



BLACK|MANN & GRAHAM L.L.P.

Attorneys At Law

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Gregory S. Graham ¹

Shawn P. Black ²

Ryan Black ³

Senior Lawyers

David F. Dulock

Diane M. Gleason

Daniel S. Engle ⁴

Margaret A. Noles

Associates

Nick Stevens

Sydney Davis

Mehreen Nadeem

Ambria Wilmore

Of Counsel

David M. Tritter

Calvin C. Mann, Jr.

Thomas E. Black, Jr. ⁵

Retired Partner(s)

Calvin C. Mann, Jr.

Thomas E. Black, Jr. ⁵

¹ Also Licensed in Georgia

² Also Licensed in Kentucky and New York

³ Also Licensed in District of Columbia

⁴ Also Licensed in New York

⁵ Also Licensed in New York and Washington

November 8, 2021

To: Clients and Friends

From: David F. Dulock

Subject: 7 TAC Chapter 80, Residential Mortgage Loan Companies, Amended Effective November 4, 2021

In the October 29, 2021 issue of the *Texas Register* ([Pages 7384 - 7389](#)), the Finance Commission of Texas, on behalf of the Texas Department of Savings and Mortgage Lending (TDSML), adopted amendments, new rules, and rule repeals (herein collectively “adopted rules”) for the following sections of Chapter 80: §§80.2, 80.101, 80.102, 80.105 - 80.107, 80.203, 80.204, 80.206, and 80.300. The following pre-November 4, 2021 sections of Chapter 80 were repealed: §§80.102 - 80.104, 80.107 and 80.206. The following sections of Chapter 80 were adopted without changes to the proposed text published in the September 10, 2021 issue of the *Texas Register* ([Pages 5681 - 5682](#)) and were not republished in the October 29, 2021 issue of the *Texas Register*: §§80.101, 80.105, and 80.106. The following sections of Chapter 80 were adopted without changes to the proposed text published in the September 3, 2021 issue of the *Texas Register* ([Pages 5501 - 5506](#)) and were not republished in the October 29, 2021 issue of the *Texas Register*: §§80.2, 80.203, 80.204, and 80.300.

The above changes to Chapter 80 are effective as of November 4, 2021.

Adopted Rules §§80.101, 80.102, 80.105 - 80.107.

These adopted rules:

(i) clarify how a mortgage company sponsors individual residential mortgage loan originators and its responsibility for supervising these originators, and prohibiting a mortgage company from allowing an originator to act on the mortgage company’s behalf prior to becoming sponsored of record by the mortgage company in the NMLS system (§80.101(a) and (b));

(ii) clarify the role of the originator appointed by the mortgage company as its qualifying individual for purposes of Finance Code §156.002, including requiring the consent of such individual to be appointed (§80.102(a) and (b));

(iii) clarify that the TDSML commissioner establishes license fees, which are nonrefundable and nontransferable (§80.105(a) and (b));

(iv) clarify the commissioner’s authority to approve a license renewal application with a minor deficiency to enable the licensee to conduct regulated activities while the deficiency is resolved (§80.106(b));

(v) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring the mortgage company to update such records within ten days after a material change occurs in such information (§80.107(a));

(vi) set forth procedures for the TDSML to contact a mortgage company by email or

(3 pages)

by mail or a commercial delivery service utilizing the contact information designated by the mortgage company in the NMLS system (§80.107(d));

(vii) establish a new requirement that a mortgage company must monitor the email address it has designated in the NMLS system for purposes of receiving correspondence or other notices from the TDSML (§80.107(d)(1)); and

(viii) for each office constituting a branch office of a mortgage company, requiring the mortgage company to obtain a branch office license (§80.107(c)).

Adopted Rules §§80.2, 80.203, 80.204, 80.206, and 80.300. Prior to September 1, 2021, Finance Code §§156.2041(a)(7), 156.2042(a)(6), and 156.212(a) required a mortgage company or credit union subsidiary organization licensed by the TDSML under Finance Code Chapter 156 to maintain a physical office in Texas. During the 87th Legislature Regular Session, Senate Bill 1900 (SB 1900) and House Bill 3617 (HB 3617) were enacted into law effective September 1, 2021, and amended Finance Code §§156.2041, 156.2042, and 156.212 eliminating this Texas physical office requirement.

These adopted rules:

(i) implement SB 1900's and HB 3617's elimination of the Texas physical office requirement (§80.2(15));

(ii) eliminate the requirements for a mortgage company to maintain records tied to the former Texas physical office requirement (§80.204(b)(4));

(iii) create definitions for the terms "administrative office," "branch office," "licensed office," "main office" and "remote location" (§80.206(a)(1) – (5));

(iv) establish a requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" (§80.204(b)(4));

(v) require the main office and a branch office of a mortgage company to be a physical office licensed by the TDSML ((§80.206(a)(3) and (b));

(vi) clarify that the main office or a branch office must be established by the mortgage company and not by a sponsored originator §80.206(b));

(vii) authorize the employees and sponsored originators of a mortgage company to work from a remote location (80.206(c));

(viii) establish conditions under and parameters by which a mortgage company's employees and sponsored originators are authorized to work from a remote location (§80.206(c)(1) – (4));

(ix) establish a requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that their work from a remote location is conducted in an environment conducive and appropriate to consumer privacy (§80.206(c)(5));

(x) require a mortgage company to adopt, maintain, and follow written procedures to ensure the mortgage company and its employees and sponsored originators working remotely comply with §80.206 and the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company (§80.206(c)(6)); and

(xi) require a mortgage company to create and maintain records reflecting its compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely (§80.204(b)(5)).

This author's three main takeaways from the adopted rules:

(1) The physical office(s) of Texas licensed mortgage companies and credit union subsidiary organizations no longer must be in Texas, which benefits out-of-state Texas licensed mortgage companies and credit union subsidiary organizations.

(2) The TDSML commissioner's discretion to approve a mortgage company's or credit union subsidiary organization's license renewal application with a deficiency the commissioner deems to be minor in nature allows the licensee to continue conducting regulated activities under the license while the deficiency is resolved.

(3) A remote location is not a licensed office of a mortgage company; but its employees and sponsored originators may conduct their business and work from a remote location to the same extent as if the employees or originators were physically present at a licensed office of the mortgage company. However, in addition to requiring a license for a mortgage company's main office or a branch office, the adopted rules state that a mortgage company must also obtain a license for any office or *location* it advertises or promotes to the general public as an office or *location* at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants.

Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators:

In the October 29, 2021 issue of the *Texas Register*, the Finance Commission of Texas, on behalf of the Texas Department of Savings and Mortgage Lending, also published adopted rules for sections of Chapter 81, effective November 4, 2021, which will be the subject of a forthcoming firm memorandum.

In conclusion, this memorandum does not address the entirety of the adopted rules, and readers are advised to review the adopted rules by clicking on the hyperlinks to the issues of the *Texas Register* on page 1 of this memorandum.

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.