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To: Clients and Friends

From: David F. Dulock

Subject: Mortgage Broker and Loan Officer Rules – Amendments to §§80.2, 80.3, 80.5, 80.6, 80.10, 80.12, 80.13, 80.18, and 80.23.

The Finance Commission of Texas (the “Commission”) has adopted amendments to §80.2, concerning definitions; §80.3, concerning licensing – general; §80.5, concerning renewals; §80.6, concerning sponsorship and termination of sponsorship; §80.10, concerning prohibition on false, misleading, or deceptive practices and improper dealings; §80.12, concerning display of license verification and license record changes; §80.13, concerning books and records; §80.18, concerning enforceability of liens; and, §80.23, concerning annual reports. Notice of the Commission’s adoption of these amendments was published in the October 31, 2008 issue of the *Texas Register* (Vol. 33, No. 44). These amendments were adopted without changes to the text of the proposed amendments published for comment in the August 22, 2008 issue of the *Texas Register* (Vol. 33, No. 34). See this firm’s August 25, 2008 memo advising you of the proposed amendments and the Commission’s request for comments.

According to the Commission, the purpose of the amendments is to conform the Rules to the Texas Department of Savings and Mortgage Lending's current practice, to eliminate obsolete provisions, and to add clarification. Sections 80.2 and 80.3 have been revised to add clarification. Section 80.5 has been revised to remove obsolete language. Section 80.6 adds language to clarify a current practice. Section 80.10 has been revised to improve consumer awareness and clarify procedures. Sections 80.12 and 80.13 have been revised to clarify procedures. Section 80.18 has been revised to delete a form that does not pertain to the Section, and that already exists in §80.9. Section 80.23 has been revised for clarification.

The text of the amendments, as published in the August 22, 2008 issue of the *Texas Register*, is attached. Underlined language indicates additions and bracketed language with strikethroughs indicates deletions.

The effective date of the adopted amendments to the Mortgage Broker and Loan Officer Rules is November 6, 2008.

This Memorandum is provided for the general information of the clients and friends of our firm only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult legal counsel regarding the application of the information discussed in this Memorandum to your specific case or circumstances.

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Chapter 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

Subchapter A. LICENSING

7 TAC §§80.2, 80.3, 80.5, 80.6

§80.2.Definitions.

As used in this Chapter, the following terms have the meanings indicated:

(1) - (12) (No change.)

(13) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) - (B) (No change.)

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) - (H) (No change.)

§80.3.Licensing - General.

(a) - (b) (No change.)

(c) Inactive Licenses

(1) New loan officer applicants. A loan officer applicant may be issued an inactive license if the applicant completes the promulgated application form and complies with all requirements of the license with the exception of having an active mortgage broker sponsor. The license can be converted to an active license within the license period following the submission and processing of information regarding an active mortgage broker sponsor. If the inactive license is not renewed within the statutory timeframes, the license will expire.

(2) Renewing loan officer licensees. A loan officer may renew his/her license while inactive and may either provide sponsorship information to convert the license to an active license or may continue to be licensed as "inactive".

(3) Mortgage broker licensees. A mortgage broker may place his/her license inactive at any time during the license period. The license will remain inactive until the mortgage broker notifies the department in writing to convert the license to an active license or until the license expires. While in an inactive status, a mortgage broker must continue to meet the statutory requirements of the license including, but not limited to, meeting financial requirements, filing of annual reports as required by §80.23(a) of this title (relating to Annual Reports), and notifying the department of the location of his/her books and records as required by §80.13 of this title (relating to Books and Records).

(d) [(e)-] The fees for the application or for the renewal of a mortgage broker license or loan officer license shall be established by the Commissioner. The amount of the fees may be modified upon not less than 30 days advance notice posted on the Department's website. Fees are nonrefundable and nontransferable.

§80.5.Renewals.

(a) - (b) (No change.)

~~[(e) THIS SUBSECTION APPLIES ONLY TO ENTITY LICENSES ISSUED UNDER §80.4(e) THAT EXPIRE DURING THE PERIOD OF DECEMBER 1, 2009 THROUGH MARCH 31, 2010. Pursuant to §156.208(f) of the Act, these licenses will be assigned a different expiration date in order to spread more evenly license renewals throughout the year. The initial renewal for an entity mortgage broker license to which this subsection applies will be for a term which expires on the expiration date of the license of the mortgage broker who is the designated representative of the entity on the date of renewal. For instance, if the entity license expires on December 15, 2009, and the license of the designated representative expires on May 15, 2010, the initial renewal license shall be for a period beginning on the renewal date and expiring on May 15, 2010. If the license of the designated representative expires during the period covered in this subsection, the licenses may be renewed simultaneously and the renewal will be for a full two-year term. The renewal fee for a renewal term of less than two years shall be prorated by multiplying the renewal fee times a fraction, the numerator of which shall be the number of months during the renewal term (rounded to the next highest number of months with respect to a partial month), and the denominator shall be 24. If the prorated amount calculated in this subsection is other than a whole dollar amount, the renewal fee shall be rounded to the closest whole dollar.]~~

§80.6.Sponsorship and Termination Thereof.

(a) An applicant for a Loan Officer license must be sponsored by a licensed Mortgage Broker otherwise the license will be issued as inactive . A Loan Officer may not be sponsored by or act for more than one Mortgage Broker at any given time. The Mortgage Broker must acknowledge and accept the responsibilities set forth in the Act, including responsibility for the actions of the Loan Officer, by executing and providing to the Commissioner a Loan Officer Sponsor Certification form.

(b) If a Loan Officer's license is approved as active , it will be issued to and must be held by the Sponsoring Mortgage Broker and displayed at the office of the sponsoring Mortgage Broker as specified on the Mortgage Broker's license.

(c) If sponsorship of a Loan Officer is terminated by the sponsoring Mortgage Broker, the Mortgage Broker shall immediately notify the Commissioner that the sponsorship has terminated. If sponsorship is terminated by the Loan Officer, the Loan Officer shall immediately notify the Commissioner that the sponsorship has ended. The license will become inactive. ~~[terminates, the sponsoring Mortgage Broker and the Loan Officer shall immediately notify the Commissioner, and the sponsoring Mortgage Broker shall return the Loan Officer's license to the Commissioner or the Commissioner's Designee, whereupon that license will become inactive.-]~~ Sponsorship of a Loan Officer remains in effect until the Commissioner has been notified in writing of the termination of sponsorship. Prior to its scheduled expiration, an inactive Loan Officer's license may be reactivated upon designation of a new sponsoring Mortgage Broker, as evidenced by execution and providing to the Commissioner of a Loan Officer Sponsor Certification form.

(d) (No change.)

Subchapter B. PROFESSIONAL CONDUCT

7 TAC §80.10

§80.10.Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) No Mortgage Broker or Loan Officer may:

(1) - (6) (No change.)

(7) induce or attempt to induce a party to a contract to breach the contract so the person may make a Mortgage; [~~or~~]

(8) alter any document produced or issued by the Department; or

(9) [~~(8)~~] engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) - (e) (No change.)

Subchapter C. ADMINISTRATION AND RECORDS

7 TAC §80.12, §80.13

§80.12.Display of License Verification; License Record Changes.

(a) - (d) (No change.)

(e) Before the tenth day preceding the effective date of a new or changed corporate or assumed name [~~or DBA~~], a licensee shall notify the Commissioner in writing of the new name. The request shall be on the form promulgated by the Commissioner and include supporting documentation as well as a \$25 processing fee. Prior to conducting business using the new or amended assumed name, the licensee must confirm that the assumed name has been processed, and must download from the Department's website, print and post the amended Verification of Licensure for each licensee using the new or amended assumed name.

§80.13.Books and Records.

In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under the Act and this Chapter, each Mortgage Broker and Loan Officer shall maintain records as set forth below. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(1) Mortgage Application Records. Each Mortgage Broker and each Loan Officer is required to maintain, at the location specified in his or her application, the following books and records:

(A) A Mortgage Loan file for each Mortgage Loan application received; each such file shall contain at least the following:

(i) a copy of the signed and dated Mortgage Loan application (including any attachments, supplements, or addenda thereto);

(ii) - (v) (No change.)

(B) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(i) - (ii) (No change.)

(iii) a description of the disposition of the application for a Mortgage Loan; [~~and~~]

(iv) the identity of the person or entity who initially funded and/or acquired the Mortgage Loan and information as to how to contact them ; and, [-]

(v) the name of the originator.

(C) (No change.)

(2) - (7) (No change.)

Subchapter G. ENFORCEMENT OF LIENS

7 TAC §80.18

§80.18.Enforceability of Liens.

A violation of this Chapter shall not render an otherwise lawfully taken lien unenforceable.

[~~Figure: 7 TAC §80.18~~]

Subchapter K. ANNUAL REPORTS

7 TAC §80.23

§80.23.Annual Reports.

(a) A mortgage broker who held a license anytime during the reporting year shall file an annual report containing such information regarding the mortgage broker activity of the licensee and each sponsored loan officer as the Commissioner may require. The annual report shall be submitted on a form promulgated by the Commissioner. The annual report must be filed before March 1 of each year and shall cover the mortgage broker activities for the calendar year immediately preceding the year in which the report is due.

(b) (No change.)