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INDUSTRY LETTER

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SUBJECT: ALERT RELATING TO CONSTRUCTION LENDING

The Department of Savings and Mortgage Lending has received inquiries relating to the provisions of HB 1038 enacted by the Texas Legislature and effective September 1, 2007. This bill deals with the statutory regulation of home builders. One of the new provisions requires that a home builder include certain disclosures in a contract between a builder and an owner. If the disclosures are not included in the contract, the statute provides that the contract may not be enforced. At least one law firm has opined that this would invalidate the lien of a mortgage lender involved in the transaction. We understand the Texas Residential Construction Commission may have a different opinion.

Neither the Finance Commission nor the Texas Department of Savings and Mortgage Lending have formed a conclusion about this matter. However, the Department is strongly urging that before any institution close a loan involving a consumer and a builder that the institution consult with legal counsel specifically about the applicability of HB 1038 and the possible impact on the validity of the institution's lien.
