to use the same method of transmittal as set forth in §32.06(f) – certified mail.

7. For the (f-1) delinquency notice, what should serve as proof or receipt in order to document that the disclosure has been "sen[t]"?

Since the notices in both (f) and (f-1) should be identical in form, it would be logical to use the same proof as set forth in §32.06(f) – certified mail.

8. In reference to the phrase "delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist," specifically when should the (f-1) delinquency notice be "sen[t] . . . to the transferee of a tax lien"?

Since the notices in both (f) and (f-1) should be identical in form, it would be logical to use the same 120 day period set forth in §32.06(f).

ISSUES RELATED TO REASONABLE FEES

Below is a series of questions seeking to determine of scope of the closing costs, fees, and other charges charged by property tax lenders. Please note that throughout this ANPR, the term "fees" will sometimes be used to collectively refer to "closing costs, fees, and other charges" as provided in SB 1520. The OCCC believes that it is critical to first ascertain for what services the fees are used to compensate the lender. The second set of questions inquires as to reasonable amounts for each of the "closing costs, fees, and other charges" permitted by Texas Tax Code, §32.06 and SB 1520, and how those fees should be calculated. The OCCC invites comment on the following questions.

Scope of Fees

SB 1520 adds subsection (a-4)(2), which states in pertinent part:

(a-4) The Finance Commission of Texas shall:

*.....
(2) adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section.*

Texas Tax Code, §32.06(e) states the following:

*(e) A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs.
(emphasis added)*

The OCCC recognizes the above listed moneys that are paid by property tax lenders to the taxing unit. The only other amount, aside from interest, not paid to the taxing unit under this subsection is "reasonable closing costs."

1. Regarding that last phrase, what is the scope of "reasonable closing costs" under §32.06(e)? In other words, what are the services provided by property tax lenders that are covered by those "reasonable closing costs"?

"Reasonable closing costs" should not exceed 3% of the amount of taxes, penalties, interest, and collection costs paid as shown on the tax receipt from the tax collector (as required by §32.06(b)) and should be limited to application fees, fees to originate, evaluate, maintain, record, broker, insure or service the loan, including attorneys' fees for document preparation.

As stated in 32.06(e), "Funds advanced" are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus

reasonable closing costs. The 3% limitation on closing costs is exactly what was implemented by the legislature regarding home equity lending which states "not to exceed 3% of original principal amount of loan" and applies for all home equity loan closing expenses (application fees and fees to originate, evaluate, maintain, record, insure or service, including attorneys' fees for document preparation) as codified at Tex. Const. art. XVI, §50(a)(6)(E)].) Home equity lending is very similar to tax lien lending in that it allows the creation of a lien on the homestead. Accordingly, the same safeguards should be implemented, regardless of whether the loan is for a lesser amount. In those instances of smaller loans, the tax lien lenders have much less risk and appraisals, evaluations, title policies, inspections etc. are not necessary. In any event, tax lien lenders should not be allowed to charge exorbitant closing costs (with up to 18% interest thereon as allowed by 32.06(e)) and convert same to what the call tax lien debt. The charging of these closing costs are where some tax lien lenders have abused the process.

Under Texas Tax Code, §32.06, the following "fees, and other charges permitted under this section" are as follows:

(b) The transferee may charge the property owner a reasonable fee for filing the release. (last sentence)

(f-3) A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. (last sentence)

(g) At any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, the transferee of the tax lien or the holder of the tax lien may require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner to the transferee or the holder of the tax lien.

(j) If a foreclosure suit results in foreclosure of the lien, the transferee is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment.(emphasis added)

2. What is the difference between the "reasonable fee" allowed for a "payoff statement" in §32.06(f-3) as opposed to the "reasonable fee" allowed for "providing information regarding the current balance owed" in §32.06(g)?

No difference. Section 32.06(f-3) and Section 32.06(g) should be read to be consistent. There should be no difference between the fee and the information given. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code (as stated in §32.06(f-3)). Section 32.06(g) is redundant and was inadvertently left in the statute as it was connected to the 6 month rule in the old §32.06 (f) which allowed a preexisting lienholder to pay off the tax lien loan within 6 months after the transferred tax lien is recorded. Now, no written authorization is required as provided by §32.06(f-3) because the transferee is now required to give the pay-off information as permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216 (the Gramm Leach Bliley Act - federal law provisions which govern customer privacy

issues. This amendment (§32.06(f-3)) was added because tax lien lenders would say they have a contractual agreement with their customer not to release any information to outside parties as an excuse not to give first lien mortgage lender a payoff statement. Or tax lien lenders would require the mortgage lender to obtain customer authorization before they gave mortgage lender a payoff statement. This provision says despite any contractual agreement, the tax lien lender must give mortgage lender the payoff information.) Further, because the tax lien lender is now required to give the first lien holder notice of delinquency between the 90th and 120th day of delinquency (see §32.06 (f)), such notice would include the "current balance owed" to cure the default (with itemized amounts owed) should be set forth therein along with a payment history to confirm the delinquency and the pay-off statement information.

3. If no foreclosure suit is filed but attorney's fees are incurred by a property tax lender, may a property tax lender recoup those attorney's fees under §32.06(j) or under some other provision of §32.06?

This is a major problem with tax lien lending. Some tax lien lenders are charging excessive attorney's fees for collection, demand letters, acceleration letters, foreclosure notices and making it difficult if not impossible for the tax payers to pay, then passing the obligation to the first lien holder, to the extent one exists. However, the ultimate victim is the consumer property owner. In the event the OCCC does allow the recoupment of (charging of) attorney's fees, same should be limited to 10% of the "funds advanced" as that term is defined in Section 32.06(e). Additionally such attorney's fees should be only allowed when charged to the tax lien lender by an attorney who is not a salaried employee of the tax lien lender if the fees are evidenced by a statement for services rendered.

4. Outside of the "reasonable closing costs" under §32.06(e) and the "fees, and other charges permitted under this section [§32.06]" (see list above), do you agree that no other non-interest charge is allowed by §32.06 and SB 1520?

Yes. However, tax lien lenders are charging for preparation of Releases of Lien, which should be prohibited. See application of Federal Truth-in-Lending to same.

5. For what services does the interest charged compensate property tax lenders?

I will respectfully defer to the OCCC.

Reasonable Amounts

For each of the questions listed below, please include in your answer how the reasonable amounts should be calculated for each type of fee (e.g. percentage, flat amount, flat amount in tiers, flat amount with minimums or maximums, combination of methods, or other calculation method). Also, for any fee that you suggest should be percentage-based, please list what should be included in the base amount upon which the fee is charged (e.g. amount of tax lien, amount of tax lien plus attorney's fees, or other base amount).

1. Under Texas Tax Code, §32.06(e) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for "closing costs"?

"Reasonable closing costs" should not exceed 3% of the amount of taxes, penalties, interest, and collection costs paid as shown on the tax receipt from the tax collector (as required by §32.06(b)) and should be limited to application fees, fees to originate, evaluate, maintain, record, broker, insure or service the loan, including attorneys' fees for document preparation.

As stated in 32.06(e), "Funds advanced" are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs. The 3% limitation on closing costs is exactly what was implemented by the legislature in 2003 regarding home equity lending which states "not to exceed 3% of original principal amount of loan" and applies for all home equity loan closing expenses (application fees and fees to originate, evaluate, maintain, record, insure or service, including attorneys' fees for document preparation) as codified at Tex. Const. art. XVI, §50(a)(6)(E)]. Home equity lending is very similar to tax lien lending in that it allows the creation of a lien on the homestead. Accordingly, the same safeguards should be implemented, regardless of whether the loan is for a lesser amount. In those instances of smaller loans, the tax lien lenders have much less risk and appraisals, evaluations, title policies, inspections etc are not necessary. In any event, tax lien lenders should not be allowed to charge exorbitant closing costs (with up to 18% interest thereon as allowed by 32.06(e)) and convert same to what the call tax lien debt. The charging of these closing costs are where some tax lien lenders have abused the process.

2. Under Texas Tax Code, §32.06(e), what do you believe "reasonable" amount(s) for "closing costs" should be?

See answer to No. 1 above.

3. Under Texas Tax Code, §32.06(b) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee for filing the release"?

This should be a pass through cost of exactly what is charged by the governmental entity for *filing/recording* the release. However, tax lien lenders are charging attorneys' fees for the preparation of a Release of Lien and including same in the pay-off. This charge should be prohibited.

4. Under Texas Tax Code, §32.06(b), what do you believe "reasonable" amount(s) for a "fee for filing the release" should be?

See answer to No. 3 above.

5. Under Texas Tax Code, §32.06(f-3) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee for a payoff statement"?

\$5.00. Some mortgage lenders do not even charge a fee for a pay-off statement. It certainly should not be \$50 to \$100, as charged by some tax lien lenders. Most lenders have software programs that perform the pay-off calculations and insert on a pre-printed pay-off statement. This information should be available without significant expense to the consumer, the majority of whom obviously are already having problems paying their debts. And, this fee should only be charged for a payoff statement, *after an initial payoff statement is provided.* See §32.06 (f-3).

6. Under Texas Tax Code, §32.06(f-3), what do you believe "reasonable" amount(s) for a "fee for a payoff statement" should be?

Same answer as No. 5 above.

7. Under Texas Tax Code, §32.06(g) (quoted in Scope of Fees section), how do you believe the rules should establish "reasonable" amount(s) for a "fee before providing information regarding the current balance owed"?

Same answer as No. 5 above.

8. Under Texas Tax Code, §32.06(g), what do you believe "reasonable" amount(s) for a "fee before providing information regarding the current balance owed" should be?

Same answer as No. 5 above.

9. Under Texas Tax Code, §32.06(j) (quoted in Scope of Fees section), what should reasonable "attorney's fees" be based upon?

As stated above, this is a major problem with tax lien lending. Some tax lien lenders are charging excessive attorney's fees for title work, document preparation, collection, demand letters, acceleration letters, foreclosure notices and making it difficult if not impossible for the tax payers to pay, then passing the obligation to the first lien holder, to the extent one exists. However, the ultimate victim is the consumer property owner.

Section 32.06(j) limits the recovery of attorney's fees to 10% of the judgment. However, the OCCC should also limit attorney's fees for collection, including non-judicial sales and TRCP 736 sales, to 10% of the "funds advanced" as that term is defined in 32.06(e). Additionally such fees should be only allowed when charged to the tax lien lender by an attorney who is not a salaried employee of the tax lien lender if the fees are evidenced by a statement for services rendered.

At the stakeholder's meeting on September 6, 2007, there was some testimony given stating that the OCCC did not have the authority under Section 32.06 to regulate attorneys' fees. I strongly disagree. SB 1520 adds subsection (a-4)(2), which states in pertinent part:

(a-4) *The Finance Commission of Texas shall:*

.....
(2) *adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section.*

Attorney's fees are expressly "fees permitted under this section." Accordingly, the OCCC clearly has authority to adopt rules relating to the reasonableness of attorneys' fees from the documents preparation stage, through collection, foreclosure and lien release.

Additionally, other fees/charges which the OCCC needs to address because of abuses committed by some tax lien lenders are late fees (delinquency charges) and NSF fees. The proposed rules regarding same are as follows:

(a) Late fees. If an installment payment remains unpaid after the 10th day it is due, the transferee (tax lien lender) may collect a delinquency charge that is not more than 5 percent of the installment payment or \$5, whichever is less, and add the charge to the unpaid balance of the contract. Only one delinquency charge may be collected on an installment, regardless of the duration of the default. (This provision is identical to the provision currently limiting late fees to \$5.00 in Section 345.060 of the Finance Code regarding installment contracts.)

(b) Dishonored Check fees. Upon return of a dishonored check made in payment tax lien debt, the transferee (tax lien lender) may collect a processing fee that is not more than \$15 and add the fee to the unpaid balance of the contract. (This provision is identical to the provision currently limiting late fees to \$15.00 in Section 345.106 of the Finance Code regarding installment agreements.)

Conclusion

The stakeholders greatly appreciate the OCCC's efforts in preparing this very thorough ANPR. Hopefully, the above initial comments will be helpful. Thanks again and please contact me if I may be of assistance.

To: Office of Consumer Credit Commissioner
From: Kenneth M. Culbreth, Jr.
Date: September 26, 2007
Re: Commentary Responsive to the OCCC's below 9/18/07 Draft Property Tax Lenders Disclosures Rules (Germane to Senate Bill 1520)

In response to the September 18, 2007 invitation by the Office of Consumer Credit Commissioner ("OCCC") to submit written commentary responsive to the 9/18/07 Draft Property Tax Lenders Disclosures Rules (Germane to Senate Bill 1520), please accept the following commentary/changes in bold as suggested revisions to the Draft Rules.

Additionally, I am sending herewith my suggested Disclosure Statement as a separate document, which is prepared in the required font size and type as required by the OCCC in §89.503 below. I would respectfully request the OCCC to substitute the attached Disclosure Statement as its sample model. It incorporates all of the OCCC's existing disclosures and some of the disclosures suggested by Robert A. Wisner in his proposed Disclosure Statement. Further, it is my opinion (as I hope it is yours) that the suggested Disclosure Statement greatly benefits the consumer in educating him/her prior to the tax lien transfer.

Property Tax Lenders Disclosures Rules
9/18/07 Draft

Subchapter E. Disclosures.

§89.501. Purpose.

The purpose of the rules contained in this subchapter is to provide disclosures for property tax loan transactions. These rules prescribe the form and content of the disclosures under Texas Tax Code, §32.06(a-4)(1) and §32.06(f-1).

§89.502. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Property tax lender--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax lender" is a "transferee" as defined by Texas Tax Code, §32.06(2), and these terms may be used synonymously.

(2) Property tax loan--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(3) Tax lien transfer--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(4) Transferee--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220) and Texas Tax Code, §32.06(2). Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

§89.503. Format.

(a) Disclosures for property tax loan transactions must be printed in an easily readable font and type size. If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must be at least as large as 11 point in the Times typeface. The typeface for the headings must be at least as large as 12 point boldface in the Times typeface. A point is generally viewed as 1/72nd of an inch.

COMMENT: At least the headings should be conspicuously printed, typed in a size equal to at least 12-point boldface Times typeface (at least as conspicuous as the various solicitation notices sent out by the tax lien lenders). While the sample disclosure at 7 TAC Figure §89.506(a) appears to have headings in bold, the above Rule does not so state.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) the property tax lender's name, principal business address, and license number;

(2) a statement that informs the property owner that on January 1 of each year, all property owners have a tax lien in favor of the governmental taxing unit(s) against the owner's property or homestead for unpaid property taxes but that the governmental taxing unit(s) must file a lawsuit and obtain a judgment in order to foreclose its lien;

COMMENT: The disclosure above is revised to explain to the property owner the nature of a statutory tax lien under Section 32.01 Texas Property Tax Code as distinguished from a transferred tax lien. Some of the above is in the 7 TAC Figure §89.506(a), but not addressed in the above rule.

(3) a statement that the property owner can pay the taxing unit(s) directly and may enter into a payment installment agreement with the taxing unit(s) under Texas Property Tax Code, §33.02 to pay the taxes over time;

COMMENT: The disclosure above is revised to explain to the property owner that they may enter into an installment arrangement with the taxing unit to pay their taxes over time. This disclosure was also referenced below in originally numbered §89.504(a)(6), but merely rearranged.

(4) a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;

(5) a statement that the property owner may limit the tax lien transfer authorization to only non-delinquent taxes owing unless the property owner states in writing that the property tax lender may transfer a tax lien on non-delinquent taxes owing in the future (pursuant to Texas Property Tax Code, §31.02, "taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed");

COMMENT: The disclosure above is added to inform the property owner that unless they agree, in writing to allow same, the tax lien lender cannot pay/loan on the property owner's non-delinquent taxes (otherwise, the tax lien lender will escrow additional amounts for future (non-delinquent) taxes increasing the monthly payment by the property owner) (see §32.06 (a-2) (2) (B) requiring property owner to execute an authorization consenting to a transfer of the tax lien for both delinquent and non-delinquent taxes in order to allow tax lien lender to pay/loan and have tax lien transferred on non-delinquent taxes. THIS AUTHORIZATION SHOULD ALSO BE IN A SEPARATE DOCUMENT CONPICUOUSLY SET FORTH).

(6) a statement that the property tax lender may add "up front" closing costs, escrow fees, attorney's fees, other charges and interest up to 18% in connection with the property tax loan and the property owner should inquire as to these amounts, the total amount of the loan, the interest rate, the monthly payment amount and the number or monthly payments ;

(7) a statement that foreclosure may occur of the transferred tax lien held by the property tax lender, the property owner could lose the property or homestead, and the cost of that foreclosure could be added to the transferred tax lien;

(8) a statement that the transferred tax lien is superior to any other preexisting lien on the property or homestead;

(9) a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g. financing options through an existing mortgage lender which may, if requested, agree to pay outstanding taxes and charge a lower interest rate, or establish an escrow arrangement and charge no interest; or other private lenders, borrowing from savings or family members);

(10) a statement that warns the property owner that entering into the property tax loan may constitute a violation of existing mortgage liens encumbering the property, thereby permitting the holders of such liens to foreclose their liens on the property;

(11) a statement that disabled persons or persons age 65 or older may be eligible for tax deferral under Texas Property Tax Code, §33.06:

(12) a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll-free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us:

(13) a statement that the property owner may seek the advice of an attorney or another third party before signing; and

(14) blanks for signature(s) of the property owner(s) and date when signed acknowledging receipt.

(b) Single page required. The disclosure statement required by §89.506(a) of this title must fit on one standard-size sheet of paper (8 1/2 by 11).

(c) Delivery.

(1) At time of application. At the time of application or within three days of application, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by 7 TAC Figure: §89.506(a) of this title to the property owner either by U.S. mail, facsimile, email, or hand-delivery.

COMMENT: As stated in my previous written comments to the ANPR, because the property is the homestead of the property owner the sanctity of same requires a significant time period for "cooling-off" after having been solicited by the property tax lender and where these loans allow for the foreclosure of the homestead. The disclosure statement must be provided to the property owner and signed by the property owner "not later than the 12th day before the earlier of (i) the date a property owner executes a sworn authorization described by Section 32.06(a-1) or (2) the property owner executes an application for credit with the tax lien lender. Compare Tex. Const. art. XVI, §50(a)(6)(M)(i) (12 day cooling-off period for home equity lending on homestead).

"At the time of application or within three days of application" as stated above in §89.504(c)(1) does not (1) tell us the definition of or what constitutes "application," therefore there is no defined trigger date for the 3 day requirement (2) give the property owner the necessary clear disclosure without being part of the signing of a myriad of other documents at the same sitting (3) give the property owner enough "cooling off" time after having been solicited by the tax lien lender causing the mindset of losing their homestead unless they sign up with the property tax lender.

Finally, the disclosure statement should be hand-delivered to the property owner at the office of the tax lien lender, an attorney's office, or title company (compare Tex. Const. art.

XVI, §50(a)(5)(D)) with a written acknowledgement (notarized) of receipt signed by the property owner at the end of the document.

(2) At time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement prescribed by 7 TAC Figure: §89.506(a), but is not required to do so. If not already obtained at the time of application, the property tax lender must obtain a dated acknowledgment contained in the disclosure statement signed by the property owner stating that the property owner received the disclosure statement at the time of application.

COMMENT: "At the time of closing" as set forth above does not tell us the definition of or what constitutes "closing," and there is no defined period between "application" and "closing" to guarantee any 3 day requirement. There are several documents that are required to be signed by the property owner to effect a transferred tax lien, including, but no limited to (1) the sworn authorization filed with the tax collector required by Section 32.06(a-1) (2) the Note (payment obligation) between the property owner and the property tax lender and (3) the Deed of Trust (converting the transferred tax lien into a deed of trust lien, allowed to be foreclosed under a TRCP 736 proceeding (Section 32.06 (c)). Accordingly, as §89.504(c)(1) and (2) are now written, the tax lien lender could refer to the sworn authorization as the "application" and have the property owner sign the disclosure statement and all above documents at that time, referring to the "closing" as the "funding" date or some other date in the future.

Therefore, there must be a definition of "application" and "closing", a description of what is accomplished at each, with a defined time period between the occurrence of the "application" and the "closing." The idea is to provide the property owner this written disclosure well in advance of the execution of the sworn authorization under Section 32.06(a-1) allowing the property tax lender to pay the taxes.

Additionally, in defining the above transaction events, the OCC should make it clear to the property tax lender as to when the 3-day right of rescission must be given to the property owner. See Section 32.06 (d-1) ("A right of rescission described by 12 C.F.R. Section 226.23 applies to a tax lien transfer under this section.")

(3) Married property owners. The signatures of both spouses must be obtained in order for a disclosure to be considered "provided" under this section.

(d) Verification of delivery.

(1) At time of application. At the time of application, verification that a disclosure was provided under this section is not required, but may be established by a signed and dated acknowledgment of the property owner, submitted to the lender either by U.S. mail, facsimile, email, or hand-delivery. If a lender mails the disclosure statement to the property owner, the property tax lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

COMMENT: See Comments under §89.504(c)(1) and (2) above.

(2) At time of closing. At the time of closing, if not already obtained at the time of application, verification that a disclosure statement as prescribed by 7 TAC Figure: §89.506(a) was provided under this section must be established by a dated acknowledgment contained in the disclosure statement signed by the property owner prior to the time of application as defined above.

COMMENT: See Comments under §89.504(c)(1) and (2) above. Also, by adding the above language to 89.504(d)(2), a time for the signing and receipt of the disclosure statement is established (relying on definitions of "application" and "closing" as requested above).

§89.505. Requirements for Notice of Delinquency to Transferee.

(a) Required elements. If a notice of delinquency under Texas Tax Code, §32.06(f-1) is sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien, it must contain the following required elements:

(1) the date of the notice;

(2) the name of the property owner;

(3) the address of the property;

(4) the legal description of the property;

(5) the tax account number or property tax loan number;

(6) name and address of the mortgage servicer or the first lien holder sending the notice;

and

(7) the sender's relationship to the preexisting lien, and if the sender is not the lien holder, the name and address of the lien holder.

(b) Delivery.

(1) Timing of delivery. If the mortgage servicer or the holder of the first lien sends a notice of delinquency under Texas Tax Code, §32.06(f-1) to the transferee of a tax lien, it must be sent within 30 days of the 90-day delinquency of the property owner.

(2) Method of delivery. At a minimum, a notice under this section must be sent by U.S. mail or via facsimile. Mortgage servicers or first lien holders may use certified mail or delivery by a commercial delivery service with tracking abilities.

(c) Verification of delivery. Verification that a notice was sent under this section, at a minimum, must be established by a dated postmark of the U.S. Postal Service or by a dated facsimile confirmation page. Mortgage servicers or first lien holders who use certified mail or a commercial delivery service may verify delivery with a return receipt or tracking receipt.

§89.506. Disclosures.

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figure. 7 TAC Figure: §89.506(a)

COMMENT: I am sending herewith my suggested Disclosure Statement as a separate document which is prepared in the required font size and type as required by the OCCC in §89.503 above. I have not included a notary jurat since the OCCC has not indicated its willingness to require same. However, I would respectfully request the OCCC to substitute the Disclosure Statement as its sample model. It incorporates all of the OCCC's existing disclosures and some of the disclosures suggested by Robert A. Wisner in his proposed Disclosure Statement.

Regarding the above §89.506 and the language which states "before the execution of a tax lien transfer," the OCCC needs to define (as requested above) what constitutes "the execution of a tax lien transfer" (ie the execution of which documents?).

(b) A sample model notice of delinquency under Texas Tax Code, §32.06(f-1) that may be sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien is presented in the following example. 7 TAC Figure: §89.506(b)

§89.507. Permissible Changes.

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by 7 TAC Figure: §89.506(a), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Substituting "transferee" for "property tax lender," or using pronouns such as "we" and "us":

(2) Substituting "borrower" for "property owner," or using pronouns such as "you" and "your": or

(3) Substituting "tax lien transfer" for "property tax loan."

(b) A property tax lender may consider making the following types of changes to the model notice of delinquency under Texas Tax Code, §32.06(f-1) as provided by 7 TAC Figure: §89.506(b):

(1) Adding information related to information set forth in the model disclosures that is not otherwise prohibited by law;

(2) Substituting "property tax lender" for "transferee," or using pronouns such as "you" and "your":

(3) Substituting "borrower" for "property owner":

(4) Presenting the model clauses in any order, and combining or further segregating the model clauses, if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures:

(5) Inserting descriptive titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis; or

(6) Making other changes which do not affect the substance of the disclosures.

DISCLOSURE TO PROPERTY OWNER ABOUT PROPERTY TAX LOANS

Property Tax Lender's Name: _____
Property Tax Lender's License #: _____
Property Tax Lender's Address: _____

READ THIS NOTICE - - IMPORTANT INFORMATION!

What is a tax lien? On January 1 of each year, all property owners have a tax lien in favor of the governmental taxing unit(s) against the owner's property or homestead for unpaid property taxes. In order to foreclose that lien, the taxing unit(s) must file a lawsuit and obtain a judgment against you before you can lose your home or property.

What is a property tax loan? Rather than pay the taxing unit(s) directly as stated above, you may authorize, in writing, the property tax lender (a non-governmental company) to pay the unpaid property taxes for you and transfer the tax lien from the taxing unit(s) to the property tax lender. In connection therewith, you will enter into a property tax loan with the property tax lender. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property or home to foreclosure by the property tax lender and the cost of the foreclosure could be added to the loan.

What can be included in a property tax loan?

Delinquent vs. Non-Delinquent Taxes. You may limit the property tax loan to only delinquent taxes, otherwise, the property tax lender may charge you for non-delinquent taxes owing in the future. Pursuant to Texas Property Tax Code, §31.02, "taxes are due on receipt of the tax bill and are *delinquent* if not paid before February 1 of the year following the year in which imposed."

Other Costs and Fees in the property tax loan. The property tax lender may add "up front" closing costs, escrow fees, late fees, attorney's fees, other charges and interest up to 18% in connection with the property tax loan. You should inquire as to the amount of these fees and charges, the total amount of the loan, the interest rate, the monthly payment amount and the number or monthly payments.

Will this property tax loan cause me to be in default on my existing mortgage loan? A property tax loan and transferred tax lien is superior to any other preexisting lien on the property or homestead. Accordingly, entering into the property tax loan may constitute a violation (default) of an existing mortgage loan/lien on your property, thereby permitting your mortgage lender to foreclose its lien on your property and the cost of the foreclosure could be added to the loan.

What alternatives are available instead of this property tax loan?

- You can pay the taxing unit(s) directly and may enter into a payment installment agreement with the taxing unit(s) under Texas Property Tax Code, §33.02 to pay the taxes over time.
- You may have financing options through an existing mortgage lender which may, if requested, agree to pay outstanding taxes and charge a lower interest rate, or establish an escrow arrangement and charge no interest; or other private lenders, borrowing from savings or family members;
- If you are disabled or age 65 or older, you may be eligible for tax deferral under Texas Property Tax Code, §33.06.

Contact the Office of Consumer Credit Commissioner if you have questions or problems.

This Property Tax Lender is licensed by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occ.state.tx.us.

Before you sign, be sure that you understand this document. Texas law requires the property tax lender to provide this Disclosure to Property Owner to you before you authorize a tax lien transfer. You may seek advice from an attorney or any third party before you enter into this transaction. You should carefully read any document before signing it.

ACKNOWLEDGMENT OF RECEIPT: I, _____, received and signed this Disclosure to Property Owner on this _____ day of _____, 20____.

M. SUZANNE FROSSARD, P.C.

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September 7, 2007

Commissioner Pettijohn
Office of Consumer Credit Commissioner
2601 N. Lamar St.
Austin, TX 78705

via e-mail laurie.hobbs@occc.state.tx.us

Re: Comments of Genesis Tax Loan Services, Inc., Genesis Tax Solutions, Inc. and BRAVO Servicing Solutions, Inc. in Response to the OCCC's Advance Notice of Proposed Rulemaking

Dear Commissioner Pettijohn:

As a follow-up to the oral testimony provided yesterday, please accept these written comments in response to the OCCC's advance notice of proposed rulemaking. In sum, my clients-- Genesis Tax Loan Services, Inc., Genesis Tax Solutions, Inc., and BRAVO Servicing Solutions, Inc.-- support the recommendations provided by TPTLA. The following comments are to highlight a few areas.

DISCLOSURES

My client recommends a one-page disclosure that is executed with the property owner's signature at the time of closing. My client is also open to a brief notice to the property owner that would accompany the Good Faith Estimate, should the Commissioner feel that this is necessary. The disclosure should be through and accurate but not scare or frighten the property owner. The Tax Lien Transferee should be required to keep the disclosure with the other transfer documents as long as the tax lien remains unpaid.

DELINQUENCY NOTICE

This is a critical notice because this delinquency notice triggers the preexisting first lien's six-month right to payoff the transferred tax lien. The notice should be required to be sent within 30 days of the 90-day delinquency and should be required to be received by the tax lien transferee, not just mailed. The content should include:

1. evidence of an outstanding transferred tax lien (the lien could have been previously foreclosed or released);
2. documentation evidencing the true holder of the preexisting first lien (mortgage companies commonly choose not to record their transfers of lien. Transferees of tax liens need some way to verify legitimate notices from those just seeking to obtain personal information of property owners.);

3. a statement of intent (i.e. whether the first lien requests a payoff, whether they intend to payoff the lien etc.); and
4. name of property owner, tax account number, county that the property is located, and property address.

FEES

1. Reasonable fee for filing the release. My client bases its charge for the preparation and recording of its releases on the fees charged by mortgage companies. Because I am a fee attorney with Rattikin Title, I see fees charged by mortgage companies every day. Mortgage companies charge release preparation fees ranging anywhere from \$75.00 to \$150.00 *per request*. Filing fees are set by the county. Since the Finance Commission has authority over the mortgage companies, I would assume that the fees charged by the mortgage companies are reasonable. What is reasonable practice and procedure for the mortgage companies in the preparation and filing of releases seem to be reasonable practice and procedure for the tax lien transferees. This fee charged by my client includes the preparation, the filing fee, and the mailing of the document via delivery with tracking. It is imperative to preserve accurate title evidence that accurate releases of liens are filed of record.

- It is important to note that mortgage companies insisted that the new law require tax lien transferees to not only record the release with the real property records but now insure that the release is also filed with the tax office of the county in which the real property is located. Mortgage companies acknowledged that this would be extra time and expense, but felt that it was important. My client requests at the minimum an additional \$25.00 per release for this additional filing. The fee is justified by employee time, copy expense, and mailing with tracking.

2. “Reasonable fee for a payoff statement” vs. “reasonable fee before providing information regarding current balance owed”. The legislature acknowledged the mortgage companies’ strategy of inundating tax lien transferees with 300+ fax payoff requests a day via facsimile. The payoff requests would not only come from the mortgage company, but also from their attorney, and their tax servicers. The attorneys for the mortgage companies would request this information “for informational purposes only,” and provide the payoffs as a service to their clients. BBWCDF, P.C. charged their clients \$500.00 per account three years ago to provide this information and monitoring service to their clients. The legislature permitted tax lien transferees to require the remittance of a reasonable fee before account information is provided to the mortgage companies so that the cost is not born by the property owner.

- It is not my client’s normal practice to charge a fee for a payoff statement when the payoff statement is requested by the borrower, even if the borrower requests the information several times. However, when the mortgage companies, the attorneys for the mortgage companies, or the tax servicers continuously request information without remitting payoff funds, my client requires that a fee be remitted prior to providing the payoff statement, unless the account is in default. If the account is in default, the information is provided free of charge.
- Depending on the abuse of the payoff requests by BBWCDF, the mortgage companies, or the tax servicers, my client charges approximately

\$20.00 -\$100.00 per account. This amount is reasonable and necessary due to the patterns and practice of the mortgage companies, their attorneys and tax servicers.

3. Attorney Fees: Attorney fees are allowed under Section 32.065 of the Tax Code as a provision of the repayment agreement upon default. As in other areas of practice, the reasonableness of attorneys' fees is governed by the disciplinary rules. Attorney fees for the foreclosure work are in line with the standard deed of trust provisions used by mortgage companies. Bankruptcy attorney fees are governed by the United States Bankruptcy Code along with the disciplinary rules. With all due respect, there is no basis for the Commission to regulate attorney's fees on delinquent account.

4. Fees Necessary to Transfer the Tax Lien vs. Post-Transfer Fees. My client charges very few post-transfer fees. If a borrower needs another copy of its non-recorded transfer tax lien documentation, my client charges a \$75.00 fee for copies and mailing of the documentation. This charge is an upfront fee and not a fee added to the account. On extremely delinquent accounts where a number of certified mailings or copies were required, the out-of-pocket expenses are charged. The interest rate cannot account for the out-of-pocket expenses on some delinquent accounts. My client never fronts insurance premiums, but homeowner dues, especially those in the Woodlands, are becoming an issue. My client would like to see addressed the ability of tax lien transferees to pay items such as homeowner dues when there is a threatened foreclosure of the homeowner association's lien.

Thank you for allowing us to provide you input at this stage of the process. We appreciate your efforts and hope that this information is helpful to you. Please contact me if I can be of further assistance.

Very Truly,

Suzanne Frossard

Suzanne Frossard
M. Suzanne Frossard, P.C.



TPTLA Comments
In Response to
OCCC's Advance Notice of
Proposed Rulemaking

Disclosures and Fees

September 6, 2007



Overview

- **§32.06(a-4) Disclosure Statement**
 - Principles and Objectives
 - Statutory Construction
 - Proposed Form
- **§32.06(f-1) Delinquency Notice**
 - Objective
 - Statutory Construction
 - Prudent Use Considerations
- **Fees**
 - Principles and Objectives
 - Origination Fees
 - Issues
 - Scope
 - Amounts
 - Proposals
 - Post-Closing Fees
 - Issues
 - Proposal



§32.06(a-4) Disclosure Statement

Principles and Objectives

- **Explain** the tax lien transfer **transaction**
- **Notify** property owner of possible scenarios that delinquent taxes could have on loans secured by a mortgage
- **Show** that the property owner has **options**, but that all the options ultimately require payment of their tax obligation
- **Warn** that if the property owner fails to pay their tax obligation, **foreclosure** might ensue
- **Advise** the property owner that **they can contact the OCCC** with any questions about property tax loans or transfers



§32.06(a-4) Disclosure Statement

Statutory Construction

- See "Disclosure to Property Owner" proposed form, attached, for content and form.
- Disclosure form should be "provided to the property owner" at the time the loan is closed by including it in the closing packet.
 - The Disclosure must be provided to the property "before the execution of a tax lien transfer". The transfer "occurs" when the tax collector certifies the payment and transfer of the lien. Tex. Tax Code Ann. §32.06(b).
 - The TPTLA supports the position that the Disclosure should be provided to the property owner at the time of closing, when all the property tax loan documents are signed, rather than at any time thereafter, which a technical interpretation of the statute would permit.
 - Note that the consumer will be afforded three days to rescind the transaction after the delivery of the Disclosure and other loan documents.
- To confirm receipt of the Disclosure, the transferee should obtain a notarized signature of the property owner at the time of closing.



§32.06(f-1) Delinquency Notice

(From Mortgage Holder to Tax Lender)
Statutory Construction

- Content and Form:
 - Reasonably constructed to identify property and loan
 - Should include:
 - Borrower's name(s)
 - Property address
 - Legal description of property
 - Tax account number or property tax loan number
- Applicable to “an obligation secured by a preexisting first lien on the property”: a first lien mortgage that was recorded prior to the date the property owner consented to the transfer of lien.
- A “collection specialist” is an outside firm or company whose primary focus is the collection of delinquent debt.



§32.06(f-1) Delinquency Notice

Prudent Use Considerations

In order to protect consumers from lender actions outside the bounds of this section, the following considerations should be implemented:

- In order to “send a notice of the delinquency to the transferee of a tax lien”, the first lien mortgage holder must provide sworn documentation that there has been no payment on the account for 90 days.
- Notice must be sent in a verifiable manner, *i.e.*, certified mail or a commercial delivery service with tracking abilities. The returned receipt or tracking receipt would suffice as proof of mailing and receipt.
- The notice must be sent within a reasonable period of time, such as thirty days, after there has been no payment received for at least 90 days.



Fees

Principles and Objectives

- **Protect consumers** from excessive fees
 - Before and in conjunction with closing a property tax loan
 - After closing (servicing, default, foreclosure, etc)
- **Maintain a healthy Property Tax Lending industry**
 - Continue to provide needed liquidity to property owners in distress
- **Let market forces** and competition do their job
 - The many new entrants to the industry over the last three years have already put downward pressure on fees and interest rates, and competitive forces will continue to do so



Fees

Issues Affecting Origination Fees

1. Most Loans are Relatively Small

- A typical property tax loan to a homeowner is for less than \$10,000 in taxes, and could be for as little as \$1,000 in back taxes. The law permits anyone – even the small property owner – to take advantage of the statute.
- The work and effort required by a property tax lender to underwrite, process and close a property tax loan varies, but certain costs and expenses may be consistent and predictable.
- When the total fees and expenses are compared to the Property Tax Payoff amount, they typically look very high as a *percentage*, but are usually in line with the *absolute dollar costs* incurred with a typical mortgage closing.

2. Lenders have Different Operating Models

- Property tax lenders all do similar work to underwrite, process and close a property tax loan
- Some property tax lenders may do all of the work in-house (or through affiliates), other may out-source all of the work to third parties, and others may do some work in-house and out-source some of the work.
- Each property tax lender may have a slightly different name for the same fee or expense (for example: tax certificate, tax payoff fee, tax research fee, etc)
- Therefore, to protect the consumer, the total fees and expenses should be considered, not individual line items



Fees

Origination Fee Issues (cont'd)

3. Lenders Need to Generate Profits on Origination to Stay Healthy

- Property Tax Lenders make money in several ways:
 - Origination
 - Spread Income
 - Servicing
- Since the typical property tax loan is small, and the level of effort required to originate and service a property tax loan is quite high, especially relative to the typical loan size, property tax lenders must have the ability to generate some income from loan originations to stay healthy

4. Some Loans Require Special Effort

- Although most loans are routine, some loans require special effort to clear title
 - Intestate succession proceedings, divorce, suits to quiet title
 - Property tax loans are often the only way many borrowers can clear title to their properties
 - Without clear title, these property owners cannot obtain payment arrangements or other conventional loans
- These additional special efforts require the lender to incur additional costs and fees:
 - Attorney's fees
 - Recording costs
- While not directly addressed by the statute, these additional costs and fees are absolutely necessary to close some transactions, and thus should be recoverable. The attorney's fees are already governed by the Disciplinary Rules.



Fees

Origination Fee Issues (cont'd)

5. **Property Tax Lenders Can Offer Better Terms Than The Taxing Units**

- Typically property tax lenders charge much less than what the taxing units charge for delinquent taxes between January 31 and July 1
- Not even including the delinquent penalties and interest, the taxing units' costs to prosecute a tax suit often exceed typical loan fees

6. **Predictability**

It is in the best interest of all parties to have predictability with respect to fees and expenses:

- Consumers, from a protection perspective
- OCCC, from an enforcement perspective
- Mortgage companies, from the perspective of protecting their loans
- Property tax lenders, from a consumer service and OCCC compliance perspective



Fees

Scope of Closing Costs

- Title examination
- Property appraisal
- Property survey
- Property inspection
- Flood and plat determinations
- Document preparation
- Attorneys
- Closing or Escrow
- Tax Certificate or Tax Payoff determination
- Expenses and fees required to clear title to property
- Fees to investigate environmental issues
- Loan origination
- Loan processing
- Underwriting
- Expediting fees
- Credit reports
- Governmental charges for filing, releasing, or obtaining related documents
- Federally mandated fees
- Courier and delivery fees
- Loan administration
- Servicing set up
- Returned checks
- Fire and casualty insurance premiums



Fees

Scope of Costs-Considerations

- For what should interest compensate the lender? The borrower's use of the money and standard servicing costs.
- Unlike a mortgage loan or a second lien that may be for a significant amount, property tax loans are for relatively small amounts, yet they require extensive work to secure and service. Throughout the life of a property tax loan, property tax lenders are required to invest a **significant amount of time and resources** in order to provide a high level of service to their customers.
- The type of work required includes loan origination, closing, funding, servicing, filing releases, and generating payoff statements.



Fees

Scope of Closing Costs-Considerations (cont'd)

Loan Origination Process Overview

1. Marketing
2. Underwriting
 1. Title Review
 2. Tax Payoff management
 3. Property inspection and/or appraisal and/or environmental
 4. Borrower (ability to pay, credit review, etc)
3. Loan Closing
4. Loan Funding/Disbursement to taxing units
5. Loan Recording and Noticing
6. Servicing set up



Fees

Scope of Closing Costs-Considerations (cont'd)

MARKETING

The property tax lien transfer process begins with the identification of property owners with delinquent accounts and marketing to these individuals. This requires:

- Purchase of tax rolls from taxing units.
- Screening of data for accounts of property owners with deferrals, installment payments plans, bankruptcies, or exemptions that would qualify for deferral or abatement.
- Significant investment in mailing program of solicitations to property owners.
- Staffing to answer calls, explain program to prospects, and discuss other options available to the taxpayer.
- Preparation and mailing of application packages to interested individuals.



Fees

Scope of Closing Costs-Considerations (cont'd)

REVIEW AND UNDERWRITING

- When an application for a property tax loan is submitted, the review and underwriting processes begin. Property tax lien transfers are **considerably smaller than mortgage loans**, but the **processes** for the underwriting, approval, and closing of these transactions are **very similar**. In both cases, services are employed from a number of outside vendors.
- During the underwriting process, the following services are typically provided by outside vendors:
 - Title work
 - Tax certificate management
 - Property inspection and/or appraisal



Fees

Scope of Closing Costs-Considerations (cont'd)

REVIEW AND UNDERWRITING:

Title work

- Verify ownership.
- Identify other lien holders.
- Provide contact information for first lienholders for notification purposes per 32.06.
- Curative title work to clear title issues (typically arising from inheritance or changes in marital status) that hinder transfers or other lending transactions.



Fees

Scope of Closing Costs-Considerations (cont'd)

REVIEW AND UNDERWRITING:

Tax payoff management

Precision is vital. Incorrect tax payments will be returned and interest/penalties will continue to accrue on the account. Tax certificates provide the following information:

- Identification of owner per assessor's office.
- Identification of relevant taxing units.
- The amount owed in delinquent and current (if any) taxes.
- Information regarding status of any suits filed.
- Total payoff amount including any legal fees and court costs.



Fees

Scope of Closing Costs-Considerations (cont'd)

REVIEW AND UNDERWRITING (cont'd)

- **Property inspection**
 - Provides information regarding property condition.
 - Provides photographs for underwriting process.
 - Provides very basic neighborhood assessment.
- **Appraisal**
 - Some property tax lenders require appraisals, rather than relying on appraisal rolls or inspections for values.



Fees

Scope of Closing Costs-Considerations (cont'd)

REVIEW AND UNDERWRITING (cont'd)

The property tax lender must complete the collection and verification of the property owner's information provided during the underwriting process prior to loan approval and to assure compliance with applicable regulations:

- **Verification of income** requires analysis of documentation provided by property owners and frequent follow up.
- Review of information in **credit report** with income data verifies ability to repay obligation.
- Request and review **mortgage statements** provided by property owner supplies contact information for compliance with recent changes to 32.06.



Fees

Scope of Closing Costs-Considerations (cont'd)

LOAN CLOSING AND FUNDING

The **closing and funding** of a tax lien transfer requires services of both the tax lending company and outside vendors, including attorneys, notaries, and courier services:

- **Appointments** must be set in advance for **closing** to assure the accuracy of documentation and the availability of **staff and service providers**.
- **Loan documents** must be prepared / reviewed by attorneys for each closing. These documents are **date sensitive** and must be redrawn if a closing is delayed beyond the scheduled day.
- These documents must be sent via overnight delivery to the staff and/or notary in advance of the signing.
- **Notaries** must be present at the closing to verify the identity of the property owner and notarize the affidavit and other documentation. Documents must then be returned via overnight delivery for timely funding.



Fees

Scope of Closing Costs-Considerations (cont'd)

LOAN CLOSING AND FUNDING (cont'd)

- Full funding of property taxes through a tax lien transfer occurs through a number of steps following the execution of the loan documents:
 - Tax payments are sent to the taxing units with the signed and notarized tax lien transfer affidavit.
 - The tax payment is accepted by the taxing unit and the transfer document is certified by the tax collector.
 - Follow up is often required by the property tax lender to provide documentation verifying ownership, to pay additional amounts related to ongoing tax suits, or to follow up on delayed documentation.
- When the certified tax lien transfer is received from the taxing unit, this document must be sent to the county clerk for recording.
 - Funding of taxes, receipt of certified transfers and receipt of recorded tax lien transfers must all be carefully tracked by the property tax lender. Security of the lien position relies on proper documentation and recording of the transfer instrument.
- A copy of the signed affidavit must also be sent to the mortgage servicers and the holder of a recorded first lien on the property within 10 days of receipt of the certified transfer document. If there are multiple taxing units, a copy must be sent for each consent signed by the taxpayer.



Fees

Establishing "Reasonable" Amounts

- As competition in the industry increases, it will control and determine "reasonable" closing costs.
- The rules should recognize these market forces, and ultimately allow consumers to establish what is "reasonable".



Fees

Reasonable Amounts (cont'd)

Multiple ways to address the amount of fees

1. Authorize fees and expenses in various categories, as long as they are “reasonable”
2. Authorize fees and expenses in various categories, without any specific amounts on line items, but with an aggregate cap or maximum; dependent upon the loan size
3. Authorize fees and expenses in various categories, with some specific amounts for certain line items; reference to “reasonable”
 - TPTLA strongly suggests Models 1 or 2.
 - Model 3 does not adequately or fairly address the varying business models of different property tax lenders.



Fees

Reasonable Amounts (cont'd)

ORIGINATION FEE MODELS

Proposal One

- Establish a list of allowable fees and expenses
- Permit the lender to charge fees within these categories, as long as they are all "reasonable"

Proposal Two

- Establish a list of allowable fees and expenses
- Establish a cap, or maximum, for all fees and expenses, whether performed in-house or by third parties, equal to the sum of \$1,800 plus 6% of the property tax payoff



Fees

Reasonable Amounts (cont'd)

ORIGINATION FEE PROPOSAL TWO-EXAMPLES

Property Tax Payoff		1,000	2,500	5,000	10,000	25,000
Base Amount	1,800					
Percentage of Tax Payoff	6%					
Maximum fees and expenses		1,860	1,950	2,100	2,400	3,300



Fees

Post Closing Fee Issues

- Once a loan is closed, market forces are no longer effective. The consumer cannot shop for the “best deal” and he/she needs to be protected from abusive fee practices from his/her property tax lender
- The legislation that was passed in the 2007 will have a significant increase the cost of foreclosure
- Primary areas where property tax loans utilize significant resources are calculating **payoffs**, **releases**, **servicing**, and **collections**.



Fees

Post Closing Fee Issues (cont'd)

FILING A RELEASE

- **SB 1520 requires** property tax lenders to administer the **recording of release** of lien documents, a function that property owners and title companies have historically performed.
- Prior to the law change, a number of property tax lenders offered to administer the release recording process as an additional optional service for their customers and performed this function as requested on a regular basis.
- The popularity of this optional service attests to the acknowledgement of its value to the customer.



Fees

Post Closing Fee Issues (cont'd)

FILING A RELEASE (cont'd)

There are **genuine** and **significant costs** associated with this task, especially in a high volume environment.

County clerks charge a fee for the recording of documents.

Documents are commonly sent by overnight delivery services rather than standard mail to track the receipt at a considerable cost premium over standard postage.

Staff are needed for the preparation of checks to the county clerk and for preparation of overnight packages to the clerk.

The release documents must be tracked and filed in the property tax lender's internal systems to assure that the lien documents have been recorded and liens fully released.

Copies of the releases now must also be sent to each tax collector, another task that will require additional staffing and tracking.



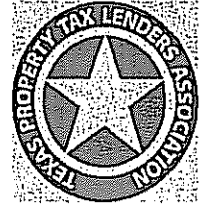
Fees

Post Closing Fee Issues (cont'd)

GENERATING A PAYOFF STATEMENT/ PROVIDING INFORMATION REGARDING THE CURRENT BALANCE OWED

Payoff statements are **expensive** for the property tax lender to prepare.

- The payoff statement must be **specifically prepared for each request** and forwarded by fax, e-mail, or mail service to the requesting party.
- Creation of the customized report is a time consuming and labor intensive process that may **be performed many times during** the life of any individual loan.



Fees

Post Closing Fee Issues (cont'd)

GENERATING A PAYOFF STATEMENT/ PROVIDING INFORMATION REGARDING THE CURRENT BALANCE OWED (cont'd)

Multiple requests for payoff statements on one property are common from property owners, mortgage companies and title companies.

- An initial payoff statement is provided by law at no charge to the customer. This is prepared for the day specified by the customer, and an amount *per diem* is included to allow adjustment if the payoff is made before or after the specified date.
- Despite this information, delays in closing often cause multiple requests for updates before the payoff is received.



Fees

Post Closing Fee Issues (cont'd)

GENERATING A PAYOFF STATEMENT/ PROVIDING INFORMATION REGARDING THE CURRENT BALANCE OWED (cont'd)

- Payoff statements are **frequently requested almost immediately prior to a scheduled closing**, with instructions to provide the required information as **quickly as possible**.
- Responding to such requests necessitates an **interruption of both normal work flow and procedures**.
- An **expediting fee is appropriate** and should be allowed in these circumstances.



Fees

Post Closing Fee Issues (cont'd)

COSTS

- PTLs should be able to charge for the costs of collecting their loans if they become delinquent, because taxing units have that right, and property tax lenders are subrogated to the same rights.
- A property tax loan does not create a new obligation; it merely transfers a pre-existing lien from a public entity to a private one. The property tax lender becomes subrogated to the rights of the taxing units when they become a lien transferee. §32.065(c). Taxing units are not liable for costs incurred to collect delinquent taxes. TEX. TAX CODE ANN. §33.49. Therefore, the property tax lender should not be liable for the costs of collecting a tax loan, should the taxes become delinquent.

ATTORNEY'S FEES

- Attorney's fees incurred in the collection process are also recoverable, and governed by the same rules that control all attorney's fees.
- In a judicial foreclosure, fees are set by 32.06(j). An expedited proceeding under Rule 736 is not a "judicial foreclosure" but an "application for an order allowing foreclosure". See TEX. R. CIV. PROC. 735. Those "reasonable attorney's fees" are thus governed not by 32.06(j), but by Rule 1.04, Disciplinary Rules of Professional Conduct.



Fees

Post Closing Fee Proposal

A property tax lender shall be permitted to charge reasonable fees for the following:

SERVICING EXPENSES

- NSF fees
- Late fees
- Loan modifications
- Additional copies of loan documents
- Additional pay-off statements
- Release of lien
- Governmental charges for filing, releasing, or obtaining related documents

COLLECTION EXPENSES

- Demand letters
- Collection Fees
- Trustee's actions
- Foreclosure costs and fees
- Attorney's fees
- Bankruptcy costs and fees
- Updated title
- Contacting first lienholder



TPTLA Contacts

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 - 512-479-0425 x 16 mmarks@eami.com
- www.tptla.org

DISCLOSURE TO PROPERTY OWNER:
PROPERTY TAX LIEN TRANSFER

SECTION 1. EXPLANATION OF TRANSACTION

- 1.1 You currently have a lien against your property for unpaid property taxes. Under Texas law, the lien automatically attaches to your property on January 1 each year.
- 1.2 This tax lien transfer directs [the property tax lien transferee] to pay your property taxes and the taxing unit(s) to transfer their lien to [the property tax transferee].
- 1.3 This transaction does not eliminate the lien against your property. You will be required to pay [the property tax lien transferee] according to the terms of your repayment agreement.

SECTION 2. ALTERNATIVES TO PROPERTY TAX LIEN TRANSFER

- 2.1 As an alternative to this transaction, you may be able to enter into an installment agreement with your tax assessor-collector for the repayment of these taxes.
- 2.2 You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes.
- 2.3 If you live on this property and you are either age 65 or older or legally disabled, you may be able to defer the collection of the property taxes.
- 2.4 If you have a mortgage on your property and you choose one of these options, your mortgage lender might consider your mortgage in default, and initiate foreclosure proceedings to protect their interest in your property.

SECTION 3. POSSIBILITY OF FORECLOSURE.

- 3.1 Regardless of whether your tax lien is held by the taxing units, [property tax lender], or a third party lienholder, if you fail to repay your tax obligation, your property may be foreclosed.

SECTION 4. GOVERNANCE

- 4.1 The Office of Consumer Credit Commissioner regulates property tax lenders. If you have any questions regarding this transfer, you may contact the Office at (800)123-4567 or ABC@occc.state.tx.us.
- 4.2 This notice is only a summary of your rights and obligations in regard to this property tax transfer loan. Your rights are governed by Texas Tax Code, §32.06 and §32.065 and other applicable laws, and not by this notice.

I have read and understand this document.

Signed this the _____ day of _____, 20_____.

PROPERTY OWNER

[ADD NOTARY BLOCK]

9/5/2007 3:08 PM

HARRISON • DOGGETT

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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September 26, 2007

Commissioner Leslie Pettijohn
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
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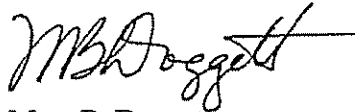
Via Telecopy

RE: Property Tax Lenders Disclosures Response

Dear Commissioner Pettijohn:

Enclosed please find the Texas Property Tax Lenders Association's Comments to Property Tax Lenders Disclosure Rules 9/18/07 Draft.

Very truly yours,



Mary B. Doggett

MBD/rw
Enclosure

CC: Laurie B. Hobbs
Sealy Hutchings

Via Email

**TEXAS PROPERTY TAX LENDERS ASSOCIATION'S COMMENTS TO
PROPERTY TAX LENDERS DISCLOSURE RULES 9/18/07 DRAFT**

A. Overriding Concerns

The TPTLA's primary concern with the current form of the proposed Disclosure is that it relates perceived drawbacks about a transfer, but none of the actual benefits, and at the same time, mentions other options without disclosing their disadvantages. In particular, the Association requests that the Commissioner review those portions of the proposed rule and form that relate to when and how the subject property may be foreclosed and the realities of other options to a property tax loan.

1. *The Disclosure Should Not Focus on an Unlikely Foreclosure of the Mortgage Lien*

The Association agrees that one of the primary purposes of the Disclosure should be to advise property owners that they may lose their property to foreclosure. However, the point is not to reiterate technical legal points, but to highlight the realities a property owner should understand. The current form of the Disclosure, in the paragraph entitled, "Foreclosure is possible", discusses a legal technicality that, to our knowledge, never occurs: a mortgage lender foreclosing on a taxpayer merely because they have taken out a property tax loan.

In practice, mortgagees only foreclose on a borrower with a property tax loan when it appears that the mortgagee might lose their interest in the property. To foreclose merely because the property owner has decided to repay the tax lien through a private financier is undesirable, as it unnecessarily puts a property owner who is paying all of his obligations out of his home. This is especially true in the current environment, where the mortgage industry is working to reduce their foreclosures, not increase them. Property tax loans are one way to avoid such foreclosures.

To advise potential borrowers that foreclosure may ensue when it is technically possible but practically highly improbable overreaches the purpose of the Disclosure.

2. *The Disclosure Should Discuss Foreclosure if the Taxes are Not Paid—Regardless of the Payee*

Second, the Disclosure inaccurately portrays the property tax loan as creating the vehicle for a tax lien foreclosure. Unlike in other lending situations where disclosures are required, such as that provided in 7 TAC §5.1(c)(1), the transaction discussed is not a new obligation that is creating an opportunity for foreclosure. Thus, the notice should explain that the unpaid taxes, not the property tax loan, create the possibility of foreclosure, and that regardless of whether the taxes are owed to the taxing units, the property tax lender, or the mortgage company, they must be repaid in order for the owner to avoid losing the property.

3. *The Disclosure Should Realistically Portray Alternatives to a Tax Loan*

The proposed form mentions that the property owner has alternatives to a property tax loan. However, the descriptions of these alternatives are somewhat misleading. In particular, the

discussion of payment arrangements with tax assessors could create the impression that a property owner has far more room to negotiate than the law and most collectors permit. Additionally, the property owner should be advised that all of these options come with the same obligation to pay or lose the property.

The Association suggests the following modifications in order to present an appropriate and informative disclosure to the property owner. These suggestions are listed not in order of priority, but as they appear in the proposed Rule and Disclosure.

B. Subchapter E. Disclosures Rule.

1. **Section 89.504(a)(2):** This section is confusing as written for two reasons: first, it says that the property owner has a lien against his or her property, as opposed to it explaining who holds the lien. Second, it says "property or homestead". Because homesteads *are* property, this is somewhat confusing. To clarify these issues, the Association suggests: "a statement that the local taxing units currently have a lien against the owner's property for unpaid property taxes."
2. **Section 89.504(a)(8):** This subsection is misleading, in that it could leave a property owner thinking that foreclosure is possible only if they take out a tax loan and it is not repaid. The reality is that foreclosure may occur if they do not pay, regardless of whether they take out the property tax loan, choose another option, or do nothing. In other words, the property tax lien transfer does not create the possibility of foreclosure, the unpaid tax lien does. Second, this subsection also refers to "property or homestead". To remedy this confusion, the Association suggests: "a statement that if the taxes are not paid, foreclosure may occur, the property owner could lose the property, and the cost of that foreclosure could be added to the tax lien." Alternatively, "a statement that regardless of who holds the tax lien, foreclosure may occur, the property owner could lose the property, and the cost of that foreclosure could be added to the tax lien."
3. **Section 89.504(c)(1)-(2):** Several of the established property tax lenders communicate with their customers solely by telephone until the day of closing, when they meet face-to-face for the first time. In those situations, there is no "application" form or package mailed or otherwise provided to the property owner. The Association suggests a definition of "application" as the point during negotiation of a tax loan where the property owner indicates a desire to accept the property tax lender's proposed terms for the repayment of the tax obligation. Second, many property owners, especially in rural areas and the valley region, do not have access to either facsimile machines or e-mail. Thus, U.S. mail is the remaining option for these lenders to use in order to get the Disclosure to the property owner. This will slow the application down by as much as three days. Although this would generally be a reasonably easy requirement to meet, the additional three days could be harmful to consumers if the property is already posted for foreclosure or if an additional penalty is soon to attach to the outstanding balance. The Association therefore suggests that the rule be amended to permit the owner to waive the delivery at the time of application for good cause, to be defined as imminent foreclosure or the accrual of an additional penalty under Tax Code section 33.01 or 33.07.

4. **Section 89.504(c)(3):** The proposed form requires consent from both the property owner and spouse. Under Texas law, a married property owner cannot encumber *homestead property* without the consent of their spouse. However, that law does not apply to other properties held by a married person. This requirement could be particularly confusing for business properties held in the name of a married sole proprietor. The Association suggests the following modification: "If the property is designated as a homestead, the signatures of both spouses must be obtained in order for a Disclosure to be considered 'provided' under this section."
5. **Section 89.504(d)(2):** The current wording appears to require the borrower to establish the presumption that the lender took certain steps to provide notice. If the property tax lender delivers the notice by fax, email, or hand-delivery, this requirement is not a problem. However, if the Disclosure was sent via mail and not timely delivered by the postal service, the *borrower* cannot establish that the lender complied with the delivery requirement. The Association suggests the following modification: "At time of closing, if not already obtained at the time of application, verification that a disclosure statement as prescribed by 7 TAC Figure: §89.506(a) was provided under this section must be established by a dated acknowledgment signed by the property owner. If the statement was provided to the owner by mail but not received within three days, the lender may establish through an affidavit a rebuttable presumption that notice was delivered."

C. **Proposed Disclosure Form under 32.06(a-4)(1)**

1. **Spousal Signature Limited to Homestead:** The proposed form requires a signature by both the property owner and spouse. Not all transfers occur on homesteads, or even on residential properties. Many of the properties are commercial. As mentioned above, Texas law only requires spousal consent to encumber homestead property. Therefore, the form should be modified to reflect that the spouse's signature is required only if the property is designated as homestead.
2. **Paragraph Entitled "What is a property tax loan":** First, this paragraph could be shorter, which would be easier to understand, if some of the information that is already or more appropriately described elsewhere in the Disclosure was deleted. The Association suggests deleting the third and final sentences. The third belongs in the "Alternatives" paragraph, as it is only one of the several options available to the owner. The final sentence belongs in the "Foreclosure is possible" paragraph. Second, this section is a very negative description of what is a positive option for many property owners. The Association suggests adding, "You are not required by law to enter into a property tax loan, but it may provide you with the most affordable way to repay your property taxes."
3. **Paragraph Entitled "You may have alternatives to this property tax loan":** This section is misleading to borrowers as currently drafted:
 - a. As mentioned above, deferrals are only permitted on homesteads. Therefore, the Association suggests: "If this property is your homestead and you are disabled or age 65 or older, you may be eligible for a tax deferral under Texas Tax Code §33.06."

- b. The phrase “you may negotiate with the taxing unit(s)” is misleading and, depending on the taxing unit, incorrect. By using the word “negotiate”, it appears that the owner has bargaining power to establish their repayment terms and/or to reduce or stop the accrual of penalties and interest. In reality, not all tax collectors allow property owners to make payment arrangements. If they do permit arrangements, most collectors require significant down payments and short repayment terms. The law caps the terms at 36 months, but most do not approach that length of time. Finally, not even the tax collectors can agree to waive or reduce the penalties and interest; payments are allocated *pro rata*, and the penalties and interest continue to accrue per the Tax Code until the last payment is made.
 - c. The Disclosure says that the owner “may be able to borrow from savings or family members.” While it is true that any borrower should consider savings or family resources, most property owners, and commercial businesspeople in particular, might consider this “disclosure” to be somewhat remedial and unnecessary. The Association notes that the OCCC does not require a similar disclosure to its home loan borrowers, even though that type of loan creates a completely new obligation. The Association therefore requests that this sentence be removed from the form.
4. **Paragraph Entitled “Foreclosure is possible”:** This section is confusing. Foreclosure of the tax lien may occur regardless of whether the tax loan is made, and regardless of to whom the property taxes are owed. In other words, it is not the failure to pay the tax loan that could cause the foreclosure, it is the failure to pay the property taxes. On a technical level, it is correct to say that a mortgagee might consider a loan to be an event of default. As a practical matter, however, mortgagees do not foreclose because property owners take out tax loans; they foreclose if the mortgage or tax loan becomes delinquent. In other words, they only act when their asset is at risk. To advise the property owner that the loan might cause the mortgagee to foreclose is misleading, and inappropriately negative at the time of application. Finally, if for any reason the mortgagee did foreclose, the cost of that foreclosure would not be added to the property tax lien, but to the mortgage lien – further evidence that discussion of mortgage foreclosure is not appropriate for a disclosure about the implications of a property tax loan.
5. **Paragraph Entitled “Contact the Office of Consumer Credit Commissioner if you have questions or problems”:** The first sentence states that the lender is licensed. However, the Finance Code creates exceptions for licensing, so that unlicensed persons can make at least some loans. However, it is not the license that creates the obligation to disclose, it is the loan. Therefore, even lenders who are exempt from licensing should be required to provide this Disclosure.

D. Proposed Disclosure Form under 32.06(f)(1)

- 1. In order to assist the property tax lender in identifying the subject property and tax loan, the Association suggests that the form seek not only the “Property Owner’s Address” but the “Property Address”. In many situations, the two addresses might be different.

2. The property address is necessary in the event that the lender is not able to identify the loan with a loan number, tax account, or legal description of the property. The property owner's mailing address is helpful in order for the property tax lender to ensure that their records reflect the most current information available.

PROPERTY TAX LIEN TRANSFER NOTICE

Lender's Name:

Lender's Address:

[If Applicable] Lender is licensed as a Property Tax Lender by the Consumer Credit Commissioner of the State of Texas. Lender's License Number: [Insert Number]

READ THIS NOTICE TO GIVE YOU IMPORTANT INFORMATION THAT CAN HELP YOU, PROTECT YOU, AND MAYBE SAVE YOU MONEY.

◆ **WHY AM I RECEIVING THIS NOTICE?**

Texas law requires your lender to provide this Notice to you before you sign a tax lien transfer.

◆ **STOP! BEFORE YOU SIGN, THINK, DO YOU REALLY NEED THIS LOAN?**

- If you are disabled or age 65 or older, then you may be eligible for tax deferral under Texas Tax Code Section 33.06.
- Do you need to put your property at risk or do you have other resources (such as savings or family) that you could borrow from?
- Will this loan cause you to be in default on a loan already secured by your property?
- Can you afford the loan, and how will you pay next year's taxes? **If you cannot afford this loan, you may lose your property.**

◆ **SHOP! DIFFERENT LENDERS OFFER DIFFERENT LOAN TERMS, SO COMPARE:**

- The lender's references
- The "up-front" costs that you will pay or that will be added to the amount you borrow.
- Your interest rate.
- Your monthly payment amount.
- The number of payments.
- Late fees, prepayment penalties and other fees.

◆ **BEFORE YOU SIGN AT CLOSING:**

- Carefully review all of the loan documents.
- Make certain that the terms of your loan are exactly what the lender promised. If anything is different, then do not sign until you fully understand why.
- Can you change your mind after you sign? Generally not, but if your property is your principal dwelling and you are a natural person, then you may rescind, or cancel, the loan within 3 business days after you sign.

◆ **WHERE CAN YOU GET MORE INFORMATION OR FILE A COMPLAINT?**

The Office of the Consumer Credit Commissioner of the State of Texas, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579 or (512) 936-7600; or www.occc.state.tx.us.

Other resources include:

Federal Reserve:	www.federalreserve.gov/consumers.htm
HUD:	www.hud.gov/consumer/index.cfm
Fannie Mae:	www.homepath.com
Safeborrowing:	www.safeborrowing.com

ACKNOWLEDGMENT OF RECEIPT: Each of the undersigned has received a copy of this notice this _____ day of _____, 2007, before signing the tax lien transfer to Lender.

HARRISON • DOGGETT

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

WESTON CENTRE, SUITE 1600
112 E. PECAN STREET
SAN ANTONIO, TX 78205
TELEPHONE: (210) 978-7412
TOLL-FREE: (800) 720-6610
E-FAK: (210) 568-2655

JOSEPH M. HARRISON IV
JOE@HARRISONTAX.US

MARY BELAN DOGGETT
MARY@MARYDOGGETT.COM

FLORESVILLE, TEXAS OFFICE
OLD FLORESVILLE FIREHOUSE
1009 C STREET, SUITE 200
FLORESVILLE, TX 78114-2223
TELEPHONE: (830) 393-0500
FACSIMILE: (830) 393-4941

September 26, 2007

Commissioner Leslie Pettijohn
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

Via Telecopy

RE: Property Tax Lenders Disclosures Response

Dear Commissioner Pettijohn:

Enclosed please find the Texas Property Tax Lenders Association's Comments to Property Tax Lenders Disclosure Rules 9/18/07 Draft.

Very truly yours,



Mary B. Doggett

MBD/rw
Enclosure

CC: Laurie B. Hobbs
Sealy Hutchings

Via Email

**TEXAS PROPERTY TAX LENDERS ASSOCIATION'S COMMENTS TO
PROPERTY TAX LENDERS DISCLOSURE RULES 9/18/07 DRAFT**

A. Overriding Concerns

The TPTLA's primary concern with the current form of the proposed Disclosure is that it relates **perceived drawbacks** about a transfer, but none of the **actual benefits**, and at the same time, mentions other options without disclosing their disadvantages. In particular, the Association requests that the Commissioner review those portions of the proposed rule and form that relate to when and how the subject property may be foreclosed and the realities of other options to a property tax loan.

1. The Disclosure Should Not Focus on an Unlikely Foreclosure of the Mortgage Lien

The Association agrees that one of the primary purposes of the Disclosure should be to advise property owners that they may lose their property to foreclosure. However, the point is not to reiterate technical legal points, but to highlight the realities a property owner should understand. The current form of the Disclosure, in the paragraph entitled, "Foreclosure is possible", discusses a legal technicality that, to our knowledge, never occurs: a mortgage lender foreclosing on a taxpayer merely because they have taken out a property tax loan.

In practice, mortgagees only foreclose on a borrower with a property tax loan when it appears that the mortgagee might lose their interest in the property. To foreclose merely because the property owner has decided to repay the tax lien through a private financier is undesirable, as it unnecessarily puts a property owner who is paying all of his obligations out of his home. This is especially true in the current environment, where the mortgage industry is working to reduce their foreclosures, not increase them. Property tax loans are one way to avoid such foreclosures.

To advise potential borrowers that foreclosure may ensue when it is technically possible but practically highly improbable overreaches the purpose of the Disclosure.

2. The Disclosure Should Discuss Foreclosure if the Taxes are Not Paid—Regardless of the Payee

Second, the Disclosure inaccurately portrays the property tax loan as creating the vehicle for a tax lien foreclosure. Unlike in other lending situations where disclosures are required, such as that provided in 7 TAC §5.1(c)(1), **the transaction discussed is not a new obligation** that is creating an opportunity for foreclosure. Thus, the notice should explain that **the unpaid taxes, not the property tax loan, create the possibility of foreclosure**, and that regardless of whether the taxes are owed to the taxing units, the property tax lender, or the mortgage company, they must be repaid in order for the owner to avoid losing the property.

3. The Disclosure Should Realistically Portray Alternatives to a Tax Loan

The proposed form mentions that the property owner has alternatives to a property tax loan. However, the descriptions of these alternatives are somewhat misleading. In particular, the

discussion of payment arrangements with tax assessors could create the impression that a property owner has far more room to negotiate than the law and most collectors permit. Additionally, the property owner should be advised that all of these options come with the same obligation to pay or lose the property.

The Association suggests the following modifications in order to present an appropriate and informative disclosure to the property owner. These suggestions are listed not in order of priority, but as they appear in the proposed Rule and Disclosure.

B. Subchapter E. Disclosures Rule.

1. **Section 89.504(a)(2):** This section is confusing as written for two reasons: first, it says that the property owner has a lien against his or her property, as opposed to it explaining who holds the lien. Second, it says "property or homestead". Because homesteads *are* property, this is somewhat confusing. To clarify these issues, the Association suggests: "a statement that the local taxing units currently have a lien against the owner's property for unpaid property taxes."
2. **Section 89.504(a)(8):** This subsection is misleading, in that it could leave a property owner thinking that foreclosure is possible only if they take out a tax loan and it is not repaid. The reality is that foreclosure may occur if they do not pay, regardless of whether they take out the property tax loan, choose another option, or do nothing. In other words, the property tax lien transfer does not create the possibility of foreclosure, the unpaid tax lien does. Second, this subsection also refers to "property or homestead". To remedy this confusion, the Association suggests: "a statement that if the taxes are not paid, foreclosure may occur, the property owner could lose the property, and the cost of that foreclosure could be added to the tax lien." Alternatively, "a statement that regardless of who holds the tax lien, foreclosure may occur, the property owner could lose the property, and the cost of that foreclosure could be added to the tax lien."
3. **Section 89.504(c)(1)-(2):** Several of the established property tax lenders communicate with their customers solely by telephone until the day of closing, when they meet face-to-face for the first time. In those situations, there is no "application" form or package mailed or otherwise provided to the property owner. The Association suggests a definition of "application" as the point during negotiation of a tax loan where the property owner indicates a desire to accept the property tax lender's proposed terms for the repayment of the tax obligation. Second, many property owners, especially in rural areas and the valley region, do not have access to either facsimile machines or e-mail. Thus, U.S. mail is the remaining option for these lenders to use in order to get the Disclosure to the property owner. This will slow the application down by as much as three days. Although this would generally be a reasonably easy requirement to meet, the additional three days could be harmful to consumers if the property is already posted for foreclosure or if an additional penalty is soon to attach to the outstanding balance. The Association therefore suggests that the rule be amended to permit the owner to waive the delivery at the time of application for good cause, to be defined as imminent foreclosure or the accrual of an additional penalty under Tax Code section 33.01 or 33.07.

4. **Section 89.504(c)(3):** The proposed form requires consent from both the property owner and spouse. Under Texas law, a married property owner cannot encumber *homestead property* without the consent of their spouse. However, that law does not apply to other properties held by a married person. This requirement could be particularly confusing for business properties held in the name of a married sole proprietor. The Association suggests the following modification: "If the property is designated as a homestead, the signatures of both spouses must be obtained in order for a Disclosure to be considered 'provided' under this section."
5. **Section 89.504(d)(2):** The current wording appears to require the borrower to establish the presumption that the lender took certain steps to provide notice. If the property tax lender delivers the notice by fax, email, or hand-delivery, this requirement is not a problem. However, if the Disclosure was sent via mail and not timely delivered by the postal service, the *borrower* cannot establish that the lender complied with the delivery requirement. The Association suggests the following modification: "At time of closing, if not already obtained at the time of application, verification that a disclosure statement as prescribed by 7 TAC Figure: §89.506(a) was provided under this section must be established by a dated acknowledgment signed by the property owner. If the statement was provided to the owner by mail but not received within three days, the lender may establish through an affidavit a rebuttable presumption that notice was delivered."

C. Proposed Disclosure Form under 32.06(a-4)(1)

1. **Spousal Signature Limited to Homestead:** The proposed form requires a signature by both the property owner and spouse. Not all transfers occur on homesteads, or even on residential properties. Many of the properties are commercial. As mentioned above, Texas law only requires spousal consent to encumber homestead property. Therefore, the form should be modified to reflect that the spouse's signature is required only if the property is designated as homestead.
2. **Paragraph Entitled "What is a property tax loan":** First, this paragraph could be shorter, which would be easier to understand, if some of the information that is already or more appropriately described elsewhere in the Disclosure was deleted. The Association suggests deleting the third and final sentences. The third belongs in the "Alternatives" paragraph, as it is only one of the several options available to the owner. The final sentence belongs in the "Foreclosure is possible" paragraph. Second, this section is a very negative description of what is a positive option for many property owners. The Association suggests adding, "You are not required by law to enter into a property tax loan, but it may provide you with the most affordable way to repay your property taxes."
3. **Paragraph Entitled "You may have alternatives to this property tax loan":** This section is misleading to borrowers as currently drafted:
 - a. As mentioned above, deferrals are only permitted on homesteads. Therefore, the Association suggests: "If this property is your homestead and you are disabled or age 65 or older, you may be eligible for a tax deferral under Texas Tax Code §33.06."

- b. The phrase “you may negotiate with the taxing unit(s)” is misleading and, depending on the taxing unit, incorrect. By using the word “negotiate”, it appears that the owner has bargaining power to establish their repayment terms and/or to reduce or stop the accrual of penalties and interest. In reality, not all tax collectors allow property owners to make payment arrangements. If they do permit arrangements, most collectors require significant down payments and short repayment terms. The law caps the terms at 36 months, but most do not approach that length of time. Finally, not even the tax collectors can agree to waive or reduce the penalties and interest; payments are allocated *pro rata*, and the penalties and interest continue to accrue per the Tax Code until the last payment is made.
 - c. The Disclosure says that the owner “may be able to borrow from savings or family members.” While it is true that any borrower should consider savings or family resources, most property owners, and commercial businesspeople in particular, might consider this “disclosure” to be somewhat remedial and unnecessary. The Association notes that the OCCC does not require a similar disclosure to its home loan borrowers, even though that type of loan creates a completely new obligation. The Association therefore requests that this sentence be removed from the form.
4. **Paragraph Entitled “Foreclosure is possible”:** This section is confusing. Foreclosure of the tax lien may occur regardless of whether the tax loan is made, and regardless of to whom the property taxes are owed. In other words, it is not the failure to pay the tax loan that could cause the foreclosure, it is the failure to pay the property taxes. On a technical level, it is correct to say that a mortgagee might consider a loan to be an event of default. As a practical matter, however, mortgagees do not foreclose because property owners take out tax loans; they foreclose if the mortgage or tax loan becomes delinquent. In other words, they only act when their asset is at risk. To advise the property owner that the loan might cause the mortgagee to foreclose is misleading, and inappropriately negative at the time of application. Finally, if for any reason the mortgagee did foreclose, the cost of that foreclosure would not be added to the property tax lien, but to the mortgage lien – further evidence that discussion of mortgage foreclosure is not appropriate for a disclosure about the implications of a property tax loan.
 5. **Paragraph Entitled “Contact the Office of Consumer Credit Commissioner if you have questions or problems”:** The first sentence states that the lender is licensed. However, the Finance Code creates exceptions for licensing, so that unlicensed persons can make at least some loans. However, it is not the license that creates the obligation to disclose, it is the loan. Therefore, even lenders who are exempt from licensing should be required to provide this Disclosure.

D. Proposed Disclosure Form under 32.06(f)(1)

1. In order to assist the property tax lender in identifying the subject property and tax loan, the Association suggests that the form seek not only the “Property Owner’s Address” but the “Property Address”. In many situations, the two addresses might be different.

2. The property address is necessary in the event that the lender is not able to identify the loan with a loan number, tax account, or legal description of the property. The property owner's mailing address is helpful in order for the property tax lender to ensure that their records reflect the most current information available.

To: Office of Consumer Credit Commissioner
From: Kenneth M. Culbreth, Jr.
Date: September 26, 2007
Re: Commentary Responsive to the OCCC's below 9/18/07 Draft Property Tax Lenders Disclosures Rules (Germane to Senate Bill 1520)

In response to the September 18, 2007 invitation by the Office of Consumer Credit Commissioner ("OCCC") to submit written commentary responsive to the 9/18/07 Draft Property Tax Lenders Disclosures Rules (Germane to Senate Bill 1520), please accept the following commentary/changes **in bold** as suggested revisions to the Draft Rules.

Additionally, I am sending herewith my suggested Disclosure Statement as a separate document, which is prepared in the required font size and type as required by the OCCC in §89.503 below. I would respectfully request the OCCC to substitute the attached Disclosure Statement as its sample model. It incorporates all of the OCCC's existing disclosures and some of the disclosures suggested by Robert A. Wisner in his proposed Disclosure Statement. Further, it is my opinion (as I hope it is yours) that the suggested Disclosure Statement greatly benefits the consumer in educating him/her prior to the tax lien transfer.

Property Tax Lenders Disclosures Rules
9/18/07 Draft

Subchapter E. Disclosures.

§89.501. Purpose.

The purpose of the rules contained in this subchapter is to provide disclosures for property tax loan transactions. These rules prescribe the form and content of the disclosures under Texas Tax Code, §32.06(a-4)(1) and §32.06(f-1).

§89.502. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Property tax lender--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax lender" is a "transferee" as defined by Texas Tax Code, §32.06(2), and these terms may be used synonymously.

(2) Property tax loan--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(3) Tax lien transfer--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(4) Transferee--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220) and Texas Tax Code, §32.06(2). Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

§89.503. Format.

(a) Disclosures for property tax loan transactions must be printed in an easily readable font and type size. If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must be at least as large as 11 point in the Times typeface. The typeface for the headings must be at least as large as 12 point boldface in the Times typeface. A point is generally viewed as 1/72nd of an inch.

COMMENT: At least the headings should be conspicuously printed, typed in a size equal to at least 12-point boldface Times typeface (at least as conspicuous as the various solicitation notices sent out by the tax lien lenders). While the sample disclosure at 7 TAC Figure §89.506(a) appears to have headings in bold, the above Rule does not so state.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) the property tax lender's name, principal business address, and license number;

(2) a statement that informs the property owner that on January 1 of each year, all property owners have a tax lien in favor of the governmental taxing unit(s) against the owner's property or homestead for unpaid property taxes but that the governmental taxing unit(s) must file a lawsuit and obtain a judgment in order to foreclose its lien;

COMMENT: The disclosure above is revised to explain to the property owner the nature of a statutory tax lien under Section 32.01 Texas Property Tax Code as distinguished from a transferred tax lien. Some of the above is in the 7 TAC Figure §89.506(a), but not addressed in the above rule.

(3) a statement that the property owner can pay the taxing unit(s) directly and may enter into a payment installment agreement with the taxing unit(s) under Texas Property Tax Code, §33.02 to pay the taxes over time;

COMMENT: The disclosure above is revised to explain to the property owner that they may enter into an installment arrangement with the taxing unit to pay their taxes over time. This disclosure was also referenced below in originally numbered §89.504(a)(6), but merely rearranged.

(4) a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;

(5) a statement that the property owner may limit the tax lien transfer authorization to only non-delinquent taxes owing unless the property owner states in writing that the property tax lender may transfer a tax lien on non-delinquent taxes owing in the future (pursuant to Texas Property Tax Code, §31.02, "taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed"):

COMMENT: The disclosure above is added to inform the property owner that unless they agree, in writing to allow same, the tax lien lender cannot pay/loan on the property owner's non-delinquent taxes (otherwise, the tax lien lender will escrow additional amounts for future (non-delinquent) taxes increasing the monthly payment by the property owner) (see §32.06 (a-2) (2) (B) requiring property owner to execute an authorization consenting to a transfer of the tax lien for both delinquent and non-delinquent taxes in order to allow tax lien lender to pay/loan and have tax lien transferred on non-delinquent taxes. THIS AUTHORIZATION SHOULD ALSO BE IN A SEPARATE DOCUMENT CONPICUOUSLY SET FORTH).

(6) a statement that the property tax lender may add "up front" closing costs, escrow fees, attorney's fees, other charges and interest up to 18% in connection with the property tax loan and the property owner should inquire as to these amounts, the total amount of the loan, the interest rate, the monthly payment amount and the number or monthly payments ;

(7) a statement that foreclosure may occur of the transferred tax lien held by the property tax lender, the property owner could lose the property or homestead, and the cost of that foreclosure could be added to the transferred tax lien;

(8) a statement that the transferred tax lien is superior to any other preexisting lien on the property or homestead;

(9) a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g. financing options through an existing mortgage lender which may, if requested, agree to pay outstanding taxes and charge a lower interest rate, or establish an escrow arrangement and charge no interest; or other private lenders, borrowing from savings or family members);

(10) a statement that warns the property owner that entering into the property tax loan may constitute a violation of existing mortgage liens encumbering the property, thereby permitting the holders of such liens to foreclose their liens on the property;

(11) a statement that disabled persons or persons age 65 or older may be eligible for tax deferral under Texas Property Tax Code, §33.06;

(12) a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll-free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us;

(13) a statement that the property owner may seek the advice of an attorney or another third party before signing; and

(14) blanks for signature(s) of the property owner(s) and date when signed acknowledging receipt.

(b) Single page required. The disclosure statement required by §89.506(a) of this title must fit on one standard-size sheet of paper (8 1/2 by 11).

(c) Delivery.

(1) At time of application. At the time of application or within three days of application, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by 7 TAC Figure: §89.506(a) of this title to the property owner either by U.S. mail, facsimile, email, or hand-delivery.

COMMENT: As stated in my previous written comments to the ANPR, because the property is the homestead of the property owner the sanctity of same requires a significant time period for “cooling-off” after having been solicited by the property tax lender and where these loans allow for the foreclosure of the homestead. The disclosure statement must be provided to the property owner and signed by the property owner “not later than the 12th day before the earlier of (i) the date a property owner executes a sworn authorization described by Section 32.06(a-1) or (2) the property owner executes an application for credit with the tax lien lender. Compare Tex. Const. art. XVI, §50(a)(6)(M)(i)] (12 day cooling-off period for home equity lending on homestead).

“At the time of application or within three days of application” as stated above in §89.504(c)(1) does not (1) tell us the definition of or what constitutes “application,” therefore there is no defined trigger date for the 3 day requirement (2) give the property owner the necessary clear disclosure without being part of the signing of a myriad of other documents at the same sitting (3) give the property owner enough “cooling off” time after having been solicited by the tax lien lender causing the mindset of losing their homestead unless they sign up with the property tax lender.

Finally, the disclosure statement should be hand-delivered to the property owner at the office of the tax lien lender, an attorney’s office, or title company (compare Tex. Const. art.

XVI, §50(a)(5)(D)) with a written acknowledgement (notarized) of receipt signed by the property owner at the end of the document.

(2) At time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement prescribed by 7 TAC Figure: §89.506(a), but is not required to do so. If not already obtained at the time of application, the property tax lender must obtain a dated acknowledgment contained in the disclosure statement signed by the property owner stating that the property owner received the disclosure statement at the time of application.

COMMENT: "At the time of closing" as set forth above does not tell us the definition of or what constitutes "closing," and there is no defined period between "application" and "closing" to guarantee any 3 day requirement. There are several documents that are required to be signed by the property owner to effect a transferred tax lien, including, but no limited to (1) the sworn authorization filed with the tax collector required by Section 32.06(a-1) (2) the Note (payment obligation) between the property owner and the property tax lender and (3) the Deed of Trust (converting the transferred tax lien into a deed of trust lien, allowed to be foreclosed under a TRCP 736 proceeding (Section 32.06 (c)). Accordingly, as §89.504(c)(1) and (2) are now written, the tax lien lender could refer to the sworn authorization as the "application" and have the property owner sign the disclosure statement and all above documents at that time, referring to the "closing" as the "funding" date or some other date in the future.

Therefore, there must be a definition of "application" and "closing", a description of what is accomplished at each, with a defined time period between the occurrence of the "application" and the "closing." The idea is to provide the property owner this written disclosure well in advance of the execution of the sworn authorization under Section 32.06(a-1) allowing the property tax lender to pay the taxes.

Additionally, in defining the above transaction events, the OCC should make it clear to the property tax lender as to when the 3-day right of rescission must be given to the property owner. See Section 32.06 (d-1) ("A right of rescission described by 12 C.F.R. Section 226.23 applies to a tax lien transfer under this section.")

(3) Married property owners. The signatures of both spouses must be obtained in order for a disclosure to be considered "provided" under this section.

(d) Verification of delivery.

(1) At time of application. At the time of application, verification that a disclosure was provided under this section is not required, but may be established by a signed and dated acknowledgment of the property owner, submitted to the lender either by U.S. mail, facsimile, email, or hand-delivery. If a lender mails the disclosure statement to the property owner, the property tax lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

COMMENT: See Comments under §89.504(c)(1) and (2) above.

(2) At time of closing. At the time of closing, if not already obtained at the time of application, verification that a disclosure statement as prescribed by 7 TAC Figure: §89.506(a) was provided under this section must be established by a dated acknowledgment contained in the disclosure statement signed by the property owner prior to the time of application as defined above.

COMMENT: See Comments under §89.504(c)(1) and (2) above. Also, by adding the above language to 89.504(d)(2), a time for the signing and receipt of the disclosure statement is established (relying on definitions of “application” and “closing” as requested above).

§89.505. Requirements for Notice of Delinquency to Transferee.

(a) Required elements. If a notice of delinquency under Texas Tax Code, §32.06(f-1) is sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien, it must contain the following required elements:

(1) the date of the notice;

(2) the name of the property owner;

(3) the address of the property;

(4) the legal description of the property;

(5) the tax account number or property tax loan number;

(6) name and address of the mortgage servicer or the first lien holder sending the notice;

and

(7) the sender's relationship to the preexisting lien, and if the sender is not the lien holder, the name and address of the lien holder.

(b) Delivery.

(1) Timing of delivery. If the mortgage servicer or the holder of the first lien sends a notice of delinquency under Texas Tax Code, §32.06(f-1) to the transferee of a tax lien, it must be sent within 30 days of the 90-day delinquency of the property owner.

(2) Method of delivery. At a minimum, a notice under this section must be sent by U.S. mail or via facsimile. Mortgage servicers or first lien holders may use certified mail or delivery by a commercial delivery service with tracking abilities.

(c) Verification of delivery. Verification that a notice was sent under this section, at a minimum, must be established by a dated postmark of the U.S. Postal Service or by a dated facsimile confirmation page. Mortgage servicers or first lien holders who use certified mail or a commercial delivery service may verify delivery with a return receipt or tracking receipt.

§89.506. Disclosures.

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figure. 7 TAC Figure: §89.506(a)

COMMENT: I am sending herewith my suggested Disclosure Statement as a separate document which is prepared in the required font size and type as required by the OCCC in §89.503 above. I have not included a notary jurat since the OCCC has not indicated its willingness to require same. However, I would respectfully request the OCCC to substitute the Disclosure Statement as its sample model. It incorporates all of the OCCC's existing disclosures and some of the disclosures suggested by Robert A. Wisner in his proposed Disclosure Statement.

Regarding the above §89.506 and the language which states "before the execution of a tax lien transfer," the OCCC needs to define (as requested above) what constitutes "the execution of a tax lien transfer" (ie the execution of which documents?).

(b) A sample model notice of delinquency under Texas Tax Code, §32.06(f-1) that may be sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien is presented in the following example. 7 TAC Figure: §89.506(b)

§89.507. Permissible Changes.

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by 7 TAC Figure: §89.506(a), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Substituting "transferee" for "property tax lender," or using pronouns such as "we" and "us":

(2) Substituting "borrower" for "property owner," or using pronouns such as "you" and "your"; or

(3) Substituting "tax lien transfer" for "property tax loan."

(b) A property tax lender may consider making the following types of changes to the model notice of delinquency under Texas Tax Code, §32.06(f-1) as provided by 7 TAC Figure: §89.506(b):

(1) Adding information related to information set forth in the model disclosures that is not otherwise prohibited by law:

(2) Substituting "property tax lender" for "transferee," or using pronouns such as "you" and "your";

(3) Substituting "borrower" for "property owner";

(4) Presenting the model clauses in any order, and combining or further segregating the model clauses, if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures;

(5) Inserting descriptive titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis; or

(6) Making other changes which do not affect the substance of the disclosures.

DISCLOSURE TO PROPERTY OWNER ABOUT PROPERTY TAX LOANS

Property Tax Lender's Name: _____
Property Tax Lender's License #: _____
Property Tax Lender's Address: _____

READ THIS NOTICE - - IMPORTANT INFORMATION!

What is a tax lien? On January 1 of each year, all property owners have a tax lien in favor of the governmental taxing unit(s) against the owner's property or homestead for unpaid property taxes. In order to foreclose that lien, the taxing unit(s) must file a lawsuit and obtain a judgment against you before you can lose your home or property.

What is a property tax loan? Rather than pay the taxing unit(s) directly as stated above, you may authorize, in writing, the property tax lender (a non-governmental company) to pay the unpaid property taxes for you and transfer the tax lien from the taxing unit(s) to the property tax lender. In connection therewith, you will enter into a property tax loan with the property tax lender. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property or home to foreclosure by the property tax lender and the cost of the foreclosure could be added to the loan.

What can be included in a property tax loan?

Delinquent vs. Non-Delinquent Taxes. You may limit the property tax loan to only delinquent taxes, otherwise, the property tax lender may charge you for non-delinquent taxes owing in the future. Pursuant to Texas Property Tax Code, §31.02, "taxes are due on receipt of the tax bill and are *delinquent* if not paid before February 1 of the year following the year in which imposed."

Other Costs and Fees in the property tax loan. The property tax lender may add "up front" closing costs, escrow fees, late fees, attorney's fees, other charges and interest up to 18% in connection with the property tax loan. You should inquire as to the amount of these fees and charges, the total amount of the loan, the interest rate, the monthly payment amount and the number or monthly payments.

Will this property tax loan cause me to be in default on my existing mortgage loan? A property tax loan and transferred tax lien is superior to any other preexisting lien on the property or homestead. Accordingly, entering into the property tax loan may constitute a violation (default) of an existing mortgage loan/lien on your property, thereby permitting your mortgage lender to foreclose its lien on your property and the cost of the foreclosure could be added to the loan.

What alternatives are available instead of this property tax loan?

- You can pay the taxing unit(s) directly and may enter into a payment installment agreement with the taxing unit(s) under Texas Property Tax Code, §33.02 to pay the taxes over time.
- You may have financing options through an existing mortgage lender which may, if requested, agree to pay outstanding taxes and charge a lower interest rate, or establish an escrow arrangement and charge no interest; or other private lenders, borrowing from savings or family members;
- If you are disabled or age 65 or older, you may be eligible for tax deferral under Texas Property Tax Code, §33.06.

Contact the Office of Consumer Credit Commissioner if you have questions or problems.

This Property Tax Lender is licensed by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us.

Before you sign, be sure that you understand this document. Texas law requires the property tax lender to provide this Disclosure to Property Owner to you before you authorize a tax lien transfer. You may seek advice from an attorney or any third party before you enter into this transaction. You should carefully read any document before signing it.

ACKNOWLEDGMENT OF RECEIPT: I, _____, received and signed this Disclosure to Property Owner on this _____ day of _____, 20_____.

CRAIN, CATON & JAMES

A PROFESSIONAL CORPORATION • SINCE 1912
ATTORNEYS AND COUNSELORS

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*Board Certified, Commercial Real Estate Law, Texas Board of Legal Specialization
Board Certified, Residential Real Estate Law, Texas Board of Legal Specialization*

E-Mail: rwisner@craincaton.com

September 28, 2007

Mr. Sealy Hutchings
General Counsel
Office of the Consumer Credit Commissioner
2601 North Lamar Blvd.
Austin, Texas 78705

RE: Proposed Property Tax Lender Rules

Dear Sealy:

This letter sets out my comments on the drafts of the two proposed rules for Property Tax Lenders.

DISCLOSURE RULES

First, a couple minor, technical comments. Proposed Section 89.503(b) refers to the "Times" typeface; is this shorthand for "Times New Roman"? I am not aware of any other Times typeface. So to be clear, the rule should refer to this typeface as "Times New Roman," rather than simply "Times."

Proposed Section 89.504(a)(7), requires "a statement that the property tax loan is superior to any other preexisting lien on the property or homestead." Although almost entirely accurate, if an owner already has an preexisting property tax loan, my understanding is that a subsequent tax lien loan would be of equal priority with the preexisting property tax loan. So perhaps, this section would more accurately read as follows: "a statement that the property tax loan is superior to any other preexisting lien on the property or homestead, except a preexisting property tax loan."

The balance of my comments on the draft disclosure rule relate to delivery of the Disclosure Statement to the Property Owner.

Proposed Section 89.504(a)(11) requires the disclosure to include "blanks for signature(s) of the property owner(s) and date when signed." The statute does not require this, nor do I think that

Mr. Sealy Hutchings
General Counsel
Office of the Consumer Credit Commissioner
September 28, 2007
Page 2

it is a good idea for the rule to impose this requirement. Obviously, the property tax lender must deliver the notice and must establish timely delivery of the notice, but these requirements are covered in the following sections of the rule, which detail how to deliver and how to verify delivery of the notice.

As you know from the testimony at the hearing, the business model for most property tax lenders is that most of these loans are originated by phone, mail or other delivery methods, and almost never by face-to-face applications. The only time of a face-to-face meeting between the owner and the lender (if at all) will be at closing of the loan, and even then many loans will be closed by a notary at a location other than the lender's offices.

As a result, the Disclosure will, in almost every case, be sent to the owner by mail, fax or other delivery method, rather than delivered in a face-to-face interview with the owner. The required signature line on the Disclosure and requirement that it be signed and returned, create two problems in connection with the Disclosure that is to be delivered "at the time of application."

- Confusion: The signature line on the Disclosure appears directly below the statement that "any document," which presumably includes this Disclosure, should not be signed before the owner fully understands it and has consulted with an attorney. An unsophisticated owner reading this provision could mistakenly conclude that this Disclosure is the agreement that legally binds the owner to the loan. Any statement directly above the signature line on this Disclosure should make clear that the signature on this Disclosure is ONLY an acknowledgment that the owner has received a copy of the Disclosure.
- Additional Burdens on the Owner and Lender: If the Disclosure given at the time of application is required to include a signature line, then the owner will be required to sign the Disclosure and return it to the lender. This means that the lender will have to wait until the owner receives, signs and returns the Disclosure to the lender. If the lender could simply send the Disclosure and verify that it was sent, without a required signature at the time of application, then the Disclosure could be signed a closing by the owner to verify that the owner received a copy of the Disclosure prior to closing.

As a result, it would seem that the signature line should not be required on the form of Disclosure, but should be an optional provision, that the lender may use to verify receipt. The lender should be required to obtain a copy of the Disclosure signed by the owner(s) to verify that the Disclosure was delivered, but the signature should not be "required" at any specific time prior to closing. If the signature is required prior to closing, since there is almost never a face-to-face interview at the time of application, then the owner is likely to be confused and will be put to additional delay, time, trouble and expense in signing the Disclosure and returning it to the lender prior to closing.

Mr. Sealy Hutchings
General Counsel
Office of the Consumer Credit Commissioner
September 28, 2007
Page 3

The requirement should be that the lender deliver a copy of the Disclosure to the owner(s) at the time of application or within three "business" days of application. Section 89.504(c)(1) should provide for three "business" days, rather than "three days."

A lender should be free to determine how to establish that the Disclosure was sent. For example, many lenders use a **certificate of mailing**. This establishes that a document was mailed by the US Postal Service, but does not require the owner to miss work to go stand in line at the post office to pick up a certified mail, return receipt requested, copy of the Disclosure. Nor does it require the owner to sign and return the Disclosure, and the lender to verify receipt of the signed application Disclosure prior to closing.

In order to verify that the Disclosure was received, the lender should be required to have a signed copy of the Disclosure acknowledging receipt of the Disclosure prior to closing, but the lender should be allowed to obtain the signature at the time of, or prior to, closing.

RESPA, Regulation X, requires a notice regarding servicing transfer to be delivered "at the time of application." The provision in Regulation X for delivery of this notice may be instructive, and reads as follows:

(1) In the case of a face-to-face interview with one or more applicants, the Servicing Disclosure Statement shall be delivered at the time of application. An applicant present at the interview may sign the Acknowledgment on his or her own behalf at that time. An applicant present at the interview also may accept delivery of the Servicing Disclosure Statement on behalf of the other applicants.

(2) If there is no face-to-face interview, the Servicing Disclosure Statement shall be delivered by placing it in the mail, with prepaid first-class postage, within 3 business days from receipt of the application. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

24 C.F.R. §3500.21(c). This rule would seem to work better and would be in line with time tested rules for the delivery of disclosures at the time of application. The proposed regulation should be written to include these provisions for the initial delivery of the Disclosure, which should not require a signature by the owner. A signed Disclosure should be required, but not until closing.

As a result, the following changes should be made:

- Section 89.504(c)(1), three days should be changed to three "business" days.

Mr. Sealy Hutchings
General Counsel
Office of the Consumer Credit Commissioner
September 28, 2007
Page 4

- Section 89.504(c)(2) makes it impossible for a lender to comply in the case of a telephone application. If the lender does not have a signed copy of the Disclosure "at the time of application" then the lender must require the owner to sign a statement that is simply not true stating that the owner received a copy of the Disclosure "at the time of application." The second sentence should read as follows "The property tax lender must obtain a dated acknowledgment signed by each owner of the property stating that the property owner received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the Disclosure."
- Section 89.504(c) (1) and (d)(1) should be rewritten to correspond to the RESPA rules for deliver of the Disclosure at the time of application.

CLOSING COSTS RULE

I have several comments on the closing cost rule. First, proposed Section 89.601(a) uses the term "residential," but this could lead to substantial confusion. The term "residential" is not defined, but would seem to include:

- An owner's principal dwelling (i.e., the homestead).
- An owner's second home.
- A rent house.
- Rental apartments.
- Vacant land that is to be developed into residential lots.

All of these have been interpreted to be "residential" real property in the context of the federal preemption of state usury laws. So is your intention for these rules to apply to a property tax loan to an owner of a large apartment project or to a real estate developer? If the intent of these rules is to address consumer purpose, owner occupied, loans to a natural person, then the rule should say so.

If, on the other hand, the rule is intended to cover all "residential" property, then how can you possibly justify a difference in the rule for business and commercial property that is used for residential rental (i.e., apartments) versus property that is used for retail rental or other business purposes?

In Section 89.601(b)(2)(H), some lenders call the origination fee a "commitment" fee, perhaps this subsection could authorize "a loan origination or commitment fee."

A lender may receive a request to also fund an owner's hazard insurance premium for the property. This would seem to be a reasonable closing cost, but would be an amount that should be allowed (such as attorneys fees for a title cure) in addition to the bracketed maximum amounts. Section 89.601(d) could have two exceptions, one for attorneys for title cure work and a second exception for hazard insurance premiums on the property, which would recognize hazard insurance

Mr. Sealy Hutchings
General Counsel
Office of the Consumer Credit Commissioner
September 28, 2007
Page 5

premiums as a reasonable closing cost, but would authorize the financing of the premium in addition to the fee limitations.

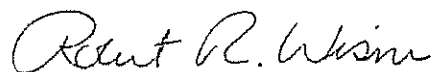
With respect to the maximum fee limits set out in Section 89.601(c)(2), the rule should make provision for multiple properties. Occasionally, a real estate developer or other taxpayer may own multiple tracts. In these cases, the lender must do separate transfers (and all of the other work) for each tract, so it would seem that the fee limitations should apply on a per assessed tract basis, or that some other reasonable allowance should be included in the rule to authorize additional charges when the taxes for multiple tracts are being refinanced.

The provision for additional attorneys fees to correct title in proposed Section 89.601(d) includes two words, "in court," that are troublesome. Often the attorneys fees necessary to correct title will not require a lawsuit and a court proceeding. Most often, title is corrected not by court action, but by researching title and then drafting documents for the proper parties to sign that will cure the title defect. The words "in court" should not be included in this section.

Finally, some thought should be given to how the maximum allowed fees should rise (or fall) with the cost of living, so as to not become outdated. Perhaps, like sections of the Finance Code or the Truth in Lending High Cost Mortgage threshold that are indexed, the maximum reasonable fee limitations could be adjusted annually, based on an indexed base year, so that they would keep pace with inflation.

I hope that my comments are clear and understandable, but if you have any questions or comments, please let me know.

Very truly yours,



Robert R. Wisner

RRW/rrw

cc: Leslie Pettijohn
Laurie B. Hobbs

Laurie Hobbs - RE: Property Tax Lenders Fees for Closing Costs Rule- 9/27 Draft

From: "Don Baylor" <[REDACTED]>
To: "Laurie Hobbs" <Laurie.Hobbs@occc.state.tx.us>
Date: 10/2/2007 7:56 AM
Subject: RE: Property Tax Lenders Fees for Closing Costs Rule- 9/27 Draft
CC: "Sealy Hutchings" <Sealy.Hutchings@occc.state.tx.us>, "Leslie Pettijohn" <Leslie.Pettijohn@occc.state.tx.us>

Laurie,

See below for our comments. Thanks Don

Section 89.601 (a) (2)

The examples of closing costs, as delineated in Section 89.601 (a)(2), represent a suitable baseline for various activities undertaken by property tax lenders in making loans to property owners. However, we contend that the following activities can reach economies of scale and are indivisible from the normal cost of doing business. After all, these firms are in the property tax business, and charging customers for each activity (e.g. loan origination) is not in line with current financial services. Accordingly, these activities should be discarded from this list of possible closing costs:

- loan origination fee;
- underwriting fee;
- courier/delivery fees;
- federally mandated fees.

SECTION 89.601 (c) (2)

We agree with the framework outlined in this subsection as the disclosure process will be more comprehensible to property owners, while promoting better competition and innovation within the industry. This framework will also discourage lenders that attempt to gain an unfair advantage by "outsourcing" activities to a related firm.

In terms of the closing costs fee schedule, we contend that these rates are excessive and may force property owners to miss payments, further compounding a secured loan. The first tier of the "total tax lien payment amount" should extend to \$3,000-\$3,500, as these property owners will have fewer credit options, such as unsecured credit cards.

SECTION 89.601 (d)

In these cases, it is imperative that the lender property notify the property owner of the intent to clear title PRIOR to engaging in these efforts. The lender should receive written authorization from the property owner before charging additional attorney's fees and then pursuing title resolution through the judicial process.

Don Baylor
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Visit us at www.cppp.org for more information, to sign up for our free *E-Mail Updates*, or to make a tax-deductible donation to our work.

From: Laurie Hobbs [mailto:Laurie.Hobbs@occc.state.tx.us]
Sent: Thursday, September 27, 2007 4:58 PM
To: Leslie Pettijohn
Cc: Sealy Hutchings
Subject: Property Tax Lenders Fees for Closing Costs Rule- 9/27 Draft

Dear interested stakeholders,

Hello again and many thanks to all of you who have provided such thoughtful and insightful comments during our rulemaking process for property tax lenders. The attached document contains a draft copy of the rule regarding fees for closing costs, which the agency plans to propose at the Finance Commission's meeting on Friday, October 19, 2007. We wanted to provide you with an advance copy of this additional rule. We invite your comments on this proposal.

For any comments regarding fees for closing costs not included in this proposal, you are welcome to file them during the official public comment period, which (assuming the commission votes to publish these rules) should last until around Monday, December 3 (31 days from the date of publication in the *Texas Register*).

After staff review of the comments, revision of the rules if required, and preparation of an official response to the comments in the preamble of the adoption notice, the Finance Commission may consider this rule for final adoption at a scheduled meeting. The earliest opportunity for the commission to consider final adoption would be at the December 14 meeting.

If you would like for us to consider your comments prior to the presentation of this rule proposal to the Finance Commission, please provide your email comments or call us by 5:00 p.m. on Monday, October 1, 2007. I apologize for the short turnaround on the response time, but we have a very tight deadline in order to submit our Finance Commission materials to the printer. Again, you are welcome to offer comments during the anticipated public comment period as well.

We highly value your input in helping us formulate the best possible proposal to present to the Finance Commission. Please feel free to contact me, Sealy Hutchings (512.936.7623), or Commissioner Pettijohn (512.936.7640) should you have any questions about this rule proposal regarding fees for closing costs.

Sincerely,

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

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**TEXAS PROPERTY TAX LENDERS ASSOCIATION'S COMMENTS TO
PROPERTY TAX LENDERS FEES FOR CLOSING COSTS RULE 9/27/07 DRAFT**

Subsection Analysis

1. **Section 89.601(a):** In regard to the limitation on residential use, the TPTLA appreciates the Commissioners' understanding that many transfers occur on commercial property, and that those properties should be treated differently than those transactions involving consumers and their residences. "Property designated for residential use" is not defined in the proposed rule, but the TPTLA would suggest that the application of this rule be further refined so that it applies to properties that are designated as residential homesteads. This modification effectively would apply the rule to owner-occupied single family houses, duplexes, townhomes and condominiums, manufactured homes that are appraised as real property, etc., but not to apartment complexes or investment properties.
2. **Section 89.601(b)(2):** Even though the list is not exhaustive of fees that the OCCC will permit, all of the property tax lenders in the Association inspect or appraise their properties prior to closing. Therefore, the Association requests that "an inspection and/or appraisal fee" is added to the list.
3. **Section 89.601(c)(2)(B)-(E):** The Association respectfully requests that the Commissioner consider an increase of \$285 for each of the maximum fees permitted in these categories. The \$285 increase for each category represents \$250 for a general increase and a \$35 increase for the increased costs to be borne by property tax lenders as a result of the new legislative notice requirements. We believe that the approach that you have taken in the proposed regulations to have several brackets of "total tax lien payment amounts" and corresponding fee maximums is simple and appropriate, but the absolute amounts are too low to allow property tax lenders to cover all of their costs and a modest origination profit. This is especially true on the low end, but it applies to all of the brackets. Furthermore, we believe that the actual fees charged by property tax lenders will be below the maximums in most cases, since market forces are pushing down prices and will continue to do so. We believe that the maximums are an important part of protecting less sophisticated consumers (*i.e.*, those that do not shop around) but the maximums should be slightly higher than those that you proposed. The \$35 increase reflects what we believe to be the approximate cost of providing notice to the first lien holder and mortgage servicers with all mailing and related costs. This is a new requirement that did not exist prior to September 1, 2007.
4. **Section 89.601(d):** The Association requests that the phrase "to establish in court the correct title" be modified by striking the words "in court". Often borrowers are in the process of obtaining title in court, but cannot wait for the probate process to conclude before they obtain a tax loan. By removing the phrase "in court" it eliminates the possibility that a collector might require the probate or other ownership change to be completed before executing the transfer.

To: Office of Consumer Credit Commissioner
From: Kenneth M. Culbreth, Jr.
Date: October 1, 2007
Re: Commentary Responsive to the OCCC's below Property Tax Lenders Fees for Closing Costs Rule 9/27/07 Draft (Germane to Senate Bill 1520)

In response to the September 27, 2007 invitation by the Office of Consumer Credit Commissioner ("OCCC") to submit written commentary responsive to the 9/27/07 Draft Property Tax Lenders Fees for Closing Costs Rule (Germane to Senate Bill 1520) by 5:00 p.m, October 1, 2007, please accept the following commentary **in bold** to the Draft Rule:

Property Tax Lenders
Fees for Closing Costs Rule
9/27/07 Draft

§89.601. Fees for Closing Costs.

(a) Applicability. The fee limitations contained in this section are applicable to property tax loans secured by property designed for residential use.

(b) Closing costs for which fees may be charged, contracted for, or received.

(1) Scope of closing costs. For purposes of this section, the term "closing costs" includes costs incurred by a property tax lender from the time of application through the time of closing.

(2) Examples of closing costs. The following is a non-comprehensive list of examples of closing costs for which a property tax lender may charge, contract for, or receive fees in connection with a property tax loan. Examples of some allowable fees for closing costs include the following:

- (A) an application fee;
- (B) a title examination fee;
- (C) a property survey fee;
- (D) a fee for flood and plat determinations;
- (E) a document preparation fee;
- (F) a closing or escrow fee;
- (G) a fee for a tax certificate or tax payoff determination;

- (H) a loan origination fee;
- (I) a loan processing fee;
- (J) an underwriting fee;
- (K) a fee for obtaining credit reports;
- (L) a fee for federally-mandated fees;
- (M) a fee for courier and delivery services.

(c) Total maximum fees for closing costs. For purposes of this section, the "total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien" will be referred to as the "total tax lien payment amount."

(1) Maximum fees include funds received by third parties or retained by property tax lender. The maximum fees provided for by this section encompass fees related to closing costs, whether the charge is paid by a property owner directly to a third party, paid to a third party through a property tax lender, or paid by a property owner directly to and retained by a property tax lender. A property tax lender may absorb any closing costs and may pay third parties out of the total compensation paid to it by a property owner.

(2) Maximum fee limits for closing costs. A property owner may not be charged, directly or indirectly, by a property tax lender an amount related to closing costs in excess of the amounts authorized by this section. A property tax lender may not directly or indirectly charge, contract for, or receive any amount related to closing costs from a property owner in excess of the amounts authorized by this section. The following subparagraphs contained in this paragraph outline the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender in connection with a property tax loan, based on the total tax lien payment amount.

(A) For a total tax lien payment amount that is less than \$2,500, the maximum fee for closing costs is \$1,000.

(B) For a total tax lien payment amount that is equal to or greater than \$2,500 but less than \$5,000, the maximum fee for closing costs is \$1,250.

(C) For a total tax lien payment amount that is equal to or greater than \$5,000 but less than \$7,500, the maximum fee for closing costs is \$1,500.

(D) For a total tax lien payment amount that is equal to or greater than \$7,500 but less than \$10,000, the maximum fee for closing costs is \$1,750.

(E) For a total tax lien payment amount that is equal to or greater than \$10,000, the maximum fee for closing costs is \$2,000, or 10% of the total tax lien payment amount, whichever is greater.

(3) Reasonable closing costs. The maximum fees contained in paragraph (2) of this subsection constitute "reasonable closing costs" under Texas Property Tax Code, §32.06.

(d) Exception for attorney's fees required to establish correct title. In addition to the maximum fees outlined by subsection (c)(2) of this section, a property tax lender may include in a property tax loan attorney's fees incurred on behalf of a property owner that are reasonable and necessary to establish in court the correct title to the property to which the property tax loan relates.

COMMENT: The very serious concern with Section 89.601(d) is that the property tax lenders will allow this provision of exception regarding "attorney's fees required to establish correct title" as a catch-all to tack on additional fees to the consumer. These fees have nothing to do with tax lien debt. One property tax lender testified at the stakeholder's meeting on September 6, 2007 that it sometimes has probate and/or divorce issues to deal with so to establish clear title. These issues are in no way related to the payment of taxes. The property owner needs to engage their own attorney to handle any and all title issues and not allow the property tax lender to add these fees to a tax lien debt which encumbers the homestead. The OCCC has already generously allowed "closing costs" as stated above to the tax lien debt, which most assuredly will be charged with interest, as would the purported title clearing attorneys' fees, if they are allowed under this section.

We must continue to be mindful of the fact that this is a *property tax* loan and legal fees to clear title have no place whatsoever in a now private tax lien debt (as opposed to a governmental unit's tax lien) which the legislature has allowed as an exception to the homestead exemption. While this writer is of the opinion that any closing costs are unconstitutional and the tax lien debt should be limited to taxes, penalties and interest, that argument is for another day. See Article 16, Section 50 of the Texas Constitution (the homestead of a family, or of a single adult person, shall be and is hereby protected from forced sale, for the payment of all debts except for: (2) the *taxes* due thereon); Texas Property Code (Section 41.001 (a) provides the same homestead protections, but Section 41.001(b)(2) allows an encumbrances to be properly fixed on homestead property for "*taxes on the property*"); Section 32.01 of the Texas Property Tax Code (states that a tax lien attaches to property on January 1 of each year to secure *the payment of all taxes, penalties and interest* ultimately imposed for the year on the property).

As stated above, the OCCC has now established caps on "closing costs" with the intention of providing a clear and concise definition of "reasonable closing costs" thereby closing the door on uncertainty and the potential for future abuse. By allowing an exception thereto regarding attorney's fees to clear title (regardless of whether "reasonable and necessary"), the door is opened. Even if the OCCC placed a cap on this type of fee, the fee would always be added to the OCCC's above current limits (even when the OCCC has already allowed for "a title examination fee"), thus defeating the purpose thereof. Accordingly, request is respectfully made to remove Section 89.601(d) from the proposed draft Rule (with the effect of disallowing any such fees from being added to the property tax loan.)

D. **Office of Consumer Credit Commissioner**

7. Discussion of and Possible Vote to Take Action on the Publication for Comment of the Proposed Amendments to 7 TAC, §90.602, Concerning Contract Provisions, §90.603, Concerning Model Clauses, and §90.604 Concerning Permissible Changes for Second Lien Home Improvement Contracts.

PURPOSE: The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation, and to make technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments to 7 TAC §§90.602, 90.603, and 90.604 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC §§90.602, 90.603, and 90.604.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 90. Chapter 342, Plain Language Contract Provisions
§§90.602, 90.603, and 90.604

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §90.602, concerning Contract Provisions, §90.603, concerning Model Clauses, and §90.604, concerning Permissible Changes for second lien home improvement contracts.

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation, and to make technical corrections.

House Bill 1038 (HB 1038) was passed by the 80th Texas Legislature and went into effect on September 1, 2007. HB 1038 requires that two related disclosures concerning the Texas Residential Construction Commission (TRCC) be provided when certain registrations are required. The first notice, which we refer to as the "TRCC home improvement contract notice," must be provided for certain contracts where the total cost of home improvement is \$10,000 or more, requiring the contract be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003. The second notice, which we refer to as the "TRCC builder notice," must be provided when the contractor is required to be registered with the TRCC.

Both notices must contain the contractor's certificate of registration number and direct the owner to contact the TRCC for complaints and inquiries. Revisions related to the TRCC disclosures

are contained in §90.602(1)(N), (3)(V), and (5)(HH); §90.603(b)(14),(d)(22), and (f)(34); and the figures contained in 7 TAC §90.604(a)(12), (a)(14), and (a)(16). Please note that these disclosures are only required when the particular registrations are required, i.e., registration of the contract or of the builder. The rule text contained in §90.603 states that these disclosures may be omitted if the registration(s) are not required, resulting in the notices being inapplicable.

Another recent legislative change was also enacted during the 2007 session with the passage of House Bill 2061 (HB 2061). HB 2061 amends the Notice of Confidentiality Rights contained in Texas Property Code, §11.008, and now requires that this notice be included on any instrument transferring an interest in real property, whether or not any social security numbers or driver's license numbers are contained in the instrument. Thus, the commission is proposing that revisions regarding the Notice of Confidentiality Rights reflecting the required nature of the notice be added to the rule text in §90.603(d)(24), and that the notice itself be added to the model contract contained in Figure 7 TAC §90.604(a)(14) for consistency purposes. This notice was returned to the other affected model contracts in a previous rule adoption. In addition, some technical corrections have been made throughout these rules, including renumbering.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the

first five-year period the amendments to these rules are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefits anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and will be more easily understood. Another public benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs may be incurred by a person required to comply with this proposal. These costs, however, are required by the statutory provisions enacted by HB 1038; the proposed amendments merely serve to implement the statute. As noted above, the disclosures contained in these rule amendments are only required when the particular registrations are required. Thus, not all home improvement contracts will be affected. For those who will be required to comply, the anticipated costs would include the costs associated with copying a contract or new forms, and costs attributable to the loss of obsolete forms inventory. Additional copy costs are estimated to be approximately \$0.30-\$0.40 per contract or new form.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the forms. Whether programmers will use the proposed

forms or create their own non-standard contract submission is not predictable. Whether the programmers will charge an additional fee for a document they do not have to draft is also not predictable.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed amendments should that effect be adverse to small businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These amendments as well as all of the rules contained in Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding §§90.101-90.604, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is

acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §§90.105, 90.403, 90.404, 90.503, 90.504, 90.603, and 90.604 in the *Texas Register* on March 9, 2007, (32 TexReg 1232) listed the agency's implementation date as October 1, 2007. Given these additional proposed amendments as well as other recent changes, some required by recent legislation, the agency intends to provide licensees until January 1, 2008, for compliance.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.602. Contract Provisions.

A Chapter 342, Subchapter G second lien home improvement loan transaction may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may

omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G home improvement loan transaction may contain the following provisions:

(1) For a contract for use in a transaction that does not allow withdrawals or multiple advances:

(A) – (G) (No change.)

(H) A provision regarding changes [~~charges~~] and extras;

(I) – (M) (No change.)

(N) Texas Residential Construction Commission disclosures:

(O) [~~(N)~~] An assignment; and

(P) [~~(O)~~] A provision regarding notice of confidentiality rights.

(2) (No change.)

(3) For a contract for use in a transaction that allows for withdrawals or multiple advances:

(A) – (J) (No change.)

(K) A provision regarding changes [~~charges~~] and extras;

(L) – (T) (No change.)

(U) A notice specifying that the owner and the contractor are responsible for meeting the terms of the contract; [~~and~~]

(V) Texas Residential Construction Commission disclosures;

(W) [~~V~~] An assignment; and
[-]

(X) A provision regarding notice of confidentiality rights.

(4) (No change.)

(5) For a deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(A) – (GG) (No change.)

(HH) Texas Residential Construction Commission disclosures;

(II) [~~HH~~] Signature blocks; and

(JJ) [~~II~~] A provision regarding notice of confidentiality rights.

§90.603. Model Clauses.

(a) (No change.)

(b) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that does not allow for withdrawals or multiple advances:

(1) - (7) (No change.)

(8) Changes [~~Charges~~] and extras. The model clause regarding changes [~~charges~~] and extras reads: "All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money."

(9) - (13) (No change.)

(14) Texas Residential Construction Commission (TRCC) disclosures.

(A) TRCC home improvement contract notice. If a contract for the construction of a new home or an improvement to an existing home is required to be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003, the contract must contain a TRCC home improvement contract notice. The disclosure or notice must contain:

(i) the builder's name and certificate of registration number; and

(ii) the notice required by the Texas Residential Construction Commission Act, Texas Property Code, §420.001, including the telephone number of the TRCC, in at least 10-point bold type or the computer equivalent.

(B) TRCC builder notice. If the contractor is required to register as a builder with the TRCC, the contract for improvements to an existing residence must incorporate a TRCC builder notice. The disclosure or notice must contain:

(i) the contractor's certificate of registration number; and

(ii) the address and telephone number at which the owner may file a complaint with the TRCC about the conduct of the contractor.

(C) Omission permitted if not applicable. The TRCC home improvement contract notice may be omitted if the contract is not required to be registered

under Texas Property Code, §426.003. The TRCC builder notice may be omitted if the contractor is not required to register with the TRCC.

(15) [(14)] Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads: Figure: 7 TAC §90.603(b)(15) [~~7 TAC §90.603(b)(14)~~]

(16) [(15)] Notice of confidentiality rights disclosure. The security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) - (C) (No change.)

(c) (No change.)

(d) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that allows for withdrawals or multiple advances:

(1) - (10) (No change.)

(11) Changes [~~Charges~~] and extras. The model clause regarding changes [~~charges~~] and extras reads: "All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money."

(12) - (21) (No change.)

(22) Texas Residential Construction Commission (TRCC) disclosures.

(A) TRCC home improvement contract notice. If a contract for the construction of a new home or an improvement to an existing home is required to be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003, the contract must contain a TRCC home improvement contract notice. The disclosure or notice must contain:

(i) the builder's name and certificate of registration number; and

(ii) the notice required by the Texas Residential Construction Commission Act, Texas Property Code, §420.001, including the telephone number of the TRCC, in at least 10-point bold type or the computer equivalent.

(B) TRCC builder notice. If the contractor is required to register as a builder with the TRCC, the contract for improvements to an existing residence must incorporate a TRCC builder notice. The disclosure or notice must contain:

(i) the contractor's certificate of registration number; and

(ii) the address and telephone number at which the owner may file a complaint with the TRCC about the conduct of the contractor.

(C) Omission permitted if not applicable. The TRCC home improvement contract notice may be omitted if the contract is not required to be registered under Texas Property Code, §426.003. The TRCC builder notice may be omitted if the contractor is not required to register with the TRCC.

(23) [(22)] Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads: Figure: 7 TAC §90.603(d)(23) [~~7 TAC §90.603(d)(22)~~]

(24) Notice of confidentiality rights disclosure. The security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document:

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

(e) (No change.)

(f) For a Chapter 342, Subchapter G second lien home improvement loan deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(1) - (33) (No change.)

(34) Texas Residential Construction Commission (TRCC) disclosures.

(A) TRCC home improvement contract notice. If a contract for the construction of a new home or an improvement to an existing home is required to be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003, the contract must contain a TRCC home improvement contract notice. The disclosure or notice must contain:

(i) the builder's name and certificate of registration number; and

(ii) the notice required by the Texas Residential Construction Commission Act, Texas Property Code, §420.001, including the telephone number of the TRCC, in at least 10-point bold type or the computer equivalent.

(B) TRCC builder notice. If the contractor is required to register as a builder with the TRCC, the contract for improvements to an existing residence must incorporate a TRCC builder notice. The disclosure or notice must contain:

(i) the contractor's certificate of registration number; and

(ii) the address and telephone number at which the owner may file a complaint with the TRCC about the conduct of the contractor.

(C) Omission permitted if not applicable. The TRCC home improvement contract notice may be omitted if the contract is not required to be registered under Texas Property Code, §426.003. The TRCC builder notice may be omitted if the contractor is not required to register with the TRCC.

(35) [(34)] Signature blocks. The parties' signatures must be notarized. The licensee may use a different notary acknowledgment without having to submit the deed of trust to the agency as non-standard. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The model provision regarding signature blocks reads: Figure: 7 TAC §90.603(f)(35) [7 TAC §90.603(f)(34)]

(36) [(35)] Notice of confidentiality rights disclosure. The security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) - (C) (No change.)

§90.604. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien home improvement contracts plain language model clauses:

(1) - (11) (No change.)

(12) A sample model contract that does not allow for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(12)

(13) (No change.)

(14) A sample model contract that allows for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(14)

(15) (No change.)

(16) A sample model deed of trust that allows for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(16)

(b) (No change.)

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 19, 2007.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

Figure: 7 TAC §90.603(b)(15) [~~7 TAC §90.603(b)(14)~~]

"ASSIGNMENT

This lien is transferred and assigned to (third party lender)_____.

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by (name of contractor)_____.

Notary Public

(Seal)"

Figure: 7 TAC §90.603(d)(23) [~~7 TAC §90.603(d)(22)~~]

"ASSIGNMENT

This lien is transferred and assigned to _____ (third party lender)_____.

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by _____ (name of contractor)_____.

Notary Public

(Seal)"

Figure: 7 TAC §90.603(f)(35) [~~7 TAC §90.603(f)(34)~~]

"BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it.

(DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By: _____

_____ (seal)

-Borrower

Printed Name: _____

(Please Complete)

_____ (seal)

-Borrower

Printed Name: _____

(Please Complete)

_____ (seal)

-Borrower

_____ (seal)

-Borrower

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by
(name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by
(name of contractor) _____.

Notary Public

(Seal)"

Figure: 7 TAC §90.604(a)(12)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

**TEXAS HOME IMPROVEMENT
MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT
AND POWER OF SALE
(Second Lien)**

DATE _____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
 - a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
 - a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT (877) 651-8722 TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

If Contractor is required to register as a builder with the Texas Residential Construction Commission, Owner may file a complaint with the Commission about the conduct of the Contractor at:

311 E. 14th Street
P.O. Box 13144
Austin, Texas 78711
877-651-TRCC (8722)

Contractor's Certificate of Registration Number is: *(insert certificate of registration number)*

Owner

Owner

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to __ (third party lender) _____.

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

Figure: 7 TAC §90.604(a)(14)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT
MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT,
POWER OF SALE, AND DEED OF TRUST
(Second Lien)

DATE _____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.
- (J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.
- (K) "Applicable Law" means all controlling applicable federal, state, and local law.
- (L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.
- (M) "Forcible Detainer" means a lawsuit to remove a person from the Property.
- (N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.
- (O) "Successor in Interest" means any party that has taken title to the Property.
- (P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed.

NOTE PAYABLE TO LENDER

In exchange for money from the Lender to you, I have signed a Note to the Lender in the amount of _____ dollars (U.S. \$ _____).

LIEN TO SECURE NOTE

To secure the amounts Lender provides to you, and the interest payable to Lender, I give you, and you transfer to Lender, the Lien. The Note is secured by a deed of trust, which I will sign. The deed of trust will renew and extend the Lien created by this Contract.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

EXCEPTIONS TO CONVEYANCE AND WARRANTY

The exceptions to conveyance and warranty are:

(List any exceptions to conveyance and warranty.)

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

OWNER'S PROMISES AND RIGHTS

I promise that:

- 1. I own the Property in "fee simple," subject to the section in this Contract named "Exceptions to Conveyance and Warranty"; and
- 2. I will provide notice to Lender if I learn of a lien or claim for labor or material on the Property that relates to the Contract.

You agree that I have the following rights:

- 1. Despite anything to the contrary in this Contract, Lender may keep all amounts under sections 53.101 and 53.081 of the Texas Property Code until thirty days after the Work is completed;
- 2. I may deduct enough money from payments on the Note to the Lender to pay a lien or claim for labor or material provided to you that you are obligated to pay. I will still owe the amount in the Note; and
- 3. Without affecting the lien created by this Contract, I may use insurance proceeds to restore destroyed or damaged property for a loss occurring before the Work is completed.

OWNER'S DUTIES

I agree to:

1. pay timely all taxes and assessments on the Property;
2. preserve the lien's priority as it is established in this Contract;
3. pay all prior lien notes that I am responsible to pay and abide by all prior lien instruments;
4. because this Contract is for improvements to the Property, keep the Property other than those improvements in good repair and condition during the Work;
5. except to the extent that you are required to insure the Work during its progress, keep at my cost and expense, and in a form acceptable to you or your transferees, insurance policies having the following coverages issued by an insurance company or companies authorized to engage in the insurance business in Texas with a financial rating acceptable to you or your transferees:
 - a. property insurance covering all improvements located on the Property in an amount not more than the actual amount of unpaid debt or the amount of their full replacement cost, whichever is less, containing a standard mortgage clause, provided that the amounts of coverage meet all coinsurance requirements of the policy;
 - b. flood insurance, if the property is located in a flood hazard area; and
 - c. any other insurance coverage that you or your transferees may reasonably require;
6. deliver the insurance policy to you within ten days of the date of the Contract and deliver renewals to you at least fifteen days before expiration;
7. I MAY PROVIDE THE INSURANCE REQUIRED OF ME BY THIS CONTRACT EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH LIKE COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS;
8. comply with all laws, ordinances, and restrictive covenants applicable to the Property; and
9. keep any buildings occupied as required by the insurance policy.

CONTRACTOR'S DUTIES

You agree that:

1. Until the Work is completed, you will insure the Work against loss or damage. You will insure the Work in the amount of any unpaid debt or the full replacement cost, whichever is less. The parties to this Contract will be beneficiaries of this insurance according to their respective interests. If you do not provide this insurance, you will bear any loss to the Work.
2. If any other lien or claim is filed against the Property, you will pay for its removal or provide a statutory bond.

CONTRACTOR'S RIGHTS

You have the following rights:

1. You may appoint in writing a substitute Trustee.
2. After completing the Work, you may apply any insurance proceeds to either (a) reduce the Note or (b) repair or replace damaged or destroyed improvements.
3. If I fail to carry out any of my duties other than providing insurance, you may carry out the duty. On demand, I will repay you for any amount paid. This amount will include attorneys' fees to an attorney who is not your employee. I will also pay you interest at the contract rate in the Note. If I repay you after the full Note amount is due, I will repay you the after maturity interest rate in the Note. Any amount to be repaid will be secured by this Contract.
4. If I default on the Note or this Lien is foreclosed, I will repay you for reasonable fees to an attorney who is not your employee. I will also repay you for court, collection, and foreclosure costs. The amount to be repaid will be secured by this Contract.
5. After notice of default plus twenty-one days, you may:
 - a. declare the unpaid principal balance and earned interest on the Note immediately due;
 - b. ask Trustee to foreclose this Lien and to give notice of the foreclosure sale under the Texas Property Code; and
 - c. buy the Property at any foreclosure sale and then credit the amount of the bid on the Note.

Notice of default is given when deposited with the United States Postal Service (certified mail, return receipt requested), addressed to me at my current mailing address or, if my current mailing address is unknown, to my last known address as shown in the records of the holder of the debt.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
 - a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
 - a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

GENERAL PROVISIONS

1. If you are dismissed from the Work, or you do not complete the Work, the Note amount will be reduced by the amount reasonably necessary to complete the Work. If you are not the Note holder, the holder may complete the Work.
2. This Contract is executed, acknowledged, and delivered before any labor has been performed or any material has been furnished for the Work. This Contract is entered into by all Owners with the consent of each Owner's spouse.
3. If any of the Property is sold under this Contract, I will immediately move from the Property. If I fail to do so, I will become a Tenant at Sufferance of the purchaser, subject to Forcible Detainer.
4. Statements in any Trustee's deed conveying the Property are assumed to be true.
5. The Lien is prior to liens created later, even if the Note is extended or part of the Property is released.
6. Payments will be applied first to satisfy any portion of the Note that is not secured by this Contract.
7. I transfer to you all condemnation proceeds. I also transfer to you all proceeds from a private sale in lieu of condemnation. I further transfer to you all damages caused by public works on or near the Property. After deducting any expenses, including attorneys' fees and court and other lawful costs, you will either release any remaining amounts to me or apply them to reduce the Note. I will immediately give you notice of any actual or threatened proceeding for a taking of all or part of the Property.
8. You do not elect remedies by continuing under this Contract, beginning foreclosure, or pursuing any other remedy.
9. As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.
10. I do not have to pay interest or other amounts that are more than Applicable Law allows.
11. Where appropriate, singular nouns and pronouns include the plural.
12. The word "may" gives sole discretion without imposing any duty to take action.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT (877) 651-8722 TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

If Contractor is required to register as a builder with the Texas Residential Construction Commission, Owner may file a complaint with the Commission about the conduct of the Contractor at:

311 E. 14th Street
P.O. Box 13144
Austin, Texas 78711
877-651-TRCC (8722)

Contractor's Certificate of Registration Number is: (insert certificate of registration number)

Owner

Owner

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by ___(name of owner)_____.

Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by ___(name of contractor)_____.

Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to (third party lender) _____.

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by (name of contractor) _____.

Notary Public

(Seal)

Figure: 7 TAC §90.604(a)(16)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT
DEED OF TRUST
ASSIGNMENT OF CONTRACTOR'S LIEN
(Second Lien)

DEFINITIONS

- (A) "Borrower" is _____ Borrower's address is _____.
- (B) "Contractor" is _____ Contractor's address is _____.
- (C) "Lender" is _____ Lender's address is _____.
- (D) "Trustee" is _____ Trustee's address is _____.
- (E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").
- (F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.
- (G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.
- (H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. \$ _____) plus interest.
- (I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).
- (J) "Applicable Law" means all controlling applicable federal, state, and local law.
- (K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.
- (L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (M) "Escrow Items" means those items that are described in Section ___ of this Deed of Trust.
- (N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.
- (O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.
- (P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.
- (Q) "Successor in Interest" means any party that has taken title to the Property.
- (R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."
- (S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at (Street Address) (City) (State) (Zip Code) and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

- a. to permit Lender to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If

there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
- c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document.

Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

- a. will not have to repay the Note;
- b. is not a surety or guarantor; and,
- c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

MAILING OF NOTICES TO BORROWER

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

ACCELERATION AND REMEDIES

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

POWER OF SALE

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or

before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
- e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

RELEASE

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at Lender's option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed.

SUBROGATION

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

RENEWAL AND EXTENSION

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
- b. affect Lender's right to any promise or condition of the Loan Agreement.

DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT (877) 651-8722 TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

If Contractor is required to register as a builder with the Texas Residential Construction Commission, Owner may file a complaint with the Commission about the conduct of the Contractor at:

311 E. 14th Street
P.O. Box 13144
Austin, Texas 78711
877-651-TRCC (8722)

Contractor's Certificate of Registration Number is: *(insert certificate of registration number)*

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By: _____

Printed Name: _____
(Please Complete)

Printed Name: _____
(Please Complete)

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

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