

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE E. OTHER FINANCIAL BUSINESSES

CHAPTER 156. MORTGAGE BROKERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 156.001. SHORT TITLE. This chapter may be cited as the Mortgage Broker License Act.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.002. DEFINITIONS. In this chapter:

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

(2) "Disciplinary action" means an order by the commissioner that requires one or more of the following:

(A) suspension or revocation of a license under this chapter;

(B) probation of a suspension or revocation of a license under this chapter on terms and conditions that the commissioner determines appropriate;

(C) a reprimand of a person licensed under this chapter; or

(D) an administrative penalty imposed on a person licensed under this chapter under Section 156.302.

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

(4) "Fund" means the mortgage broker recovery fund established by the commissioner under Subchapter F.

(5) "Loan officer" means an individual sponsored by a licensed mortgage broker for the purposes of performing the acts of a mortgage broker. The term does not include:

(A) an individual who performs only clerical functions such as delivering a loan application to a mortgage broker or mortgage banker or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage broker, or mortgage banker; or

(B) an individual who performs functions of a loan processor.

(6) "Loan processor" means an individual who works under the instruction of a loan officer or mortgage broker and performs only clerical functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files.

(7) "Mortgage applicant" means a person who is solicited to use or who uses a mortgage broker to obtain a mortgage loan.

(8) "Mortgage banker" means a person who is:

(A) approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority;

(B) an approved seller or servicer of the Federal National Mortgage Association;

(C) an approved seller or servicer of the Federal Home Loan Mortgage Association; or

(D) an approved issuer for the Governmental National Mortgage Association.

(9) "Mortgage broker" means a person who receives an application from a prospective borrower for the purposes of making a mortgage loan from that person's own funds or from the funds of another person. The term does not include:

(A) a person who performs only clerical functions such as delivering a loan application to a mortgage broker or mortgage banker or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage broker, or mortgage banker; or

(B) a person who performs functions of a loan processor.

(10) "Mortgage loan" means a debt against real estate secured by a security interest against one-to-four family residential real estate created by a deed of trust, security deed, or other security instrument.

(11) "Registered financial services company" means a person registered under Section 156.214.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 228, Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 6.052, eff. September 1, 2007.

Sec. 156.003. SECONDARY MARKET TRANSACTIONS. This chapter does not prohibit a mortgage broker from receiving compensation from a party other than the mortgage applicant for the sale, transfer, assignment, or release of rights on the closing of a mortgage transaction.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.004. DISCLOSURE TO APPLICANT. At the time an applicant submits an application to a mortgage broker, the mortgage broker shall provide to the applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated. The finance commission, by rule, shall promulgate a standard disclosure form to be used by the mortgage broker.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 85, eff. Sept. 1, 2001.

Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless prohibited by federal or state law, this chapter may not be construed to prevent affiliated or controlled business arrangements or loan origination services by or between mortgage brokers and other professionals if the mortgage broker complies with all applicable federal and state laws permitting those arrangements or services.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.01, eff. September 1, 2005.

SUBCHAPTER B. ADMINISTRATION PROVISIONS

Sec. 156.101. ADMINISTRATION OF CHAPTER. (a) The commissioner shall administer this chapter.

(b) The commissioner may hire employees as necessary to administer this chapter. The salaries of the employees shall be set by the commissioner in amounts not to exceed the amounts set by the General Appropriations Act.

(c) The commissioner may employ a general counsel, attorneys, investigators, and support staff to administer and enforce this chapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.102. RULEMAKING AUTHORITY. (a) The finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter.

(b) The finance commission may adopt rules to prohibit false, misleading, or deceptive practices by mortgage brokers and loan officers but may not adopt any other rules restricting competitive bidding or advertising by mortgage brokers or loan officers. When adopting rules under this subsection, the finance commission may not restrict:

- (1) the use of any medium for an advertisement;
- (2) the personal appearance of or voice of a person in an advertisement;
- (3) the size or duration of an advertisement; or
- (4) a mortgage broker's or loan officer's advertisement under a trade name.

(c) The finance commission may adopt rules regarding books and records that a person licensed under this chapter is required to keep, including the location at which the books and records must be kept.

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

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 86, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.02, eff. September 1, 2005.

Sec. 156.103. POWERS OF COMMISSIONER. (a) In addition to any other action, proceeding, or remedy authorized by law, the commissioner may institute an action in the commissioner's name to enjoin a violation of this chapter or a rule adopted under this chapter. To sustain an action filed under this subsection, it is not necessary to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation of this chapter.

(b) The commissioner is not required to provide an appeal bond in any action or proceeding to enforce this chapter.

(c) The commissioner may authorize specific employees to conduct hearings and make recommendations for final decisions in contested cases.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.104. MORTGAGE BROKER ADVISORY COMMITTEE.

(a) The mortgage broker advisory committee is created to advise and assist the commissioner.

(b) The advisory committee is composed of six members to be appointed as follows:

(1) the commissioner shall appoint four members, each of whom:

(A) must hold a mortgage broker license;

(B) is actively engaged in the business of brokering loans at the time of appointment; and

(C) has been primarily engaged in the business of brokering mortgage loans for at least two years before the member's appointment; and

(2) the Texas Real Estate Commission shall appoint two members, each of whom must hold a real estate broker or salesperson license.

(c) Appointments to the advisory committee shall be made without regard to the sex, race, color, age, disability, religion, or national origin of the appointees.

(d) The members of the advisory committee serve for a staggered three-year term, with the terms of two members expiring February 1 of each year.

(e) The advisory committee shall meet at least twice a year at the call of the commissioner.

(f) The commissioner may remove a member of the advisory committee if:

(1) the member does not have at the time of appointment the qualifications required by Subsection (b); or

(2) the commissioner determines that the member cannot discharge the member's duties for a substantial part of the term for which the member is appointed.

(g) In the event of a vacancy during a term, the appointing entity or official shall fill the vacancy for the unexpired part of the term with a person who meets the qualifications of the vacated position.

(h) In addition to other powers and duties delegated to it by the commissioner, the advisory committee shall advise the commissioner with respect to:

(1) the proposal and adoption of rules relating to:

(A) the licensing of mortgage brokers and loan officers;

(B) the education and experience requirements for licensing mortgage brokers and loan officers;

(C) conduct and ethics of mortgage brokers and loan officers;

(D) continuing education for licensed mortgage brokers and loan officers and the types of courses acceptable as continuing education courses under this chapter; and

(E) the granting or denying of an application or request for renewal for a mortgage broker license or loan officer license;

(2) the form of or format for any applications or other documents under this chapter; and

(3) the interpretation, implementation, and enforcement of this chapter.

(i) Each member of the advisory committee is entitled to a per diem allowance and to reimbursement of travel expenses necessarily incurred in performing functions as a member of the committee, subject to any applicable limitation in the General Appropriations Act.

(j) The advisory committee shall take a record vote on any matter described by Subsection (h)(1). The commissioner shall inform the finance commission of:

(1) the result of the vote; and

(2) any additional information the commissioner considers necessary to ensure the finance commission is sufficiently notified of the advisory committee's recommendations.

(k) A record vote taken by the advisory committee under Subsection (j) is only a recommendation and does not supersede the rulemaking authority of the finance commission under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 87, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.03, eff. September 1, 2005.

Sec. 156.105. STANDARD FORMS. (a) The finance commission, by rule, shall adopt one or more standard forms for use by a mortgage broker or loan officer in representing that an applicant for a mortgage loan is preapproved or has prequalified for the loan.

(b) The finance commission shall adopt rules requiring a mortgage broker or loan officer licensed under this chapter to use the forms adopted by the finance commission under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 407, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. MORTGAGE BROKER LICENSE AND LOAN OFFICER LICENSE

Sec. 156.201. LICENSES REQUIRED. (a) A person may not act

in the capacity of, engage in the business of, or advertise or hold that person out as engaging in or conducting the business of a mortgage broker in this state unless the person holds an active mortgage broker license or is exempt under Section 156.202.

(b) An individual may not act or attempt to act as a loan officer unless the individual at the time is:

(1) licensed under this chapter and sponsored by a licensed mortgage broker and acting for the mortgage broker; or

(2) exempt under Section 156.202.

(c) Each mortgage broker licensed under this chapter is responsible to the commissioner and members of the public for any act or conduct performed by the mortgage broker or a loan officer sponsored by or acting for the mortgage broker in connection with:

(1) the origination of a mortgage loan; or

(2) a transaction that is related to the origination of a mortgage loan in which the mortgage broker knew or should have known of the transaction.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.04, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 2, eff. September 1, 2007.

Sec. 156.2011. PROVISIONAL LOAN OFFICER LICENSE. (a) An applicant for a loan officer license may be issued a provisional loan officer license as provided by this section only if the applicant:

(1) during the 20 months immediately preceding the application, has at least 18 months of experience as a loan officer employed by a person exempt from this chapter under Section 156.202; and

(2) meets the qualifications for a loan officer license, other than the educational and examination requirements.

(b) The commissioner shall use best efforts to issue the provisional loan officer license on or before the later of:

(1) the 10th business day after the date of receipt of

a completed application; or

(2) the second business day after the date of receipt of the criminal background information required under Section 156.206 demonstrating that the applicant has no pending criminal charges and has not been convicted of a criminal offense.

(c) For purposes of Subsection (b)(2), a person is considered convicted as provided by Section 156.204(d).

(d) A provisional loan officer license is valid for 90 days after the date the license is issued, except as provided by Subsection (e).

(e) The commissioner may revoke a provisional loan officer license if the commissioner discovers that the applicant has made a misrepresentation relating to the applicant's qualifications for a loan officer license, has violated this chapter, or does not meet the qualifications for a provisional loan officer license. The revocation of a provisional loan officer license is not subject to appeal.

(f) The finance commission by rule may impose a fee not to exceed \$100 for an expedited issuance of a provisional loan officer license. The fee is nonrefundable and is in addition to the fee for the application for a regular loan officer license.

Added by Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 3, eff. September 1, 2007.

Sec. 156.202. EXEMPTIONS. The following persons are exempt from this chapter:

(1) any of the following entities or an employee of any of the following entities provided the employee is acting for the benefit of the employer:

(A) a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank, or savings and loan association;

(B) a state or federal credit union, or a subsidiary, affiliate, or credit union service organization of a state or federal credit union;

(C) an insurance company licensed or authorized to do business in this state under the Insurance Code;

(D) a mortgage banker registered under Chapter 157;

(E) an organization that qualifies for an exemption from state franchise and sales tax as a 501(c)(3) organization;

(F) a Farm Credit System institution; or

(G) a political subdivision of this state involved in affordable home ownership programs;

(2) an individual who makes a mortgage 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;

(3) an owner of real property who in any 12-consecutive-month period makes no more than five mortgage loans to purchasers of the property for all or part of the purchase price of the real estate against which the mortgage is secured;

(4) an individual who:

(A) makes a mortgage loan from the individual's own funds;

(B) is not an authorized lender under Chapter 342, Finance Code; and

(C) does not regularly engage in the business of making or brokering mortgage loans; or

(5) an individual who is an exclusive agent of a registered financial services company under a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 5, Sec. 1, eff. Sept. 1, 2001;

Acts 2003, 78th Leg., ch. 135, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.05, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 228, Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 4, eff. September 1,

2007.

Sec. 156.203. APPLICATION FOR A LICENSE; FEES. (a) An application for a mortgage broker or loan officer license must be:

- (1) in writing;
- (2) under oath; and
- (3) on the form prescribed by the commissioner.

(b) An application for a mortgage broker license must be accompanied by:

- (1) an application fee in an amount determined by the commissioner not to exceed \$375; and
- (2) a recovery fund fee as provided by Section 156.502.

(c) An application for a loan officer license must be accompanied by:

- (1) an application fee in an amount determined by the commissioner not to exceed \$275; and
- (2) a recovery fund fee as provided by Section 156.502.

(d) An application fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.06, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 5, eff. September 1, 2007.

Sec. 156.204. QUALIFICATIONS. (a) To be eligible to be licensed as a mortgage broker as an individual, the individual must:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) maintain a physical office in this state and designate that office in the application;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university and has 18 months of experience in the mortgage or lending field as evidenced by documentary proof of full-time employment as a mortgage broker or licensed loan officer with a mortgage broker or a person exempt under Section 156.202;

(B) the person is licensed in this state as:

(i) an active real estate broker under Chapter 1101, Occupations Code;

(ii) an active attorney; or

(iii) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or holds an equivalent license under Chapter 21, Insurance Code; or

(C) the person has three years of experience in the mortgage lending field as evidenced by documentary proof of full-time employment as a licensed loan officer with a mortgage broker or a person exempt under Section 156.202;

(5) provide the commissioner with satisfactory evidence of:

(A) having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(i) the mortgage industry; and

(ii) the role and responsibilities of a mortgage broker; and

(B) compliance with the financial requirements of this chapter;

(6) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a mortgage broker as provided by Chapter 53, Occupations Code;

(7) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity;

(8) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner; and

(9) provide the commissioner with satisfactory evidence that:

(A) if the person has not been previously licensed as a mortgage broker or a loan officer under this subchapter, the person has completed 90 classroom hours of education courses approved by the commissioner under this section; or

(B) if the person has not been previously licensed as a mortgage broker under this subchapter but has been licensed as a loan officer under this subchapter, the person has successfully completed an additional 30 classroom hours of education courses approved by the commissioner under this section.

(b) A corporation, limited liability company, or limited partnership may not act as a mortgage broker unless the entity obtains a mortgage broker license. To be eligible for a mortgage broker license the entity must designate an individual licensed as a mortgage broker as its designated representative and pay an application fee in an amount to be determined by the commissioner not to exceed \$175. The designated representative must be:

(1) if the entity is a corporation, an officer of the corporation;

(2) if the entity is a limited liability company, a manager of the limited liability company; or

(3) if the entity is a limited partnership:

(A) an individual who is a general partner;

(B) an officer of a general partner that is a corporation; or

(C) a manager of a general partner that is a limited liability company.

(c) To be eligible to be licensed as a loan officer a person must:

(1) be an individual who is at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) designate in the application the name of the mortgage broker sponsoring the loan officer;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person meets one of the requirements described by Subsection (a)(4) and has successfully completed 60 classroom hours of education courses approved by the commissioner under this section;

(B) the person has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a person exempt under Section 156.202 and has successfully completed 30 classroom hours of education courses approved by the commissioner under this section;
or

(C) for applications received prior to January 1, 2000, the mortgage broker that will sponsor the applicant provides a certification under oath that the applicant has been provided necessary and appropriate education and training regarding all applicable state and federal law and regulations relating to mortgage loans;

(5) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a loan officer as provided by Chapter 53, Occupations Code;

(6) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity;

(7) provide the commissioner with satisfactory evidence of having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(A) the mortgage industry; and

(B) the role and responsibilities of a loan officer; and

(8) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

(d) For the purposes of Subsections (a)(6) and (c)(5), a

person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case.

(e) The education courses required for a mortgage broker or loan officer license under Subsection (a)(9) or (c)(4) must cover ethics, the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.), the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), and the provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.746, eff. Sept.

1, 2001; Acts 2003, 78th Leg., ch. 170, Sec. 1, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 171, Sec. 1, eff. Sept. 1, 2003; Acts

2003, 78th Leg., ch. 1276, Sec. 14A.771, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728, Sec. 7.001, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 859, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.07, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 6, eff. September 1, 2007.

Sec. 156.205. FINANCIAL REQUIREMENTS FOR A MORTGAGE BROKER. (a) In this section, "net assets" means the difference between total assets and total liabilities, as determined by generally acceptable accounting principles, and does not include any assets that are exempt under state or federal law. All assets and liabilities are subject to verification by the commissioner.

(b) A mortgage broker must maintain net assets of at least \$25,000 or a surety bond in the amount of at least \$50,000. The term of the surety bond must coincide with the term of the license. The finance commission may adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety.

(c) The commissioner shall require proof of compliance with

this section at the time the mortgage broker applies for or renews a license.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.08, eff. September 1, 2005.

Sec. 156.206. CRIMINAL BACKGROUND CHECK. (a) On receipt of an application for a mortgage broker license or a loan officer license, the commissioner shall conduct a criminal background check of the applicant.

(b) The commissioner shall obtain criminal history record information on an applicant that is maintained by the Department of Public Safety and shall obtain criminal history record information from the Federal Bureau of Investigation on each applicant. Each applicant must submit with the application fingerprint and other information necessary to implement this section. The commissioner may submit the fingerprint and other information to the Federal Bureau of Investigation, and the Department of Public Safety is designated to be the recipient of the criminal history record information. The commissioner may also obtain criminal history record information from any court or any local, state, or national governmental agency.

(c) The commissioner shall keep confidential any criminal background information obtained under this subsection and may not release or disclose the information unless:

(1) the information is a public record at the time the commissioner obtains the information; or

(2) the commissioner releases the information:

(A) under order from a court;

(B) with the permission of the applicant;

(C) to a person through whom the applicant is conducting or will conduct business; or

(D) to a governmental agency.

(d) Notwithstanding Subsection (c), criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as

authorized by federal statute, federal rule, or federal executive order.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 337, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 407, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 867, Sec. 88, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 173, Sec. 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 296, Sec. 11, 12, eff. Sept. 1, 2003.

Sec. 156.207. ISSUANCE OF LICENSE CERTIFICATE; PROVISIONAL LICENSE. (a) The commissioner shall issue a license certificate to an applicant for a mortgage broker license if the commissioner finds that the applicant meets all requirements and conditions for the license.

(b) When an applicant for a loan officer license has met all requirements and conditions for the license, the commissioner shall issue a license certificate to the mortgage broker sponsoring the loan officer.

(c) In accordance with any rules adopted by the finance commission under this subsection, the commissioner may issue a provisional license to an applicant if a significant delay is necessary to process the application, review information related to the application, or obtain information related to the application. If the commissioner has not received criminal history record information from the Federal Bureau of Investigation before the 61st day after the date the commissioner requested the information, the commissioner shall issue a provisional license to the applicant, if the applicant otherwise meets all requirements and conditions for a license. If the commissioner has not received criminal history record information from the Federal Bureau of Investigation before the 181st day after the date the commissioner requested the information, the provisional status of the license ends and, except as provided by Subsection (d), the license is subject to the provisions of this chapter and other law applicable to a license issued to an applicant who meets all requirements and conditions for a license under this chapter.

(d) The commissioner may revoke a license issued under

Subsection (c), regardless of whether the license is provisional, on a ground listed under Section 156.303 or on any ground that the commissioner could have denied issuance of the license on the application.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 337, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 867, Sec. 89, eff. Sept. 1, 2001.

Sec. 156.2071. PERSON LICENSED IN OTHER JURISDICTION.

(a) The commissioner may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) The commissioner may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a mortgage broker or loan officer for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commissioner relating to mortgage brokers or loan officers; and

(3) is sponsored by a person licensed under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(c) The commissioner may waive the requirement of Subsection (b)(3) for an applicant if the commissioner determines that compliance with that subsection would be a hardship to the applicant.

(d) A provisional license under this section is valid until the date the commissioner approves or denies the provisional license holder's application for a license. The commissioner shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Subsection (a); or

(2) the commissioner verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter and the provisional license holder satisfies any other licensing requirements under this chapter.

(e) The commissioner must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

(f) The finance commission may establish a fee for provisional licenses under this section in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 337, Sec. 7, eff. Sept. 1, 2001.

Sec. 156.208. RENEWALS. (a) A mortgage broker license issued under this chapter is valid for two years and may be renewed on or before its expiration date if the mortgage broker:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$375 and a recovery fund fee provided by Section 156.502;

(2) has not been convicted of a criminal offense the commissioner determines is directly related to the occupation of a mortgage broker as provided by Chapter 53, Occupations Code; and

(3) provides the commissioner with satisfactory evidence that the mortgage broker:

(A) has attended, during the term of the current license, 15 hours of continuing education courses that the commissioner, in accordance with the rules adopted by the finance commission under this section, has approved as continuing education courses; or

(B) maintains an active license in this state as:

- (i) a real estate broker;
- (ii) a real estate salesperson;
- (iii) an attorney; or
- (iv) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or an equivalent license under Chapter

21, Insurance Code.

(b) A loan officer license issued under this chapter is valid for two years and may be renewed on or before its expiration date if the loan officer:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$175 and a recovery fund fee provided by Section 156.502;

(2) has not been convicted of a criminal offense the commissioner determines is directly related to the occupation of a loan officer as provided by Chapter 53, Occupations Code; and

(3) provides the commissioner with satisfactory evidence that the loan officer:

(A) has attended, during the term of the current license, 15 hours of continuing education courses that the commissioner, in accordance with the rules adopted by the finance commission under this section, has approved as continuing education courses, including courses provided by or through the licensed mortgage broker with whom the loan officer is associated after submission to and approval by the commission; or

(B) maintains an active license in this state as:

- (i) a real estate broker;
- (ii) a real estate salesperson;
- (iii) an attorney; or
- (iv) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or an equivalent license under Chapter 21, Insurance Code.

(c) The commissioner may require mortgage brokers or loan officers to submit requests for renewal on a form prescribed by the commissioner.

(d) On receipt of a request for a renewal of a license issued under this subchapter, the commissioner may conduct a criminal background check under Section 156.206.

(e) A renewal fee is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

(f) The finance commission by rule may adopt a system under

which licenses expire on a date or dates other than December 31. If a system is adopted under this subsection, dates relating to expiration and issuance of licenses shall be adjusted accordingly. For the biennium in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(g) The finance commission shall adopt rules related to the approval of courses for continuing education credit under this section that provide for the acceptance of continuing education courses that are related to finance, financial consulting, lending, real estate contracts, discrimination laws, deceptive trade practices, real property conveyances, and other topics that are relevant to mortgage brokers and that are acceptable as continuing education courses to other professional licensing agencies or related trade associations. The finance commission may approve any education course approved by the Texas Real Estate Commission, the Mortgage Bankers Association of America, or the National Association of Mortgage Brokers.

(h) For the purposes of Subsections (a)(2) and (b)(2), a person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case.

(i) The finance commission shall adopt a rule that requires a mortgage broker or loan officer to attend, during the term of the current license, not less than eight hours of continuing education courses related to residential mortgage lending before renewing a license under this section.

(j) The commissioner may deny the renewal of a mortgage broker license or a loan officer license if:

(1) the mortgage broker or loan officer is in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner;

(2) the mortgage broker or loan officer is in default

in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title; or

(3) during the current term of the license, the commissioner becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 90, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.747, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 170, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 859, Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.09, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 7, eff. September 1, 2007.

Sec. 156.2081. RENEWAL AFTER EXPIRATION; NOTICE. (a) A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less but who is otherwise eligible to renew a license may renew the license by paying to the commissioner a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for 91 days or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(d) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license by paying to the commissioner a fee that is equal to two times the normally required renewal fee for the license.

(e) Not later than the 60th day before the date a person's license is scheduled to expire, the commissioner shall send written notice of the impending expiration to the person at the person's

last known address according to the records of the Department of Savings and Mortgage Lending.

Added by Acts 2001, 77th Leg., ch. 337, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.10, eff. September 1, 2005.

Sec. 156.209. DENIAL OF APPLICATIONS AND RENEWALS. (a) If the commissioner declines or fails to issue or renew a license, the commissioner shall promptly give written notice to the applicant or the person requesting the renewal that the application or renewal, as appropriate, was denied.

(b) Before the applicant or person requesting the renewal may appeal to a district court as provided by Section 156.401, the applicant or person must file with the commissioner, not later than the 10th day after the date on which notice under Subsection (a) is received, an appeal of the ruling requesting a time and place for a hearing before a hearings officer designated by the commissioner.

(c) The designated hearings officer shall set the time and place for a hearing requested under Subsection (b) not later than the 90th day after the date on which the appeal is received. The hearings officer shall provide at least 10 days' notice of the hearing to the applicant or person requesting the renewal. The time of the hearing may be continued periodically with the consent of the applicant or person requesting the renewal. After the hearing, the commissioner shall enter an order from the findings of fact, conclusions of law, and recommendations of the hearings officer.

(d) If an applicant or person requesting the renewal fails to request a hearing under this section, the commissioner's refusal to issue or renew a license is final and may not be subject to review by the courts.

(e) A hearing held under this section is governed by Chapter 2001, Government Code. An appeal of a final order issued under this section may be made in accordance with Section 156.401.

(f) A person who requests a hearing under this section shall be required to pay a deposit to secure the payment of the costs of

the hearing in an amount to be determined by the commissioner not to exceed \$500. The entire deposit shall be refunded to the person if the person prevails in the contested case hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against that person shall be refundable.

(g) A person whose application for a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period determined by the commissioner after evaluating the specific circumstances of the person's subsequent application. The finance commission may adopt rules to provide conditions for which the commissioner may shorten the time of disqualification.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.11, eff. September 1, 2005.

Sec. 156.210. PROBATIONARY LICENSE. The commissioner may issue a probationary license. The finance commission by rule shall adopt reasonable terms and conditions for a probationary license.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 91, eff. Sept. 1, 2001.

Sec. 156.211. CHANGE OF ADDRESS OR SPONSORSHIP; MODIFICATION OF LICENSE. (a) Before the 10th day preceding the effective date of an address change, a mortgage broker shall notify the commissioner in writing of the new address accompanied by a change of address fee of \$25. A new license certificate must be obtained before the mortgage broker may conduct business at the new location.

(b) A loan officer may act only for the mortgage broker sponsoring the loan officer. A loan officer may be sponsored by only one mortgage broker at a time. When the sponsorship of a loan officer is terminated, the loan officer and the mortgage broker shall immediately notify the commissioner and the mortgage broker shall return the loan officer license to the commissioner. The loan

officer's license then becomes inactive. The loan officer license may be activated if, before the license expires, a mortgage broker files a request, accompanied by a \$25 fee, notifying the commissioner that the mortgage broker will sponsor the loan officer and will assume responsibility for the actions of the loan officer.

(b-1) Not later than the 10th day before a mortgage broker begins doing business under an assumed name, the mortgage broker shall file with the commissioner a copy of an assumed name certificate for each assumed name under which the mortgage broker intends to conduct business and pay a \$25 registration fee for each assumed name. A loan officer may not conduct business under any assumed name that is not the registered assumed name of the sponsoring mortgage broker.

(b-2) A person licensed under this chapter must notify the commissioner not later than the 10th day after the date of any change of the person's name and pay to the commissioner a change of name fee of \$25 for the issuance of an amended license certificate.

(b-3) A business entity licensed under this chapter shall notify the commissioner of any change of its designated representative. The commissioner may charge a fee of \$25 for each change of a designated representative.

(c) A fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 8, eff. September 1, 2007.

Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES; DISPLAY OF LICENSE CERTIFICATES. (a) Each mortgage broker licensed under this chapter shall maintain a physical office in this state. The address of the office shall be designated on the license certificate.

(b) If a mortgage broker maintains more than one place of

business in this state, the mortgage broker shall apply for, pay a fee of \$50 for, and obtain an additional license certificate to be known as a branch office license for each additional office to be maintained by the mortgage broker.

(c) The license certificate of a mortgage broker shall be at all times prominently displayed in the mortgage broker's place of business. The branch office certificate shall be at all times prominently displayed in the mortgage broker's branch office.

(d) A loan officer license certificate shall be at all times prominently displayed in the office of the mortgage broker for whom the loan officer primarily conducts business.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Text of section as added by Acts 2001, 77th Leg., ch. 337, Sec. 9

Sec. 156.213. ANNUAL REPORT. (a) Each licensed mortgage broker shall file an annual report with the Savings and Loan Department. The report must include:

(1) data on loan originations in this state for the mortgage broker;

(2) information on each loan officer sponsored by the mortgage broker; and

(3) any other information required by finance commission rule.

(b) Trade information, including information used to determine statistical entries in the report related to loan origination volume, is confidential and may not be disclosed by the Savings and Loan Department.

Added by Acts 2001, 77th Leg., ch. 337, Sec. 9, eff. Sept. 1, 2001.

Text of section as added by Acts 2001, 77th Leg., ch. 407, Sec. 3

Sec. 156.213. ANNUAL REPORT. (a) Each licensed mortgage broker shall file an annual report with the commissioner on a form prescribed by the commissioner. The report must include:

(1) data on loan origination in this state for the mortgage broker and each loan officer sponsored by the mortgage broker; and

(2) any other information required by the

commissioner.

(b) Information contained in the annual report related to loan origination volume or other trade information is confidential and may not be disclosed by the commissioner or any other employee of the Savings and Loan Department.

Added by Acts 2001, 77th Leg., ch. 407, Sec. 3, eff. Sept. 1, 2001.

Text of section as added by Acts 2007, 80th Leg., R.S., Ch. 228,
Sec. 3

For text of section as added by Acts 2007, 80th Leg., R.S., Ch. 905,
Sec. 9, see other Sec. 156.214.

Sec. 156.214. REGISTERED FINANCIAL SERVICES COMPANY.

(a) A registered financial services company may perform the services of a mortgage broker as if the company were licensed as a mortgage broker under this chapter, through individuals who are the exclusive agents of the registered financial services company.

(b) To be eligible to register as a registered financial services company, a person must:

(1) be a depository institution exempt from this chapter under Section 156.202(1)(A) or (B) and chartered and regulated by the Office of Thrift Supervision or the Office of the Comptroller of the Currency, or be a subsidiary or affiliate of the institution;

(2) provide the commissioner with satisfactory evidence of an undertaking of accountability in a form acceptable to the commissioner, supported by a surety bond equal to \$1 million to cover the person's responsibility for mortgage broker activities of each exclusive agent;

(3) provide a business plan satisfactory to the commissioner that sets forth the person's plan to provide education to its exclusive agents, handle consumer complaints relating to its exclusive agents, and supervise the mortgage broker activities of its exclusive agents;

(4) pay an annual registration fee of the lesser of:

(A) one-half of the license fee for a loan officer under Section 156.203(c)(1), multiplied by the number of exclusive agents under contract to act for the person in this state;

or

(B) \$200,000; and

(5) designate an officer of the person to be responsible for the activities of the exclusive agents.

(c) If the commissioner determines that a person has met the requirements of Subsection (b), the commissioner shall issue a registration to the person. The registration is valid for one year and may be renewed on or before its expiration date. A person may renew an expired registration in the same manner as a person may renew an expired license under Section 156.2081(b).

(d) A registered financial services company is subject to Subchapters D and E as if the company were licensed as a mortgage broker.

(e) No person may be an exclusive agent of a registered financial services company without the prior consent of the commissioner if the individual has:

(1) been convicted of a criminal offense involving dishonesty, breach of trust, or money laundering; or pled guilty or nolo contendere in connection with a prosecution for an offense described in this subdivision; or agreed to enter into a pretrial diversion or similar program in connection with a prosecution for an offense described in this subdivision; or

(2) been the subject of a revocation or suspension of any professional license in this state or any other jurisdiction.

(f) Prior to permitting an exclusive agent to solicit, process, negotiate, or place a mortgage loan, the registered financial services company shall submit to the commissioner such information as the commissioner may require relating to the person together with a fingerprint imprint of the person. The commissioner shall obtain criminal history record information as provided in Section 156.206(b). The commissioner may assess a fee in an amount determined by the finance commission to cover the cost of the criminal background check. This section does not apply to a person who is licensed as a mortgage broker or loan officer under Chapter 156 at the time he becomes an exclusive agent of a registered financial services company.

(g) The commissioner shall notify the person and the

registered financial services company of his determination as to whether or not the person is eligible to be an exclusive agent under Subsection (a). A person who is determined to be ineligible may appeal the decision of the commissioner in the same manner as an appeal may be made under Section 156.209.

Added by Acts 2007, 80th Leg., R.S., Ch. 228, Sec. 3, eff. September 1, 2007.

Text of section as added by Acts 2007, 80th Leg., R.S., Ch. 905,
Sec. 9

For text of section as added by Acts 2007, 80th Leg., R.S., Ch. 228,
Sec. 3, see other Sec. 156.214.

Sec. 156.214. APPROVAL OF COURSES. (a) The finance commission may adopt rules establishing:

(1) minimum standards for courses, approved course providers, and approved course instructors; and

(2) a fee not to exceed \$200 for the review and approval of each course not provided and approved by a duly organized trade association the purpose of which is primarily to represent residential mortgage originators.

(b) An approval is for up to two years.

Added by Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 9, eff. September 1, 2007.

SUBCHAPTER D. LICENSE REVOCATION AND SUSPENSION AND OTHER ACTIONS AGAINST LICENSE HOLDER

Sec. 156.301. INSPECTIONS; INVESTIGATIONS. (a) The commissioner may conduct inspections of a person licensed under this chapter as the commissioner determines necessary to determine whether the person is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) On the signed written complaint of a person, the

commissioner shall investigate the actions and records of a person licensed under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify a mortgage broker or loan officer in writing of the complaint and that the commissioner intends to investigate the matter.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed under this chapter to determine whether the person is complying with this chapter and applicable rules.

(d) The commissioner may conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this chapter.

(e) The finance commission by rule shall provide guidelines to govern an inspection or an investigation, including rules to:

(1) determine the information and records to which the commissioner may demand access during an inspection or an investigation; and

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

(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

(g) The commissioner may share information gathered during an investigation or inspection with any state or federal agency.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 337, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.13, eff. September 1, 2005.

Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENA.

(a) During an investigation, the commissioner may issue a subpoena

that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. The subpoena may require a person to give a deposition, produce documents, or both.

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

Added by Acts 2005, 79th Leg., Ch. 1018, Sec. 6.14, eff. September 1, 2005.

Sec. 156.302. ADMINISTRATIVE PENALTY. (a) The commissioner may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The amount of the penalty may not exceed \$2,500, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the

affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

(e) An appeal of an administrative penalty under this section is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 337, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 407, Sec. 4, eff. Sept. 1, 2001.

Sec. 156.303. DISCIPLINARY ACTION; CEASE AND DESIST ORDER. (a) The commissioner may order disciplinary action against a licensed mortgage broker or a licensed loan officer when the commissioner, after a hearing, has determined that the person:

(1) obtained a license, including a renewal of a license, under this chapter through a false or fraudulent representation or made a material misrepresentation in an application for a license or for the renewal of a license under this chapter;

(2) published or caused to be published an advertisement related to the business of a mortgage broker or loan officer that:

(A) is misleading;

(B) is likely to deceive the public;

(C) in any manner tends to create a misleading impression;

(D) fails to identify as a mortgage broker or loan officer the person causing the advertisement to be published; or

(E) violates federal or state law;

(3) while performing an act for which a license under this chapter is required, engaged in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) entered a plea of guilty or nolo contendere to, or is convicted of, a criminal offense that is a felony or that involves fraud or moral turpitude in a court of this or another state or in a federal court;

(5) failed to use a fee collected in advance of closing

of a mortgage loan for a purpose for which the fee was paid;

(6) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a mortgage loan before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds of the mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304;

(7) failed within a reasonable time to honor a check issued to the commissioner after the commissioner has mailed a request for payment by certified mail to the person's last known business address as reflected by the commissioner's records;

(8) paid compensation to a person who is not licensed or exempt under this chapter for acts for which a license under this chapter is required;

(9) induced or attempted to induce a party to a contract to breach the contract so the person may make a mortgage loan;

(10) published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the person's actions or services as a mortgage broker or loan officer, as applicable;

(11) established an association, by employment or otherwise, with a person not licensed or exempt under this chapter who was expected or required to act as a mortgage broker or loan officer;

(12) aided, abetted, or conspired with a person to circumvent the requirements of this chapter;

(13) acted in the dual capacity of a mortgage broker or loan officer and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law;

(14) discriminated against a prospective borrower on the basis of race, color, religion, sex, national origin, ancestry, familial status, or a disability;

(15) failed or refused on demand to:

(A) produce a document, book, or record

concerning a mortgage loan transaction conducted by the mortgage broker or loan officer for inspection by the commissioner or the commissioner's authorized personnel or representative;

(B) give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the person's business kept by an officer, agent, or employee of the person or any business entity through which the person conducts mortgage brokerage activities, including a subsidiary or holding company affiliate; or

(C) provide information requested by the commissioner as a result of a formal or informal complaint made to the commissioner;

(16) failed without just cause to surrender, on demand, a copy of a document or other instrument coming into the person's possession that was provided to the person by another person making the demand or that the person making the demand is under law entitled to receive;

(17) disregarded or violated this chapter, a rule adopted by the finance commission under this chapter, or an order issued by the commissioner under this chapter; or

(18) provided false information to the commissioner during the course of an investigation or inspection.

(b) In addition to disciplinary action by the commissioner authorized under Subsection (a), the commissioner, if the commissioner has reasonable cause to believe that a person licensed under this chapter has or is about to violate this section, may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

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

occurred or not occurred.

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

(e) The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection. A penalty collected under this subsection shall be deposited in the fund.

(f) For purposes of Subsection (a), a person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case.

(g) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law the commissioner, on not less than 10 days' notice to the person, may without a prior hearing suspend the person's mortgage broker license or loan officer license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. During the period of suspension, the person may not originate a mortgage loan and all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b).

(h) An order of suspension under Subsection (g) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (g) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(i) An order revoking the license of a mortgage broker or loan officer may provide that the person is prohibited, without obtaining prior written consent of the commissioner, from:

(1) engaging in the business of originating or making mortgage loans;

(2) being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage broker or loan officer; or

(3) otherwise affiliating with a person for the purpose of engaging in the business of originating or making mortgage loans.

(j) On notice and opportunity for hearing, the commissioner may suspend a person's license under this chapter if an indictment or information is filed or returned alleging that the person committed a criminal offense involving fraud, theft, or dishonesty. The suspension continues until the criminal case is dismissed or the person is acquitted.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 92, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 170, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905, Sec. 10, eff. September 1, 2007.

Sec. 156.304. FEE ASSESSMENT AND DISCLOSURE. (a) Before the completion of all services to be performed, a mortgage broker may charge and receive, unless prohibited by law, the following fees for services in assisting a mortgage applicant to obtain a mortgage:

- (1) a fee to obtain a credit report;
- (2) a fee for the appraisal of the real estate;
- (3) a fee for processing a mortgage application;
- (4) a fee for taking a mortgage application;
- (5) a fee for automated underwriting;
- (6) a fee for a courier service;

(7) a fee to issue a loan commitment; or

(8) subject to Subsection (b), a fee for locking in an interest rate.

(b) A mortgage broker or loan officer may not charge or receive a fee for locking in an interest rate unless there is a written agreement signed by the mortgage applicant and mortgage broker that contains a statement of whether the fee to lock in the interest rate is refundable and, if so, the terms and conditions necessary to obtain the refund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.305. RESTITUTION. The commissioner may order a person to make restitution for any amount received by that person in violation of this chapter. A mortgage broker may be required to make restitution for any amount received by a sponsored loan officer in violation of this chapter.

Added by Acts 2005, 79th Leg., Ch. 1018, Sec. 6.16, eff. September 1, 2005.

SUBCHAPTER E. HEARINGS; JUDICIAL REVIEW; CIVIL ACTIONS;

UNLICENSED ACTIVITY

Sec. 156.401. HEARINGS AND JUDICIAL REVIEW. (a) The commissioner may employ an enforcement staff to investigate and prosecute complaints made against persons licensed under this chapter. The commissioner may employ a hearings officer to conduct hearings under this section.

(b) If the commissioner proposes to suspend or revoke a license issued under this chapter or if the commissioner refuses to issue or renew a license to an applicant for a license or person requesting a renewal of a license under this chapter, the applicant or license holder is entitled to a hearing before the commissioner or a hearings officer who shall make a proposal for decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(c) The commissioner or hearings officer may issue subpoenas for the attendance of witnesses and the production of

records or documents. Process issued by the commissioner or hearings officer may extend to all parts of the state and may be served by any person designated by the commissioner or hearings officer.

(d) An individual aggrieved by a ruling, order, or decision of the commissioner has the right to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.402. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) A mortgage applicant injured by a violation of this chapter may bring an action for recovery of actual monetary damages and reasonable attorney's fees and court costs.

(b) The commissioner, the attorney general, or a mortgage applicant may bring an action to enjoin a violation of this chapter.

(c) A remedy provided by this section is in addition to any other remedy provided by law.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.403. BURDEN OF PROOF TO ESTABLISH AN EXEMPTION. The burden of proving an exemption in a proceeding or action brought under this chapter is on the person claiming the benefit of the exemption.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.404. RELIANCE ON WRITTEN NOTICES FROM COMMISSIONER. A person does not violate this chapter with respect to an action taken or omission made in reliance on a written notice, written interpretation, or written report from the commissioner, unless a subsequent amendment to this chapter or a rule adopted under this chapter affects the commissioner's notice, interpretation, or report.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.405. COMPLETION OF MORTGAGE BROKER SERVICES. (a) On disbursement of mortgage proceeds to or on behalf of the

mortgage applicant, the mortgage broker and loan officer who assisted the mortgage applicant in obtaining the mortgage loan are considered to have completed the performance of the mortgage broker's and loan officer's services for the mortgage applicant and owe no additional duties or obligations to the mortgage applicant with respect to the mortgage loan.

(b) This section does not limit or preclude the liability of a mortgage broker or loan officer for:

(1) failing to comply with this chapter or a rule adopted under this chapter;

(2) failing to comply with a provision of or duty arising under an agreement with a mortgage applicant or lender under this chapter; or

(3) violating any other state or federal law.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.406. UNLICENSED ACTIVITY. (a) A person who is not exempt under this chapter and who acts as a mortgage broker or loan officer without first obtaining a license required under this chapter commits an offense. An offense under this subsection is a Class B misdemeanor. A second or subsequent conviction for an offense under this subsection shall be punished as a Class A misdemeanor.

(b) A person who received money, or the equivalent of money, as a fee or profit because of or in consequence of the person acting as a mortgage broker or loan officer without an active license or being exempt under this chapter is liable for damages in an amount that is not less than the amount of the fee or profit received and not to exceed three times the amount of the fee or profit received, as may be determined by the court. An aggrieved person may recover damages under this subsection in a court.

(c) If the commissioner has reasonable cause to believe that a person who is not licensed or exempt under this chapter has engaged, or is about to engage, in an act or practice for which a license is required under this chapter, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative

action, or both, to enforce compliance with this chapter. The order shall contain a reasonably detailed statement of the facts on which the order is made. The order may assess an administrative penalty in an amount not to exceed \$1,000 per day for each violation and may require a person to pay to a mortgage applicant any compensation received by the person from the applicant in violation of this chapter. If a person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code. An order under this subsection becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued.

(d) If a hearing has not been requested under Subsection (c) not later than the 30th day after the date the order is made, the order is considered final and not appealable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day of a violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section. A penalty collected under this subsection shall be deposited in the fund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.17, eff. September 1, 2005.

SUBCHAPTER F. MORTGAGE BROKER RECOVERY FUND

Sec. 156.501. MORTGAGE BROKER RECOVERY FUND. (a) The commissioner shall establish and maintain a mortgage broker recovery fund as provided by this subchapter. The amounts received by the commissioner for deposit in the fund shall be held by the commissioner in trust for carrying out the purposes of the fund.

(b) The fund shall be used to reimburse aggrieved persons to

whom a court awards actual damages because of certain acts committed by a mortgage broker or loan officer who was licensed under this chapter when the act was committed. The use of the fund is limited to an act that constitutes a violation of Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16) or 156.304. Payments from the fund may not be made to a lender who makes a mortgage loan originated by the mortgage broker or loan officer or who acquires a mortgage loan originated by the mortgage broker or loan officer.

(c) Amounts in the fund may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System, and the interest from these investments shall be deposited to the credit of the fund. An investment may not be made under this subsection if the investment will impair the necessary liquidity required to satisfy judgment payments awarded under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018, Sec. 6.18, eff. September 1, 2005.

Sec. 156.502. FUNDING. (a) On an application for an original license or for renewal of a license issued under this chapter, the applicant, in addition to paying the original application fee or renewal fee, shall pay a \$20 fee. The fee shall be deposited in the fund.

(b) If the balance remaining in the fund at the end of a calendar year after 2010 is less than \$500,000, each mortgage broker and loan officer licensed under this chapter, on the next renewal of the license, shall pay, in addition to any other required fees, the lesser of a \$10 fee or a pro rata share of the amount necessary to bring the fund to \$1 million. The fee shall be deposited in the fund.

(c) If the balance remaining in the mortgage broker recovery fund at the end of a calendar year is more than the greater of \$3.5 million or the total amount of claims paid from the fund during the previous four fiscal years, the amount of money in excess of the

greater amount shall be transferred to the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.503. STATUTE OF LIMITATIONS. An action for a judgment that subsequently results in an order for collection from the fund may not be instituted after the second anniversary of the date on which the cause of action accrues.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.504. PROCEDURE FOR RECOVERY. (a) An aggrieved person who recovers against a mortgage broker or loan officer licensed under this chapter a valid court judgment for conduct described by Section 156.501 that occurred on or after January 1, 2000, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, may file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commissioner and to the judgment debtor, may apply to the court for an order directing payment from the fund of any unpaid judgment amount, subject to Section 156.503.

(b) On the hearing on the application, the aggrieved person is required to show:

(1) that the judgment is based on facts allowing recovery under Section 156.501;

(2) that the person is not a spouse of the debtor, or the personal representative of the spouse, and that the person is not licensed as a mortgage broker or loan officer under this chapter who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made;

(3) that based on the best available information, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment and the surety bond required by Section 156.205 is not sufficient to satisfy the judgment; and

(4) the amount that may be realized from the sale of property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(c) A recovery on the judgment against a single defendant

made before payment from the fund shall be applied first by the creditor to actual damages.

(d) The court shall make an order directed to the commissioner requiring payment from the fund of the amount the court finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this subchapter, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person under Subsection (b) and that the aggrieved person has satisfied all of the requirements of this section.

(e) When the commissioner receives notice of entry of a final judgment and a hearing is scheduled under this section, the commissioner may notify the attorney general of the commissioner's desire to enter an appearance, file a response, appear at the court hearing, defend the action, or to take any other appropriate action. In taking any action described by this subsection, the commissioner and the attorney general shall act only to protect the fund from spurious or unjust claims or to ensure compliance with the requirements for recovery under this subchapter.

(f) The commissioner may relitigate any issue material and relevant in the hearing on the application that was determined in the underlying action on which the judgment in favor of the applicant was based.

(g) If the court finds that the aggregate amount of claims against a licensed mortgage broker or loan officer exceeds the limits contained in Section 156.505, the court shall reduce proportionately the amount the court finds payable on the claim.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.505. RECOVERY LIMITS. (a) A person entitled to receive payment out of the fund is entitled to receive reimbursement of actual, out-of-pocket damages, reasonable attorney's fees, and court costs as determined by the court as provided by this section.

(b) A payment from the fund may be made only pursuant to a court order as provided by Section 156.504. A payment for claims:

(1) arising out of the same transaction, including

attorney's fees, interest, and court costs, is limited in the aggregate to \$25,000, regardless of the number of claimants; and

(2) based on judgments against a single person licensed as a mortgage broker or loan officer under this chapter is limited in the aggregate to \$50,000 until the fund has been reimbursed for all amounts paid.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.506. REVOCATION OF LICENSE FOR PAYMENT FROM FUND.

(a) The commissioner may revoke a license issued under this chapter on proof that the commissioner has made a payment from the fund of any amount toward satisfaction of a judgment against a person licensed as a mortgage broker or loan officer under this chapter.

(b) The commissioner may probate an order revoking a license under this section.

(c) A person on whose behalf payment was made from the fund is not eligible to receive a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the person's behalf.

(d) This section does not limit the authority of the commissioner to take disciplinary action against a mortgage broker or loan officer for a violation of this chapter or the rules adopted by the finance commission under this chapter. The repayment in full to the fund of all obligations of a mortgage broker or loan officer does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 93, eff. Sept. 1, 2001.

Sec. 156.507. SUBROGATION. When the commissioner has paid a judgment creditor an amount from the fund as directed by the court, the commissioner is subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all of the creditor's right, title, and interest in the judgment up to the amount paid by the commissioner,

and that amount has priority for repayment in the event of any subsequent recovery on the judgment. Any amount, including interest, recovered by the commissioner on the judgment shall be deposited to the credit of the fund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.508. FAILURE TO COMPLY WITH SUBCHAPTER. The failure of an aggrieved person to comply with a provision of this subchapter relating to the fund constitutes a waiver of any rights under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.