

# Suggested Best Practices for Texas Mortgage Originators

Presented by:

**The Texas Department of Savings and Mortgage Lending**

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# Notice:

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- The following presentation consists of suggested “Best Practices” for Texas mortgage originators (licensed and/or registered mortgage originators) based on practical experiences, examination deficiencies, consumer complaint findings, industry observations and investigations by the Texas Department of Savings and Mortgage Lending. The material contained herein does not necessarily reflect legal or official opinions from the Texas Finance Commission, its members or any state official, but rather informal recommendations from the staff of the department in order to assist in reducing, mitigating or eliminating complaints, non-compliance with state and federal law and potential company and individual liability. This presentation is not all-encompassing and not intended to perfectly suit all types, sizes and manners of all mortgage origination operations, but is a “general” standard from which one can benefit in customizing their optimum operation.

# PRESENTATION PURPOSE

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- In addition to providing regulatory oversight as is mandated by statutes, SML feels it should also play a major role in assisting industry with helpful suggestions to improve the quality of the mortgage industry. We also desire to assist individuals in heightening an awareness of pitfalls and problems that could be prevented with proper and adequate supervision and managerial oversight. We are pleased to implement this initiative and make every contribution possible. This presentation is not intended to compete with approved education providers in that it contains actual agency experiences from actual cases not necessarily available to others.

# PRESENTATION FLOW

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- Interactive session. However, we have a tight time constraint.
- Limit your questions/comments to the subject being discussed at the time.
- Make notes of your questions aside from the topic at the time, and if your questions are not addressed in the presentation, ask them at the end (Q & A), or when the topic comes up.
- If your question is not universally applicable, we may defer response until after the session, or at another time/place.
- Pose your questions in a clear and concise manner.

# OPENING A MORTGAGE OFFICE

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- Thoroughly research market, competition, employee availability, office space, supply needs, equipment needs, needed hardware/software, investor selection (product offering and requirements).
- Prepare a detailed business plan to include all aspects of forecasted revenues/expenses for a 3 year period. Review/revise quarterly.
- Prepare a detailed budget and conduct quarterly reviews and variance reports. Revise as necessary to maintain a reasonable, meaningful and workable budget. Share this information with senior staff.
- Consult with professional services (CPA, consultant, attorney, etc.).

# OPENING A MORTGAGE OFFICE – cont.

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- File applicable company start-up paperwork with SOS or County
- Arrange for public access office space.
- Carefully review all required licensing/regulatory requirements.
- GET LICENSED/REGISTERED well before you commence operations.
- Secure HUD/FNMA/FHLMC applications/approvals (broker/banker).
- Secure warehouse line approvals (broker/ banker).
- DO NOT rely on third party license application preparation – thoroughly review for accuracy.
- Determine ability to fully comply with all state and federal regulations/rules and make arrangements to do so, ongoing.
- Consummate investor relationships/contracts.
- Create “tickler” to insure timely reviews, reminders, license renewals, responses, report due dates, etc.

# HIRING CRITERIA

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- KNOW WHO YOU ARE HIRING!
- Have an employment application for all employees with all current legal requirements.
- DOUBLE VERIFY (or dual control) all reference checks, credit, employer background, regulator check, neighbors, churches, courthouse records, acquaintances and DOCUMENT!
- Interview face to face – ask pointed questions (i.e. attitude, stress relief, co-worker relations, ability to take direction, adherence to policies, experience, past regulatory relationships, etc.).

# HIRING CRITERIA – cont.

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- Secure unconditional written authorization from the prospect to conduct all reference checks on any issue relating to subject, including with regulators, law enforcement, credit, court histories (in and outside Texas), and CONDUCT THEM!
- IF there are any reservations, hesitations, troubling issues, unanswered questions, gray areas, negative instincts, information gaps – DO NOT HIRE!
- BAD ACTORS CONTINUE TO FIND POSITIONS WITH BROKERS/BANKERS/EXEMPT ENTITIES!
- Ask for personal goals, aspirations, etc.
- Ask for listing and explanation for ALL crimes (mis.or fel.) regardless of when they occurred or the final disposition, including dismissals, deferred adjudication, probation, etc.
- Secure a writing sample and analyze.
- Tell a prospect what you expect and require.

# HIRING CRITERIA – cont.

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- Set high standards and do not allow compromises or exceptions.
- If you are a “numbers” only employer...keep your checkbook handy...it will be expensive in the long run.
- Conduct regular performance reviews.
- Review policies with employee and get signed confirmation they fully understand, suggest any violations “may” result in probation, termination and reporting of incident to applicable authorities.
- Suggest 90 day probation period (or more).
- Document in detail all personnel issues.

# HIRING CRITERIA – cont.

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- Have recruitment plan with minimum standards you are willing to accept.
- Insist on professionalism, courtesy, knowledge and communication skills consistency.
- Consider testing (both on company issues as well as industry and regulatory knowledge).
- Discuss ethics in great detail.
- Verify all licenses certifications, credentials and document – if license is needed, preview qualifications.
- Highly suggest to not allow any 3<sup>rd</sup> party services performed.
- **DO NOT ALLOW ANYONE TO COMMENCE ORIGINATION ACTIVITIES WITHOUT PROPER LICENSING OR NECESSARY CHANGES, UPDATES, SPONSORSHIPS, ETC.**

# LICENSING

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- The website is your most valuable tool for licensing information – **IMPORTANT HANDOUT!**
- When completing an application form, **CAREFULLY** read all of the instructions.
- Don't second-guess what you think we need-**ASK!** Do not rely on third party information relating to Departmental issues! Call the Department and **ONLY** rely on it as your source!
- Provide changes as soon as you know about them.
  - **NOTE:** Any change to the information on your license requires the original license to be sent in prior to having a re-issuance.
- Let us know of emergencies that affect a license.
- Give us time to process a request (self-imposed goal is 10 days).
- Criminal background discussion – A denial may **NOT** be based solely on a mortgage or financially related crime. Moral character, trustworthiness, honesty, disregard for the law with repeated “unrelated” violations, etc. are also considerations for denials.
- **WE WILL NOT** re-try a criminal or civil case! “It was not my fault!”

# TRAINING

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- Have all sign acknowledgement of company policies and procedures annually (and revise as needed).
- Thoroughly review all laws, regs. and rules (at the very least, annually).
- Select required training (if counts toward CE, great...if not – OK).
- Select training providers with care.
- Do NOT totally rely on regulatory interpretation information from education providers. Check with SML to verify official positions on all matters.
- Suggest checklist for every job (reviewed frequently).

# TRAINING - cont.

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- Insist on on-going training.
- Monitor performance on training.
- Be involved in the training.
- Consider professional development, sales, communication skills training for all customer contact staff (ongoing).
- Owners/managers – Serve as an example!

# TRAINING – cont.

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- Hands-on training for customer contact, to-dos, not-to-dos, follow-ups, etc.
- Suggest “mock” client application situation, evaluate.
- Review compliance process and their specific role, cooperation and authority.
- Systems, software, equipment, etc. training.
- Investor requirements.

# PREPARING FOR THE SML EXAMINATION/INSPECTION

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## *You may, or may not be notified in advance!*

- Adequate space and accommodations ready for examiners?
- Everyone licensed and properly so?
- ALL advertising ready for review?
- All loans logged and accurately disclosed?
- Systems contact available for discussion?
- Investor contacts and other information available?
- All files accessible?
- Files in order, complete with **all** docs signed?
- In full compliance with MBLA, RESPA, TILA, ECOA?
- All closing disbursements on the final signed HUD -1 readily explainable and verifiable?
- Compliance programs in order, implemented and functional?

# NEGATIVE RESULTS OF SML EXAMINATION/INSPECTION

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## *The most Common Issues leading to Enforcement!*

- Unlicensed activity
- Material misstatements in loan docs
- Failure to produce documents
- GFE's not disclosing all fees
- GFE's not consistent with final HUD-1
- APRs not attempted, no identification of PFCs

# INTERNAL AUDIT/COMPLIANCE/OPERATIONS

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- Don't accept anything at "face value" for data or party's signature. Always review in detail beforehand.
- Per your shop size, production, etc., have a viable and effective compliance program in place and review often. Random and surprise audits effective. A specific Compliance Officer is highly recommended who reports ONLY to the owner/manager.
- Delegate and support authority to Compliance Officers.
- Insist on Compliance Officer confidentially reporting suspicious activity to upper management with purported evidence, if possible.
- Thoroughly investigate and communicate ANY suspicious activity to the appropriate management, authorities and regulator QUICKLY!
- Record ALL customer communications and have readily available in file.

# INTERNAL AUDIT/COMPLIANCE/OPERATIONS- cont.

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- Make sure customer can afford the proposed product now and in the future with facts as known.
- Read and understand the “Best Practices Guidance on Non-Traditional Mortgage Products” posted on the TDSML website.
- Make certain all charges are legal, fully supportable and documented.
- Make certain all charges are disclosed on the GFE and match the final HUD -1 (incl. POCs).
- Make clear notation of changed or updated GFEs/HUD – 1s in file.
- Make certain you know of your employee’s activities.
- Make certain you have all controls in place to properly manage and oversee all activities.
- Make certain you have adequate physical review process for all locations.

## INTERNAL AUDIT/COMPLIANCE/OPERATIONS- cont.

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- Perform annual employee performance reviews, systems checks, policy compliance, company standards, etc.
- Take adequate time with clients – do NOT proceed with transaction without comfort that they fully understand – complaint elimination.
- Check SML website daily, others as well (federal, etc.) [www.sml.state.tx.us](http://www.sml.state.tx.us).
- Suggest frequent internal meetings to discuss hot topics, new rules, new policies, etc.

## **INTERNAL AUDIT/COMPLIANCE/OPERATIONS- cont.**

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- Have consistent order to all loan files, with check sheet or other index review. Also, ensure presence of final signed HUD-1.
- Have formal procedure for all consumer complaints.
- Annual review of all policies and procedures and make necessary changes as your office climate dictates.
- Convey formal and informal education requirements and make certain they are followed.

# INTERNAL AUDIT/COMPLIANCE/OPERATIONS- cont.

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- Prepare well in advance for inspections/exams (HUD, SML, FNMA, etc.). Full information on our website.
- Carefully review inspection/exam reports, expedite corrective action and respond timely.
- Have a controlled approved appraiser list with order controls centralized.
- Review sample work of any approved appraiser.
- Strong suggestion for someone in-office, trained to review all received appraisals and document the review (CADS comparison, etc.).
- Centralize and restrict ordering of credit reports and appraisals.

## INTERNAL AUDIT/COMPLIANCE/OPERATIONS- cont.

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- Make certain a pre-closing/post closing review process in place (use checklist).
- Have a confidential information protection policy/process in place with record retention secure and centralized.
- Have a records destruction policy/process in place **WITH DUAL CONTROLS**.
- Secure all customer information with dual controls and frequently check for effectiveness.

# INTERNAL AUDIT/COMPLIANCE/OPERATIONS- cont.

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- Centralize processing. GFE/TILA preparation process uniform and overseen (for larger operations is more critical).
- Maintain uniform templates for each loan product throughout the organization.
- Consider networking computers and utilities for larger operations (LAN/WAN).
- Have written policies for every area.
- Get personally involved with all consumer complaints and investigate all allegations to the fullest.

# ADVERTISING COMPLIANCE

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- All advertising must comply with TILA and all other federal /state regulations and rules.
- MBLA Sec. 80.10 (a) (1-5) in addition to federal regulations.
- MBLA Sec. 80.11 – Advertising
  - Any ad shall conform to:
    - If there is a rate of finance charge, it shall state the rate as an “annual percentage rate” as defined in 12 CFR 226.22.
    - If the rate may be increased after consummation, the ad shall clearly state that fact.
    - The ad shall state no other rate except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but no more conspicuous than the APR.

# ADVERTISING COMPLIANCE

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- If any of the following terms is set forth in the ad..
  - The amount or percentage of down payment
  - The number or period of any payments
  - The amount of any payment
  - The amount of any finance charge
  - The amount of any closing costs (including “no” closing costs.....**THEN..**

# ADVERTISING COMPLIANCE

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- The ad must show..
  - How the down payment was calculated
  - The FULL terms of repayment
  - How the rate, APR was calculated (i.e. 365 day year, simple (or type used) interest, \$ amount of the calculation basis (loan amount)
  - The “annual percentage rate”, using that term, and, if the rate may be increased after consummation, that fact

# ADVERTISING COMPLIANCE

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- An ad must be made for ONLY SUCH PRODUCTS AND TERMS AS ARE ACTUALLY AVAILABLE AT THAT TIME, and if subject to change, the specific conditions of that change (effective date, expiration date, etc.)
- An ad shall not make any statement or omission that would be misleading or deceptive to consumers
- An ad must contain the name of the MB/LO followed by the phrase(s) Mortgage Broker or Loan Officer or the name of the company through which the loan activities are conducted AS SHOWN IN THE RECORDS OF THE DSML AT THE TIME OF THE AD and throughout its continuance

# ADVERTISING COMPLIANCE

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- An ad must contain the license number of the MB or LO
- Contain the physical street address in Texas as indicated in the DSML records at the time
- Exemptions granted:
  - Coffee mugs, pencils, pens, youth sports' clothing (sponsorships), or promotional items with no specific terms and conditions stated, but only name and/or contact information
  - Any generated rate sheets not intended for, distributed to, or accessible by, available to consumers

# ADVERTISING COMPLIANCE

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- See example written ad on the website:
  - [www.sml.state.tx.us](http://www.sml.state.tx.us)
    - Mortgage Broker/ Loan Officer Information
      - Compliance
        - Advertising Example

# OTS REFERENCE

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## ■ SMAART Compliance Policy

- **Systems** – written programs clearly delineating responsibilities
- **Monitoring** – how is assurance of compliance attained
- **Assessment** – capture routine full scope reviews
- **Accountability** – performance evaluation
- **Response** - follow through on corrective actions
- **Training** – intentional system of delivery

# NOW YOU KNOW!

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- Feel free to contact SML with any questions.
- Frequently review all aspects of the issues herein.
- Lot of trouble to follow these suggestions? YES. Is it worth it? YES..it's the EASY way, the ONLY way.
- CHECK WEBSITE DAILY!  
[www.sml.state.tx.us](http://www.sml.state.tx.us)
- Q & A

# Texas Department of Savings and Mortgage Lending

## CONTACT INFORMATION

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- Website: [www.sml.state.tx.us](http://www.sml.state.tx.us)
- Universal email: [smlinfo@sml.state.tx.us](mailto:smlinfo@sml.state.tx.us)
- Office Hours: 8AM-5PM Mon.-Fri. except on observed state and federal holidays, or state declared closures (i.e. inclement weather, etc.)
- Address: 2601 North Lamar Blvd., Ste. 201, Austin, Texas 78705 (map on website)
- Main Phone Number: (512) 475-1350
- Main Fax Number: (512) 475-1360
- Toll Free Consumer Hotline: 1(877) 276-5550