

80th Texas Legislature 2007 Regular Session

New Legislation affecting the Texas Department of Savings
and Mortgage Lending and Regulated Industries

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NOTICE

Some comments and opinions expressed in this presentation are solely those of the Commissioner or agency staff and should not be considered a position or opinion of the Finance Commission, its members or any other state official.

Legislation Affecting Mortgage Origination

- Some of the legislation would affect all mortgage originators including insured institutions. That will be pointed out in the presentation.
- **Most** mortgage related legislation would apply to non-institutional entities.
- TDSML tracked over 60 bills during session that would apply directly to thrifts and/or mortgage originators.
- Total bills filed during session 6,678 with the three Finance Commission agencies tracking 269, or 4%.
- Some “emphasized” bills in this presentation **made it to the latter stages but did not pass**. They are expected to be re-addressed in the 2009 session again in some form.

Regulated Industries

- State Savings Banks (27 - \$10 bil. in assets)
- Texas Savings and Loan Associations (0-all converted to SSBs)
- Individual Mortgage Brokers (6,600)
- Individual Mortgage Loan Officers (17,400)
- Company Registration of Mortgage Brokerage (NEW)
- Mortgage Banking Company Registration (429)

HB 38 Burt Solomons (Failed to Pass)

Employment Eligibility for Licensing

- Requires employment verification for state licensing (new or renewal).
- One of:
 - U.S. Passport (current or expired)
 - Cert. of U.S. Citizenship
 - Cert. of Naturalization
 - Unexpired Foreign Passport with I-55 stamp or Form I-94 stating unexpired employment authorization
 - Permanent Resident Card or Alien registration receipt Card with photo
 - Valid Temporary Resident Card
 - Valid Employment Authorization Card
 - Valid Re-Entry Permit
 - Valid Refugee Travel Document
 - Valid Employment Authorization Document issued by U.S.D.H.S with photo
- OR

HB 38 Continued

- Two of the following with “One from”:
 - Valid Driver’s License or I.D. issued by a U.S. state with photo or all personal description information
 - I.D.Card issued by a government agency with photo or all personal description information
 - Voter Registration Certificate
 - U.S. Military Card or Draft Card
 - U.S. Coast Guard Merchant Mariner Card
 - Native American Tribal Document
 - Canadian Driver’s License

- AND

HB 38 Continued

- “One from”:
 - Social Security card
 - U.S. Birth Certificate (original or certified)
 - Birth Certificate Abroad issued by the U.S. Dept. of State
 - Native American Tribal Document
 - U.S. Citizenship I.D. Card
 - I.D. Card
 - Resident Citizen I.D. Card
 - Employment Authorization Document issued by the U.S. Department of Homeland Security

HB 716 Burt Solomons (Passed)

Mortgage Fraud Bill

- Provide written form, “NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING STATEMENT” to all borrowers for acknowledgement AT closing
- Requires “separate document” disclosure
 - 14-point type and has **specific language**
 - Includes criminal penalty of 2-99 years imprisonment and fine of up to \$10,000
 - Includes certification of income, identity, intent to occupy

HB 716 Continued

- Reporting Fraudulent Activities
 - Authorized Governmental Agency
 - Texas Department of Savings and Mortgage Lending
 - Attorney General
 - Local, state or federal law enforcement agency
 - U.S., County or District Attorney
 - Texas Department of Public Service
 - Texas Department of Insurance
 - Office of Consumer Credit Commissioner
 - Texas Department of Banking
 - Texas real Estate Commission
 - Texas Credit Union Department
 - Texas Appraiser Licensing and Certification Board

HB 716 Continued

- Fraudulent Activity- any act that constitutes a violation of a penal law and is part of an attempt or scheme to defraud any person.
- Reporting requirements: If a person suspects that fraud has been, is going to be committed, the person **SHALL** report to one of the named agencies.
- The reporting person(s) **SHALL NOT** notify the persons involved of the report and *shall not be liable for such notification* under state or federal law (excepting common law).

HB 716 Continued

- Residential Mortgage Fraud Task Force
 - Texas Attorney General
 - Savings and Mortgage Lending Commissioner
 - Consumer Credit Commissioner
 - Banking Commissioner
 - Credit Union Commissioner
 - Insurance Commissioner
 - TREC Commissioner
 - TALCB Commissioner

HB 716 Continued

- Additional Federal Task Force Members (as invited and agree to participate):
 - F.B.I.
 - U.S. Secret Service
 - U.S. Department of Justice
 - U.S. Department of Homeland Security
 - I.R.S.
 - U.S. Postal Service

HB 716 Continued

- Task Force will:
 - Share information and resources
 - Enforce administrative and criminal actions against perpetrators
 - Report to the Texas Governor, Lt. Governor, and Speaker of the House annually on the progress of each agency

HB 716 Continued

- Increased Statute of Limitations – 7 years
- Felony Charge – 2nd degree, if pattern or subsequent event, then 1st degree.

Required Disclosure – 9/1/07

NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING STATEMENT

Effective September 1, 2007 and pursuant to Section 1. Subchapter B, Chapter 343, Section 343.105 of the Texas Finance Code, each mortgage lender, mortgage banker or licensed mortgage broker/loan officer shall provide to each applicant for a home loan this written notice at closing for full verification and execution by each loan applicant.

- **WARNING:**
- **Intentionally or knowingly making a materially false or misleading statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, of the Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.00.**
- *If you are aware of or suspect any false or incorrect information used in connection with this loan, and do not report it immediately to the following agency, you could be held responsible and/or accountable by law:*
- Texas Department of Savings and Mortgage Lending
- 2601 North Lamar Blvd., Ste. 201
- Austin, Texas 78705
- **Toll Free Consumer Hotline: (877) 276-5550**
- Main Number: (512) 475-1350
- Email: sml.state.tx.us Website: www.sml.state.tx.us
- I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.
- I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our **identity, employment, annual income, and intent to occupy the residential real property** secured by the home loan, are true and correct as of the date of loan closing.
- _____
- Applicant Date
- _____
- Co-Applicant(s) Date

HB 1716 Burt Solomons (Passed)

Financial Services Companies

- Establishes “Registered Financial Services Company” licensing category
- “Financial Institution Owned” Affiliate or Subsidiary only
- Exclusive Agent employees (full time)
- Can only act for FSC employer
- Furnishes Commissioner a Surety Bond of \$1 million
- Commissioner approved business plan (policies on compliance, complaints, underwriting, oversight/mgt., education, etc.)
- Commissioner approved education courses
- Commissioner approved consumer complaints resolution process
- Commissioner approved lending administration process
- Annual registration fee of the lesser of ½ of applicable loan officer fees or \$200,000
- Commissioner ordered and approved criminal background
- Requires designated corporate contact person
- Signed by the Gov. on 5/25/07 – Effective 9/1/07

HB 2783 Burt Solomons (Passed)

Broker Bill

- Limits to no more than 5 in any 12 month period the number of mortgage loans one can make to a purchaser as an owner-carry for exemption qualification.
- Requires licensing of mortgage broker entities/companies (if existing) for fee of \$175.
- LOs now may be sponsored by entity with DO, or MB
- \$25 fee for assumed name registration and licensee cannot do business under any other names other than those registered with the TDSML.
- Change of name fee \$25.
- Change of designated representative \$25.

HB 2783 Continued

■ Education

- Finance Commission may “formally” establish minimum standards for courses, providers and instructors (has been in place previously as policy)
- \$200 review and approval fee for each course not provided by a duly organized trade association, the purpose of which is primarily to represent residential mortgage originators
- Course approvals are valid for two years or less at the discretion of the Commissioner

HB 2783 Continued

- Enhanced Enforcement Authority to the Commissioner
 - Disciplinary action for false information during the course of a complaint investigation or inspection
 - Suspension (with hearing) of any licensee if an indictment is filed or returned alleging the person committed any criminal offense involving fraud, theft, or dishonesty. The suspension shall continue until the case is dismissed or the person is acquitted.

HB 2783 Continued

- Increases Loan Officer license fee to \$275 for two year license (new applications only at this point).
- Allows for persons “licensed” with the TDSML who previously were required to be licensed for 2nd lien loans with the OCCC, to be exempt from OCCC licensing and transfers examination and enforcement authority to the TDSML for 2nd lien lending (HE, improvement, purchase 2nds, cash-outs, etc.)

HB 2783 Amendment – (HB 3144)

Provisional Licensing & Other Issues

- Loan Officers only who were working 18 of the past 20 months as a loan officer employed by a person exempt from Chapter 156 licensing.
- Meets all other qualifications of a Loan Officer under Chapter 156.
- Extra fee of \$100, **non-refundable if found not eligible for expedited treatment under this process, or denied.**
- Provisional License for 90 days **only (not extendable)** to allow for the test and educational requirements to be met, revocable without appeal.
- If not previously licensed as a broker or loan officer, 90 classroom hours of approved education required. If previously licensed as a LO, then additional 30 hours required.
- Increases LO education from 30 to 60 hours or if 18 months experienced with exempt entity as a loan officer, then 30 hours
- Provides that MBs and LOs have to have courses in ethics, RESPA, TILA, ECOA and the MBLA
- TDSML will make “best efforts” to license upon the later of:
 - The 10th day after the receipt of a COMPLETED application, or
 - The 2nd business day after the receipt of a criminal background check showing **NO convictions or criminal charges pending whatsoever, regardless of the crime, related or not to the mortgage business.**

SB 987 Eddie Lucio (Failed to Pass)

Counseling on Complex Loans

- Loans under \$125,000, and
- 1ST Lien loans on principal residence of the borrower, and
- Has 10% or less down payment or equity if refinanced, and
- Borrower(s) whose credit score is less than 650 (the relied upon score), and
- Have a variable rate loan with a “teaser” rate as defined by the Finance Commission, or
- A variable rate loan resulting in a negative amortization

SB 987 Continued

- Certificate of Completion (promulgated by the Finance Commission) of counseling required not later than 10 days prior to closing, signed by lender and all borrower(s).
- HUD approved Housing Counselors or licensed Texas Attorneys not associated with the transaction.
- Lender or broker to provide a notice to all borrower(s) of proposed terms of the loan, that it is a complex loan and that financial alternatives may be available.
- Does not apply to construction loans of less than 18 months term.
- Finance Commission shall determine the reasonable fee for counseling.

Other TDSML Tracked Bills that Passed (SSBs, MBs/LOs, MBkrs)

- HB 732 - Relating to electronic signature documents for filing
- HB 887 – Amended Penal Code for credit or debit card offenses and fraudulent use or possession of ID info.
- HB 944 – Texas ILC branch bill
- HB 1795 – Security at unmanned teller machines (ATMs)
- HB 2002 – FI required to notify check verification of ID theft when notified
- HB 2219 – Process of service to a FI.

Non-Legislative Current News

- In response to the high rate of foreclosures nationally, many initiatives underway to offer relief or advice to homeowners:
 - HOPE – Homeownership Preservation Foundation 24 hr. hotline (888-995-HOPE) www.995hope.org
 - MBA has contact numbers for approx. 60 lenders that offer relief, www.homelearningcenter.com
 - H.U.D. – counseling centers, www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm or call (800) 569-4287
 - FHLMC has enhanced its CreditSmart curriculum, www.FreddieMac.com/creditsnart

Non-Legislative Current News-Cont.

- NEW FEDERAL GUIDANCE EXPECTED TO BE PUBLISHED IN THE FEDERAL REGISTER IN JULY 2007- STATES WILL LIKELY ADOPT SAME RULES
 - Washington's response to the subprime/high national foreclosure rate problems.
 - Severely restricts use of "stated-income" loans – will only be used in "special cases" where a person refis and whose financial has not changed since recent underwriting for borrower who has "substantial liquidity" that **can** be verified.
 - Control when lenders can charge pre-payment penalties (i.e. no PPP when refinancing 60 or more days prior to ARM rate reset period).
 - Strongly encourage lenders to work with struggling borrowers to avoid foreclosure.

Non-Legislative Current News-Cont.

- Requires use of fully-indexed rate when qualifying, disclosing or underwriting ARMs (not teaser rates).
- Guidance targets hybrid ARMS and SI loans
- Guidance is expected to evolve into regulations as most lawmakers think more should be done.
- States likely to not only adopt this Guidance but also propose similar regulations.

Non-Legislative Current News – Cont.

- Hardest hit Texas Zip Codes – Foreclosure Filings as of 6/19/07 (Source CNN). List includes top 500 in the U.S.

■ # 1 in Ohio had ...		458 Sales	783 filings
■ # 74	75115 DeSoto	179	336
■ # 80	75052 Grand Prairie	178	330
■ # 102	75104 Cedar Hill	173	300
■ # 154	75070 McKinney	129	261
■ # 171	76063 Mansfield	142	253
■ # 180	78664 Round Rock	123	248
■ # 217	76002 Arlington	125	229
■ # 275	76248 Keller	208	208
■ # 286	77449 Katy	175	205
■ # 300	75217 Dallas	112	202
■ # 301	76123 Ft. Worth	117	202
■ # 310	76137 Ft. Worth	113	198
■ # 357	76112 Ft. Worth	99	186
■ # 372	75034 Frisco	88	183
■ # 373	76179 Ft. Worth	107	183
■ # 377	75216 Dallas	102	182
■ # 412	75227 Dallas	98	175
■ # 434	76017 Arlington	92	170
■ # 442	76140 Ft. Worth	88	167
■ # 461	76133 Ft. Worth	88	164
■ # 490	76108 Ft. Worth	95	159

Department of Savings and Loan Legislative Tracking Activity

- 60 bills tracked/ 9 “of note” passed
- Q & A
- Contact Information
 - 2601 N. Lamar Blvd, Ste. 201, Austin, TX 78705
 - Consumer Hotline 1-(877)- 276-5550
 - Main Number (512) 475-1350
 - Email: www.smlinfo@sml.state.tx.us
 - Website: www.sml.state.tx.us