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To: Clients and Friends

From: David F. Dulock

Subject: 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, Amended Effective November 4, 2021

In the October 29, 2021 issue of the *Texas Register* ([Pages 7389 - 7396](#)), 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 81: §§81.2, 81.101 - 81.111, 81.203, 81.204, 81.206, and 81.300. The following pre-November 4, 2021 sections of Chapter 81 were repealed: §§81.102 - 81.104, 81.106 - 81.110 and 81.206. The following sections of Chapter 81 were adopted without changes to the proposed text published in the September 10, 2021 issue of the *Texas Register* ([Pages 5683 - 5690](#)) and were not republished in the October 29, 2021 issue of the *Texas Register*: §§81.101, 81.102, 81.104 - 81.111. The following sections of Chapter 81 were adopted without changes to the proposed text published in the September 3, 2021 issue of the *Texas Register* ([Pages 5506 - 5512](#)) and were not republished in the October 29, 2021 issue of the *Texas Register*: §§81.2, 81.203, 81.204, and 81.300.

The above changes to Chapter 81 are effective as of November 4, 2021.

Adopted Rules §§81.101 - 81.111.

Changes Concerning Licensing Procedures. These adopted rules:

(i) specify the steps by which a residential mortgage loan originator is sponsored by a mortgage company or mortgage banker, and that the originator is prohibited from acting as an originator on behalf of a mortgage company or mortgage banker until sponsorship is established and effective (§81.101(a) and (b));

(ii) specify how an individual licensed in another jurisdiction or by a different licensing authority as a residential mortgage loan originator, or is a registered mortgage loan originator defined by Finance Code §180.002(16) may engage in originator activities in Texas under temporary authority while the individual seeks licensure by the TDSML under Finance Code §180.0511 (§81.102(a) and (b));

(iii) implement licensing requirements for military service members, military veterans and military spouses in accordance with Occupations Code Chapter 55, including the definitions assigned by §55.001, late license renewal and reinstatement provided by §55.002, expedited license procedure provided by §§55.004 and 55.005, substantial equivalency of originator license issued in another jurisdiction to a Texas originator license as required by §55.004, and credit for military experience (*i.e.*, verified military service, training and education) of a military service member applicant or military veteran applicant as provided by §55.007 (§81.103(a) – (d), (f) and (g));

(iv) clarify, with respect to a military service member or military veteran who is an applicant for licensure, that the applicant’s military service, training, or education cannot

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constitute grounds for waiving the pre-licensing examination required by Finance Code §180.057, the pre-licensing education training and coursework required by §81.104(a) and Finance Code §180.056, or the continuing education training and coursework required by §81.104(d) and Finance Code §180.060 (§81.103(g));

(v) require that a military spouse seeking temporary authority to act as a Texas originator under Occupations Code §55.0041 must apply for and seek temporary authority under §81.102 and Finance Code §180.0511 (§81.103(e));

(vi) require an individual applying for an original license to complete the required pre-licensing education and coursework within three years preceding the date of application, otherwise the individual must retake the pre-licensing education and coursework (§81.104(a) and (b));

(vii) clarify that the TDSML commissioner establishes license and registration fees, which are nonrefundable and nontransferable (§81.105(a) and (b));

(viii) require, with respect to pre-licensing education taken in another jurisdiction, that any portion of such pre-licensing education that was specific to such jurisdiction and that comprised the twelve-hour undefined electives portion of such pre-licensing education and coursework does not count towards the minimum hours of required pre-licensing education (§81.104(c));

(ix) clarify the commissioner's authority to approve a license renewal application with a minor deficiency to enable the licensee to conduct licensed activities while the deficiency is resolved (§81.106(b));

(x) clarify the commissioner's authority to conduct credit and criminal background checks on an individual applying for an original license other than through the NMLS system (§81.108); and

(xi) establish procedures for conducting background checks and reviewing an individual's criminal background and credit history by the commissioner and TDSML staff (§81.109).

Changes Concerning Licensing Records. These adopted rules:

(i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with the originator's license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring the originator to update such records within ten days after a material change occurs in such information (§81.107(a), (b) and (c));

(ii) set forth procedures for the TDSML to contact an originator by email or by mail or a commercial delivery service utilizing the contact information designated by the originator in the NMLS system (§81.107(d)); and

(iii) establish a new requirement that an originator must monitor the email address the originator has designated in the NMLS system for purposes of receiving correspondence or other notices from the TDSML (§81.107(d)(1)).

Criminal Conviction Guidelines. Pursuant to Occupations Code §53.025, the TDSML, as a licensing authority for an occupational license, is required to issue guidelines relating to the TDSML's administration of Occupations Code Chapter 53, including stating the reasons certain criminal offenses are considered to relate to the duties and responsibilities of acting as an originator and any other criterion that affects the decisions of the TDSML in administering Occupations Code Chapter 53. The adopted rules implement §53.025 by adopting comprehensive criminal conviction guidelines. The authority for denial of an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. The adopted rules further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed to be grounds for denial of licensure under the Finance Code.

The above requirements and authority are implemented in adopted rule §81.110 that:

- (i) describes purpose and applicability (§81.110(a));
- (ii) describes individuals who are ineligible for licensure by operation of law due to their criminal history (§81.110(b));
- (iii) describes the duties and responsibilities of a residential mortgage loan originator (§81.110(c));
- (iv) describes the categories of criminal offenses related to residential mortgage loan origination (§81.110(d));
- (v) contains a schedule of Texas and United States criminal offenses that meet one or more of the categories deemed to relate to residential mortgage loan origination by §81.110(d) and are directly related to the duties and responsibilities of an individual licensed to act as an originator (§81.110(e), Figure: 7 TAC §81.110(e));
- (vi) describes the five factors the commissioner will consider in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed to act as an originator (§81.110(f));
- (vii) provides, in addition to the factors described in §81.110(f), that the commissioner, in determining whether an individual convicted of a crime as determined by Finance Code §157.0131 and §81.110(h) is unfit and ineligible for licensure, will consider eight additional factors (§81.110(g));
- (viii) restates each factor in Finance Code §157.031 that determines an individual is considered to have been convicted of a criminal offense (*i.e.*, sentence is imposed on the individual; the individual received probation or community supervision, including deferred adjudication or community service; or the court deferred final disposition of the individual's case) (§81.110(h));
- (ix) provides that, in addition to the individual's criminal history, the commissioner may consider the individual's history of disciplinary actions with the TDSML, another regulatory

body or official of another jurisdiction regulating residential mortgage loan origination or other financial services (§81.110(i));

(x) provides that, in addition to the individual's criminal history, the commissioner may consider the individual's financial responsibility and other evidence of character and general fitness (§81.110(j)); and

(xi) provides that a criminal offense conviction affecting residential mortgage loan origination arising from §81.110(d)'s criminal offenses categories related to residential mortgage loan origination is indicative of a failure to demonstrate the character and general fitness required by Finance Code §180.055(a)(3), and the honesty, trustworthiness and integrity required by §157.012(c)(1) (§81.110(j)).

Request for Criminal History Eligibility Determination. The TDSM is a licensing authority under Occupations Code Chapter 53. Pursuant to §53.102, a person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority.

Adopted rule §81.111 establishes the procedures by which an individual may seek a preliminary review of the individual's eligibility to be licensed by the TDSML with respect to the individual's criminal history prior to formally applying with the TDSML for licensure, as authorized by Occupations Code Chapter 53 (§81.111(a) – (e)).

Adopted Rules §§81.2, 81.203, 81.204, 81.206, and 81.300.

These adopted rules:

- (i) eliminate definition of “physical office” (§81.2(15));
- (ii) create definitions for the terms “administrative office,” “branch office,” “main office,” “registered office,” and “remote location,” (§81.206(a)(1) – (5));
- (iii) establish a requirement for a mortgage banker to create and maintain a list of its offices constituting an “administrative office” (§81.204(b)(4));
- (iv) require the main office and a branch office of a mortgage banker to be a physical office registered with the TDSML (§81.206(a)(4) and (b));
- (v) clarify that the main office or a branch office must be established by the mortgage banker and not by a sponsored originator (§81.206(b));
- (vi) authorize the employees and sponsored originators of a mortgage banker to work from a remote location (§81.206(c));
- (vii) establish conditions under and parameters by which a mortgage banker's employees and sponsored originators are authorized to work from a remote location (§81.206(c)(1) – (4));
- (viii) establish a requirement for a mortgage banker 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 (§81.206(c)(5));

(ix) require a mortgage banker to adopt, maintain, and follow written procedures to ensure the mortgage banker and its employees and sponsored originators working remotely comply with §81.206 and the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker (§80.206(c)(6)); and

(x) require a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely (§81.204(b)(5)).

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

(1) A remote location is not a registered office of a mortgage banker; 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 registered office of the mortgage banker. However, in addition to requiring a mortgage banker's main office or a branch office to be registered, the adopted rules state that a mortgage banker must also register any office or *location* it advertises or promotes to the general public as an office or *location* at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants.

(2) The TDSML commissioner's discretion to approve an originator's license renewal application with a deficiency the commissioner deems to be minor in nature allows the licensee to continue conducting licensed activity while the deficiency is resolved.

(3) The adoption of comprehensive criminal conviction guidelines that expand the TDSML's authority for denial of an application for licensure based on the individual's criminal history.

Chapter 80. Residential Mortgage Loan Companies:

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 80, effective November 4, 2021, which is the subject of the [firm's November 8, 2021 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.

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