

**PROPOSED ADOPTION OF AMENDMENTS TO 7 TAC
CHAPTER 79, SUBCHAPTERS A, E, and H
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*Title 7. Banking and Securities
Part 4. Texas Department of Savings
and Mortgage Lending
Chapter 79. Miscellaneous
Subchapter A. §79.4 and §79.7;
Subchapter E. §79.71; and,
Subchapter H. §79.122*

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §79.4, concerning financial statements, annual reports, and audits, §79.7, concerning examinations; Subchapter E, §79.71, concerning hearings officer; and, Subchapter H, §79.122, concerning consumer complaint procedures, in conjunction with the Commission's review of Chapter 79.

Sections 79.4, 79.7, 79.71, and 79.122, are adopted without changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6664-6665), and will not be republished.

In general, the purpose of the amendments is to conform the rules to the Department's current practice, to eliminate obsolete provisions, and to add clarification. Section 79.4 has been revised to remove the option of not having independent audits and to correct the numbering scheme. Section 79.7 has been revised for clarification. Sections 79.71 and 79.122 have been revised to correct the Department's name and contact information.

The 30-day comment period ended September 22, 2008, during which no comments were received on the proposed rule amendments.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 11, 13, and 96.

Subchapter A. Books, Records, Accounting Practices, Financial Statements and Reserves.

§79.4. Financial Statements; Annual Reports; Audits.

(a) Before March 1 of each year, each savings bank shall submit a statement of condition (balance sheet) as of the last business day of December of the preceding year to the commissioner, upon a form to be prescribed and furnished by the commissioner.

(b) For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank is required to have an independent audit of its financial statements. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 Code of Regulations Part 363 Federal Deposit Insurance Corporation Regulations regarding annual independent audits and reporting requirements are incorporated herein, with the exception of any matters specifically addressed by the Act or its related rules.

(c) A copy of the independent audit and all correspondence reasonably

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related to the audit shall be provided to the Commissioner upon completion.

§79.7. Examinations.

(a) The commissioner shall examine every state savings bank once in each year, or more frequently if the commissioner determines that the condition of the savings bank justifies more frequent attention to enforce the Act. The commissioner may defer an examination for not more than six months if the commissioner considers the deferment appropriate to the efficient enforcement of the Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the Federal Deposit Insurance Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings bank, and/or the commissioner may accept an examination made by such banking agency in lieu of an examination pursuant to this section.

Subchapter E. Hearings.

§79.71. Hearings Officer. The Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, provides that the Finance Commission may employ a hearings officer, who for purposes of Texas Civil Statutes, Government Code, §2003.21, is an employee of the Texas Department of Savings and Mortgage Lending, Department of Banking and the Office of the Consumer Credit Commissioner. The Finance Commission hearings officer

shall conduct hearings under provisions of the Act.

Subchapter H. Consumer Complaint Procedures.

§79.122. Consumer Complaint Procedures.

(a) Definitions

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b) (1) of this section.

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Texas Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1505, E-mail: smlinfo@sml.state.tx.us.

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(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with subsection (b) (1) of this section.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in subsection (b) (1) of this section, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a web site, the required notice must be included in a

screen which the consumer must view whenever the site is accessed.

Certification

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.

Issued in Austin, Texas on October 17, 2008.

Jane Black

General Counsel

Department of Savings and Mortgage Lending