

7 TAC 80 Proposed Rule Changes Published in the TexReg 9/4/2009

Part 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

Chapter 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

The Finance Commission of Texas (Finance Commission) proposes to amend the following sections of 7 TAC Chapter 80, concerning Mortgage Broker and Loan Officer Licensing: §80.1, Scope; §80.2, Definitions; §80.3, Licensing - General; §80.4, Qualifications for Obtaining Licenses; §80.5, Renewals; §80.6, Sponsorship and Termination Thereof; §80.7, Background Checks; §80.12, Display of License Verification; License Record Changes; §80.13, Books and Records; §80.15, Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions; and §80.20, Inspections. These amendments are proposed in order to implement the provisions of House Bill 963 and House Bill 2774 as passed by the 81st Texas Legislature, as well as a previous legislative session change to Chapter 55, Texas Occupations Code. These bills make substantial modifications to the Mortgage Broker License Act, Finance Code Chapter 156 relating to the licensing and regulation of mortgage brokers.

The proposal to amend §80.1, concerning Scope, reflects the departments intention to participate in the Nationwide Mortgage Licensing System and Registry (NMLSR) as required by the federally mandated Secure and Fair Enforcement Licensing Act of 2008 (SAFE), and enacted by House Bill 10 in Texas. In addition, the proposed amendment expands the definition for the mortgage banker exemption to state that to be exempt the mortgage banker the company must be registered under Chapter 157, Finance Code.

The proposed amendment to §80.2, concerning Definitions, adds the more familiar acronyms associated with the quasi-federal government sponsored enterprises which are Fannie Mae, Freddie Mac, and Ginnie Mae.

The proposed amendment to §80.3, concerning Licensing - General, and eliminates the requirement for a holder of a provisional license to display the license.

The proposed amendment to §80.4, concerning Qualifications for Obtaining Licenses, updates the references to insurance agent titles as defined by the Texas Insurance Code. It also changes the requirements for a mortgage broker and an entity mortgage broker license by indicating finance requirements are met solely by participation in the Mortgage Broker Recovery Fund, and allows an active mortgage broker license holder to convert to a loan officer license without additional pre-licensing education or proof of experience.

The proposal to amend §80.5, concerning Renewals, adds language pursuant to Chapter 57, Texas Education Code, that a licensing agency cannot renew a license if the licensee is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation. In addition, the proposed amendment adds language pursuant to Chapter 55, Texas Occupations Code, which exempts licensees on active military duty from late filing penalties and allows additional time to complete continuing education requirements.

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The proposed amendment to §80.6, concerning Sponsorship and Termination Thereof, eliminates the requirement of a loan officer's sponsoring mortgage broker to display the license.

The proposed amendment to §80.7, concerning Background Checks, implements House Bill 963 which amended Chapter 55, Texas Occupations Code, by providing a means for a potential applicant to request a determination of eligibility relating to the effect a criminal history may have on the approval of a mortgage broker or loan officer license.

The proposed amendment to §80.12, concerning Display of License Verification; License Record Changes, amends the title of the section and references to the display of license verifications.

The proposal to amend §80.13, concerning Books and Records, eliminates the language that requires the mortgage broker to maintain records relating to the maintenance of any surety bond; the requirement for a surety bond has been eliminated by the enactment of House Bill 2774.

The proposed amendment to §80.15, concerning Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions, amends the language to include the addition of an administration claim as a method to receive payment from the Mortgage Broker Recovery Fund; adds language to indicate the commissioner may collect a fee for the handling of a returned check or credit card charge back; clarifies that a licensee receives a notice and opportunity for hearing regarding the imposition of administrative penalties; and eliminates language that states any penalty collected must be deposited in the Mortgage Broker Recovery Fund. In addition it adds language that the commissioner may order disciplinary action against a license holder if he becomes aware of any fact that had it been known prior to the issuance of a license it may have resulted in the denial of a license.

The proposed amendment to §80.20, concerning Inspections, adds language that the commissioner may require reimbursement for a mortgage broker examination if the records are located out of state or if the review is considered beyond the routine examination process.

The Act establishes a Mortgage Broker Advisory Committee to advise the commissioner and the Finance Commission on the promulgation of forms and regulations, and the implementation of the Act. The advisory committee members were provided copies of the proposed rule changes on June 30, 2009, and comments from all members were received back via electronic mail. No member objected to the publication of the rule changes for comments.

Douglas B. Foster, Commissioner of the Department of Savings and Mortgage Lending, has determined that for the first five-year period that the amended sections, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections, and they will add equal amounts of revenue and costs to the department.

Mr. Foster estimates that for the first five years the proposed amended sections are in effect, the public will benefit by adding the provision for administrative claims in addition to the current

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court judgments as a means for a consumer to reach the Mortgage Broker Recovery Fund. The public will no longer be required to retain an attorney and negotiate the complicated, expensive and lengthy civil legal process to obtain relief. The economic effect on small or micro businesses will be negligible.

Comments on the proposed amendments may be submitted in writing to Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or e-mailed to smlinfo@sml.state.tx.us, no later than 30 days from the date these proposed amendments are published in the *Texas Register*.

Subchapter A. LICENSING

7 TAC §§80.1 - 80.7

The amendments are proposed under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102(a) and (b), which authorize the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is Finance Code, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purpose of the Act or to enforce the Act. The proposed amendments relate to the following sections of the Finance Code: §§156.203, 156.204, 156.205, 156.208, 156.212, 156.301, 156.302, 156.303, and 156.506.

§80.1.Scope.

This chapter [Chapter-] governs the licensing and conduct of Mortgage Brokers, and the Loan Officers working for them, under the Act. During the department's transition to the Nationwide Mortgage Licensing System and Registry (NMLSR), the terms "mortgage broker," "loan officer," and "residential mortgage loan originator" may be used interchangeable, and some definitions, terms, and processes may be modified to conform to the NMLSR.

(1) As used herein the term "Mortgage Broker" means a person who receives an application from a prospective borrower to attempt to obtain a Mortgage Loan. A person is a "Mortgage Broker" even if the person is not exclusively engaged in the activities of a Mortgage Broker.

(2) As used herein, the term "Loan Officer" means an individual required to be sponsored by a licensed Mortgage Broker for the purposes of performing the acts of a Mortgage Broker.

(3) The terms Mortgage Broker and Loan Officer do not include:

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(A) An individual who performs only clerical functions in connection with the obtaining, compiling, or delivery of an application for a Mortgage Loan; or

(B) An individual functioning solely as a Mortgage Loan processor performing those duties listed in Finance Code §156.002(6).

(4) A person is required to be licensed under the Act if:

(A) The person, acting alone or in concert with others, receives a mortgage loan application and performs any one of the following activities:

(i) Advises a prospective borrower about the different type of loan products available, or advises a prospective borrower how closing costs and monthly payments could vary under each product; or

(ii) Consults or discusses with a prospective borrower about the maximum amount of the mortgage a prospective borrower can afford; or

(iii) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the mortgage broker disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as mortgage broker and loan officer and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed loan officer or licensed mortgage broker, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this clause [~~subsection~~]; or

(iv) Determines the lender(s) or investor(s) to whom the loan will be submitted; or

(v) Issues or signs a prequalification letter or preapproval letter; or

(B) The [~~the~~] individual represents or holds himself out as a "loan officer," "mortgage consultant," or "mortgage broker," or otherwise represents that the person is engaging in or conducting the business of originating mortgage loans.

(5) An individual who is a licensed real estate agent or real estate broker, and who only provides general information relating to activities described in paragraph (4)(A)(i) and [~~(4)(A)~~](ii) is not required to be licensed provided that such individual receives no additional compensation for providing such services.

(6) Exemptions.

(A) The following business entities are exempt from the Act and this chapter [~~Chapter~~], and the Employees, as defined in paragraph (11) of §80.2 of this chapter [~~Chapter~~]

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(relating to Definitions), of such entities are also exempt from the Act and this chapter [~~Chapter~~] to the extent they are working for the benefit of their employer:

(i) a bank, savings bank, or savings association and any subsidiary or affiliate of any of the foregoing;

(ii) a state or federal credit union;

(iii) an insurance company licensed or authorized to do business in the State of Texas;

(iv) a Mortgage Banker registered or licensed under Chapter 157, Finance Code ; or

(v) an organization that qualifies for an exemption from state franchise and sales taxes by virtue of its status under §501(c)(3) of the Internal Revenue Code, as amended.

(vi) An [~~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.

(vii) An Employee is presumed to be working for the benefit of his or her employer with respect to a Mortgage Loan if when the Mortgage Loan is made it is closed at the direction of the employer or the employer directly shares in the economic gain or loss of the Mortgage Loan transaction.

(B) The following persons are exempt from the Act and this chapter [~~Chapter~~]:

(i) an individual who makes a Mortgage Loan from the individual's own funds to a spouse, former spouse, or person or persons in the lineal line of consanguinity of the person making such Mortgage Loan;

(ii) an owner of real property who in any 12-consecutive-month period makes no more than five Mortgage Loans to purchasers of the real property for all or a part of the purchase price of that same real property; or

(iii) an individual who makes a Mortgage Loan from that individual's own funds who is not and is not required, by virtue of his or her business, to be an authorized lender under Chapter 342, Finance Code, and does not regularly engage in the business of making or brokering Mortgage Loans. For purposes of this clause [~~subsection~~], a person is deemed to be regularly engaging in the business of making or brokering Mortgage Loans if that person:

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(I) advertises or holds himself out to be engaged in the business of making or brokering mortgage loans; or

(II) originates or brokers more than one mortgage loan in any one calendar quarter.

§80.2.Definitions.

As used in this chapter [~~Chapter~~], the following terms have the meanings indicated:

(1) "Commissioner" means the Commissioner of the Department of Savings and Mortgage Lending.

(2) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

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

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage Loan" means any indebtedness secured by a lien against, or security interest in, one-to-four family residential real property when the property is intended to be occupied for residential purposes whether or not the property is acquired for investment purposes or acquired for owner occupancy. It includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

(6) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is, is being or is to be constructed or situated.

(7) "Mortgage Banker" means a person who is:

(A) approved or authorized by the United States Department of Housing and Urban Development as a mortgagee, for Mortgage Loans as defined in this chapter [~~Chapter~~], with unconditional direct endorsement underwriting authority;

(B) an approved seller or servicer under the Federal National Mortgage Association (Fannie Mae);

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(C) an approved seller or servicer under the Federal Home Loan Mortgage Corporation (Freddie Mac); or

(D) an approved issuer for the Government National Mortgage Association (Ginnie Mae).

(8) "Mortgage Applicant" means any person who is solicited to use or uses a Mortgage Broker, directly or through a Mortgage Broker's Loan Officer, to obtain a Mortgage Loan.

(9) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting Mortgage Loan applications is conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The posted hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a Mortgage Broker or a Loan Officer need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(10) "Branch office" means any location at which a Mortgage Broker, acting directly or through one or more Loan Officers, solicits or receives applications for Mortgage Loans. A branch office includes any location at which a Mortgage Broker (or a Loan Officer acting on behalf of a Mortgage Officer) owns, leases, operates, maintains, or staffs a computer or other similar electronic device by means of which a consumer may make application for a Mortgage Loan.

(11) "Employee" means, with respect to an individual working for a business entity, any individual whom the business entity has elected to treat as an employee for federal income tax and FICA withholding purposes.

(12) "Recovery Fund" means the Mortgage Broker Recovery Fund established and administered in accordance with Subchapter F of the Act.

(13) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

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(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered in connection with several other violations committed by the same person over a period of time forms part of a pattern showing a lack of respect for, disregard for, or, apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as a Mortgage Broker or Loan Officer in a manner consistent with the purposes of the Act and the best interest of the State of Texas and its residents.

§80.3.Licensing - General.

(a) Applications for a Mortgage Broker license or Loan Officer license must be submitted on the current application forms promulgated by the Commissioner from time to time. Current application forms will be made available on the Department's website in a format which can be downloaded and printed. An application, notice, or any other filing with the Department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the Department. If an applicant fails to provide to the Department any information or supplemental documentation within 30 days from the date of request, the application may be deemed withdrawn. Except as otherwise specifically provided in these rules, a Mortgage Broker license or Loan Officer license shall be valid for a term [~~period~~] of not more than two years from the date of issuance.

(b) Provisional Licenses

(1) If the Commissioner determines that the completion of an application for a license required by the Act will be delayed significantly due to the need for additional information to render the application complete and the Commissioner has determined that there is no reason to believe, based on the facts and circumstances known, that the application will be denied, the Commissioner may, in his or her sole discretion, issue a provisional license. A provisional license issued under this paragraph:

(A) may contain such limitations and restrictions as the Commissioner determines are reasonably necessary or appropriate to further the purposes of the Act;

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(B) is subject to revocation for any of the grounds set forth in §156.303 of the Act; and

(C) is subject to revocation if the Commissioner determines that any facts or circumstances exist which would have constituted grounds for denial of the application.

(2) If an applicant for a loan officer license has been employed as a loan officer for at least 18 months of the 20 months immediately preceding the date of the application by a person exempt from the Act under §156.202, the applicant may be granted a 90 day provisional license as provided in this subsection [~~subdivision~~]:

(A) The applicant must meet the qualifications for a loan officer license, other than the educational and examination requirements.

(B) The applicant must pay a non-refundable \$100 expedited processing fee in addition to the fee for regular license.

(C) No extension of the provisional license will be granted. Unless the applicant has met all of the requirements for a regular license, including the educational and testing requirements, and the license has been issued, the provisional license will expire at the end of the 90 day period.

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

(i) the 10th business day after the date of receipt of a completed application; or

(ii) the second business day after the date of receipt of the criminal background information required under §156.206 of the Act, demonstrating that the applicant has no pending criminal charges and has not been convicted of a criminal offense. A person is considered convicted as provided by §156.204(d) of the Act.

(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.

(3) The holder of a provisional license shall be required, while operating under such provisional license, to comply with all requirements of the Act as if he or she were the holder of a license [~~, including, but not limited to, display of his or her provisional license~~].

(c) Inactive Licenses

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(1) New loan officer applicants. A loan officer applicant may be issued an inactive license if the applicant completes the promulgated application form and complies with all requirements of the license with the exception of having an active mortgage broker sponsor. The license can be converted to an active license within the license period following the submission and processing of information regarding an active mortgage broker sponsor. If the inactive license is not renewed within the statutory timeframes, the license will expire.

(2) Renewing loan officer licensees. A loan officer may renew his/her license while inactive and may either provide sponsorship information to convert the license to an active license or may continue to be licensed as "inactive."

(3) Mortgage broker licensees. A mortgage broker may place his/her license inactive at any time during the license period. The license will remain inactive until the mortgage broker notifies the department in writing to convert the license to an active license or until the license expires. While in an inactive status, a mortgage broker must continue to meet the statutory requirements of the license including, but not limited to, meeting financial requirements, filing of annual reports as required by §80.23(a) of this chapter [~~title~~] (relating to Annual Reports), and notifying the department of the location of his/her books and records as required by §80.13 of this chapter [~~title~~] (relating to Books and Records).

(d) The fees for the application or for the renewal of a mortgage broker license or loan officer license shall be established by the Commissioner. The amount of the fees may be modified upon not less than 30 days advance notice posted on the Department's website. Fees are nonrefundable and nontransferable.

§80.4. Qualifications for Obtaining Licenses [~~obtaining licenses~~].

(a) Individual Mortgage Broker Licenses. In order to be issued a license as a Mortgage Broker, an individual applicant must establish to the satisfaction of the Commissioner that:

- (1) the applicant is an individual of at least 18 years of age;
- (2) the applicant is either a United States citizen or a lawfully admitted alien;
- (3) the applicant maintains a Physical Office in the State of Texas and has designated that office in his or her application;
- (4) the applicant either:

(A) 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 or more of actual experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a licensed mortgage broker or licensed loan officer or with an individual [~~a person~~] exempt under §156.202 of the Act;

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(B) is currently licensed in the State of Texas as:

(i) an active real estate broker;

(ii) an active attorney; or

(iii) an active general lines insurance agent or a limited lines insurance agent, or holds an equivalent insurance license under the Insurance Code [~~a local recording agent or insurance agent for a legal reserve life insurance company under Chapter 21 of the Insurance Code (or holds an equivalent license under the Insurance Code or its equivalent regulations as now or hereafter promulgated)~~]; or

(C) has three years or more experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a loan officer or with an individual [~~a person~~] exempt under §156.202 of the Act;

(5) the applicant is in compliance with the financial requirements of Chapter 156, Finance Code, by participating in the Recovery Fund [~~either has net assets of \$25,000 or more (which must be maintained while the license is in effect) or has provided an acceptable surety bond in an amount of not less than \$50,000 (an acceptable bond being a bond issued by a surety licensed by the Texas Department of Insurance and issued on a form approved by the Texas Department of Insurance for that purpose)~~];

(6) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §80.2 of this chapter (relating to Definitions) [~~of this Chapter~~] or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Commissioner, in accordance with §53.023, Occupations Code, to be fit to be licensed as a Mortgage Broker;

(7) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of a mortgage broker;

(8) the applicant is of good moral character, including honesty, trustworthiness, and integrity;

(9) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this chapter [~~Chapter~~] or any order previously issued to the applicant by the Commissioner; and

(10) 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

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(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) Loan Officer Licenses. In order to be issued a license as a Loan Officer, an applicant must establish to the satisfaction of the Commissioner that:

(1) the applicant is an individual of at least 18 years of age;

(2) the applicant is either a United States citizen or a lawfully admitted alien;

(3) the applicant is sponsored by a licensed Mortgage Broker, as evidenced by an appropriately completed Loan Officer Sponsor Certification form;

(4) the applicant has either:

(A) successfully completed at least 60 hours of education courses approved by the Commissioner; or

(B) successfully completed 30 hours of education courses approved by the Commissioner if the applicant:

(i) has 18 months or more of experience as a mortgage loan officer as evidenced by documentary proof of full-time employment as a mortgage loan officer with a person exempt under §156.202 of the Act; [~~or~~]

(ii) is a person who meets the qualifications of subsection (a)(4)(B) of this section ; or [-]

(C) currently holds an active mortgage broker license issued under this chapter.

(5) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §80.2 of this chapter [~~(relating to Definitions)~~] or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Commissioner, in accordance with §53.023, Occupations Code, to be fit to be licensed as a Loan Officer;

(6) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of mortgage brokers;

(7) the applicant is of good moral character, including honesty, trustworthiness, and integrity; and

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(8) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this chapter or any order previously issued to the applicant by the Commissioner.

(c) Entity Mortgage Broker Licenses. 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 to obtain a mortgage broker license the entity must:

(1) designate an individual licensed as a mortgage broker as its designated representative. The designated representative must be:

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

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

(C) if the entity is a limited partnership:

(i) an individual who is a general partner;

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

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

(2) demonstrate to the satisfaction of the Commissioner that the applicant's designated representative [~~applicant~~] meets the minimum financial net worth requirements for a mortgage broker [~~or prove to the Commissioner a surety bond in an amount not less than \$50,000 as provided in subsection (a)(5) of this section. In the alternative, the Commissioner will accept evidence that the mortgage broker who is the designated representative meets the minimum net worth requirements for a mortgage broker~~].

(d) Designated representative. A mortgage broker may not act as a designated representative at any time while the broker's license is inactive, expired, suspended or revoked.

(e) Additional Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to the Act as is deemed necessary or advisable to determine that the requirements of the Act have been met.

§80.5.Renewals.

(a) A license may be renewed upon:

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(1) submission of a completed application for renewal on the prescribed form (together with any requested additional, clarifying, or supplemental information) together with the payment of the applicable renewal application fee;

(2) providing the Commissioner with satisfactory evidence of compliance with the applicable educational requirements or licensing requirements specified in Finance Code §156.208; and §156.204 of the Act and §80.4 of this chapter (relating to Qualifications for Obtaining Licenses).

(b) A renewal of a license may be denied if:

(1) the license holder has been convicted of a criminal offense the Commissioner determines is directly related to the occupation of a mortgage broker or loan officer as provided by Chapter 53 of the Occupations Code;

(2) the license holder is in violation of the Act, this chapter [~~Chapter~~], or an order of the Commissioner;

(3) the license holder has engaged in conduct evidencing the licensee's lack of good moral character, including the licensee's honesty, trustworthiness, or integrity; [~~or~~]

(4) the mortgage broker or loan officer is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to §57.491, Education Code; or

(5) [~~(4)~~] on any other ground provided by statute or this chapter [~~Chapter~~].

(c) A licensed individual on active military duty serving outside of Texas shall be exempt from any late filing penalty fee imposed for renewing after the expiration date of the license, and is entitled to an additional amount of time, equal to the total number of years or parts of years that the individual serves or served on active duty, to complete any continuing education requirements and other requirements related to the renewal of the license, pursuant to §55.001, Occupations Code.

§80.6.Sponsorship and Termination Thereof.

(a) An applicant for a Loan Officer license must be sponsored by a licensed Mortgage Broker otherwise the license will be issued as inactive. A Loan Officer may not be sponsored by or act for more than one Mortgage Broker at any given time. The Mortgage Broker must acknowledge and accept the responsibilities set forth in the Act, including responsibility for the actions of the Loan Officer, by executing and providing to the Commissioner a Loan Officer Sponsor Certification form.

(b) If a Loan Officer's license is approved as active, it will be issued to [~~and must be held by-~~] the sponsoring [~~Sponsoring~~] Mortgage Broker [~~and displayed at the office of the sponsoring Mortgage Broker as specified on the Mortgage Broker's license-~~].

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(c) If sponsorship of a Loan Officer is terminated by the sponsoring Mortgage Broker, the Mortgage Broker shall immediately notify the Commissioner that the sponsorship has terminated. If sponsorship is terminated by the Loan Officer, the Loan Officer shall immediately notify the Commissioner that the sponsorship has ended. The license will become inactive. Sponsorship of a Loan Officer remains in effect until the Commissioner has been notified in writing of the termination of sponsorship. Prior to its scheduled expiration, an inactive Loan Officer's license may be reactivated upon designation of a new sponsoring Mortgage Broker, as evidenced by execution and providing to the Commissioner of a Loan Officer Sponsor Certification form.

(d) Loan officers affiliated with an entity which is licensed as a mortgage broker may be sponsored by the entity or an individual mortgage broker which is affiliated with and does business solely on behalf of the entity.

§80.7. Background Checks [~~checks~~].

(a) In connection with each application for the issuance of a license to an individual under the Act, the Commissioner shall initiate a background check by obtaining a criminal history on the applicant from the Federal Bureau of Investigation and Department of Public Safety and shall require a fingerprint card or scan and authorization for such additional background checks as the Commissioner may deem necessary or advisable.

(b) The Commissioner shall keep confidential any criminal background information obtained under this subsection and §156.206 of the Act 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.

(c) Notwithstanding subsection (b) of this section, 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.

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(d) The provisions of this section shall apply to the background check to be conducted by the Commissioner for exclusive agents of registered financial services companies.

(e) An individual considering applying for a license may request a criminal history evaluation letter regarding the person's eligibility for a license as defined in Chapter 53, Subchapter D, Occupations Code. The request must be made on a form promulgated by the department and include all pertinent court documentation including certified copies of all court indictments and/or judgements, and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

(1) investigate the information provided by the individual to determine if there is ground for ineligibility; and

(2) notify the individual as to the department's determination within 90 days of receipt of the individual's request.

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.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903713
Caroline Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1352