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To: Clients and Friends

From: David F. Dulock

Subject: Office of Consumer Credit Commissioner Residential Mortgage
Loan Originator Regulations - *Texas Register* (35 TexReg 3470)
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INTRODUCTION

Effective May 6, 2010, the Finance Commission of Texas (Finance Commission) adopts new Chapter 2 to Title 7 of the Texas Administrative Code (7 TAC Chapter 2, §§2.101 – 2.105). The purpose of new Chapter 2 is to provide for certain application procedures and fees for those individuals applying for or renewing their licenses as a residential mortgage loan originator (RMLO) with the Office of Consumer Credit Commissioner (OCCC), as required by Chapter 180 of the Texas Finance Code enacted by the 2009 session of the Texas Legislature in House Bill 10 (*i.e.*, Texas SAFE Act). For a detailed summary of the Texas SAFE Act, see our November 13, 2009 memorandum posted on our website <http://www.bmandg.com/> under “Our Clients and Friends” web page.

For your convenience, reprinted in this memorandum is the text of new Chapter 2, which you are advised to read and not rely solely on the summary contained in this memorandum.

SUMMARY OF CHAPTER 2

Chapter 2 provides definitions, information regarding registration with the Nationwide Mortgage Licensing System and Registry (NMLSR) for applicants with and licensees of the OCCC, fingerprint submission information, the fees associated with application and renewal, and recovery fund fees. Chapter 2 applies only to those individuals applying for or renewing a license under Chapters 342 (*consumer loans, including secondary mortgage loans*), 347 (*manufactured home loans*), 348 (*sell recreational vehicles as primary residences*), and 351 (*property tax loans*) of the Finance Code.

The above cited issue of the *Texas Register* briefly summarizes Chapter 2 as follows:

1. §2.101 provides general definitions to be used throughout Chapter 2.

2. §2.102 states that individuals applying for a license with the OCCC to become a RMLO must register with the NMLSR. It also provides an exception to §2.102 for individuals subject to the authority of a regulatory official under §180.251(a)¹ of the Finance Code, which provides that the Commissioner of the Texas Department of Savings and Mortgage Lending (TDSML) is the regulatory official with respect to individuals licensed under Chapters 156 and 157 of the Finance Code, except as provided by §180.251(b)². This exception in §2.102 clarifies that the TDSML Commissioner, except as provided by §180.251(b), administers and enforces the SAFE Act with respect to these licensees. Finally, §2.102 clarifies that entity licensees and applicants are not required to register with the NMLSR.

3. §2.103 describes the requirements concerning fingerprint submissions. OCCC applicants must submit one legible set to the NMLSR, and the OCCC reserves the right to request additional sets to conduct state and international background checks.

4. §2.104 sets out the required application and renewal fees for OCCC applicants and licensees, which must be submitted to the NMLSR and are non-refundable. Fingerprint processing fees must be paid in the amount necessary to recover the costs of investigation. The Finance Commission sets the RMLO application fee at \$300 and the RMLO renewal fee at \$300. The third party who operates the NMLSR sets the required system fees and the required fingerprint processing fees that must also be paid.

5. §2.105 provides for a \$25 recovery fund fee that must be paid to the OCCC at the time of application and at renewal. Under the federal SAFE Act, a state must either enforce a bonding requirement or maintain a recovery fund for the protection of harmed consumers. Texas elected to maintain a recovery fund rather than require a bond. This section establishes the funding mechanism for the recovery fund of OCCC licensees.

TEXT OF NEW 7 TAC CHAPTER 2, §§2.101 – 2.105:

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR
LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER
THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

§2.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) NMLSR--The Nationwide Mortgage Licensing System and Registry with the same meaning as assigned by Texas Finance Code, §180.002.

(2) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(3) RMLO--A registered mortgage loan originator under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§2.102. Registration with Nationwide Mortgage Licensing System and Registry.

(a) Individuals. Individuals applying for a license with the OCCC and who, for actual or expected compensation or gain, take a residential mortgage loan application, or who offer or negotiate the terms of a residential mortgage loan, are required to register with the NMLSR, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Texas Finance Code, §180.251(a).

(b) Entities. Entities licensed or applying for a license with the OCCC to make, transact, or negotiate residential mortgage loans are not required to register with the NMLSR.

§2.103.Fingerprint Submissions.

Applicants are required to submit one legible set of fingerprints to the NMLSR for purposes of application with the OCCC to become an RMLO. The OCCC reserves the right to request additional sets of fingerprints to conduct state and international background checks.

§2.104.Application and Renewal Fees.

(a) Required submission to NMLSR. To become an RMLO, an OCCC applicant must submit the required fees to the NMLSR. A fee is required to be submitted at the time of application and at the time of renewal. All fees are non-refundable.

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at \$300 and the RMLO annual renewal fee at \$300 for applications filed with the OCCC. A third party operates the NMLSR and that third-party operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

§2.105.Recovery Fund Fees.

Applicants and RMLOs applying for a license with the OCCC must pay a non-refundable \$25 recovery fund fee to the OCCC at the time of application and at the time of renewal.

CONCLUSION

Please do not rely solely on the summary of new Chapter 2 contained in this memorandum. You are also advised to read the complete text of Chapter 2.

Endnotes

¹ Section 180.251(a) provides that, except as provided by subsection (b), the TDSML Commissioner administers and enforces Chapter 180 with respect to individuals licensed under Chapter 156 or 157.

²Section 180.251 (b) provides that the Credit Union Commissioner examines, inspects, and investigates employees of credit union subsidiary organizations who are licensed to act as RMLOs under Chapter 156 and enforces compliance by these RMLOs with the applicable requirements of Chapter 156 and Chapter 180 and any applicable rules adopted under Section 15.4024.

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 the cited material and legal counsel regarding the application of the information discussed in this Memorandum to your specific case or circumstances.