



BLACK|MANN & GRAHAM L.L.P.

9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Thomas E. Black, Jr., P. C.\*

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

David F. Dulock

Diane M. Gleason

Benjamin R. Idziak \*\*

Shawn P. Black \*\*

Margaret A. Noles

Robert J. Brewer

Regina Uhl

Ali Hedayatifar

\* Also Licensed in New York, Washington,  
West Virginia and Iowa

\*\* Also Licensed in New York

May 21, 2010

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Finance Commission Adopts Residential Mortgage Loan Originator Regulations - *Texas Register* (35 TexReg 3638) issued May 7, 2010

Effective May 9, 2010, the Finance Commission of Texas ("Finance Commission") adopted amendments to §§80.1 and 80.2, §§80.8 through 80.15, §§80.20 through 80.23 and new Subchapter L, Licensing, (§§80.301 through 80.307) of the Texas Residential Mortgage Loan Originator Regulations (formerly titled the "Mortgage Broker and Loan Officer Licensing Regulations") contained in the Texas Administrative Code at 7 TAC Chapter 80. The text of these amended and new regulations ("Rules") may be found at: [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=7&pt=4&ch=80](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=7&pt=4&ch=80).

This memorandum briefly summarizes the Rules, and you are advised to read the Rules and not rely solely on the below summary:

### Subchapter A – Licensing

*(Note: Apparently, amended Subchapter A and new Subchapter L will both be in effect during the balance of 2010. The amendment to §80.1(see below) states that Subchapter A is rescinded January 1, 2011, and replaced with new Subchapter L; and, the Finance Commission's preamble statement published with the Rules in the above-cited issue of the Texas Register states that new Subchapter L addresses the TDSML's licensing program effective April 2, 2010. Each subchapter, however, has provisions that are inconsistent with or overlap provisions in the other subchapter, and it remains to be seen how the TDSML will administer these subchapters together for the remainder of 2010.)*

1. The amendment to §80.1, *Scope*, adds a statement that Subchapter A is rescinded January 1, 2011, and replaced with new Subchapter L.

2. The amendment to §80.2, *Definitions*, replaces the definition for "Mortgage Loan" with the definition for "Residential Mortgage Loan," which is revised in language and more limited in scope. The amendment also adds definitions for "Dwelling" and "Residential Real Estate."

*(Note: The TDSML amended §§80.3 through 80.6 effective November 8, 2009.)*

### Subchapter B – Professional Conduct

1. The amendment to §80.9, *Required Disclosures*, amends the notice in the Residential Mortgage Loan Originator Disclosure form (see "[Attached Graphic](#)" in §80.9(b)) by eliminating the requirement of court order prior to payment of a claim from the Recovery Fund and replacing the requirement with a written application for reimbursement from the Recovery Fund that must be investigated by the Texas Department of Savings and Mortgage Lending ("TDSML").

2. The amendment to §80.10, *Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings*, **eliminates** the language that a sponsoring broker engages in false, misleading or deceptive practices or improper dealings when affiliating with a second mortgage broker who engages in false, misleading, or deceptive practices.

### **Subchapter C – Administration and Records**

1. The amendment to §80.12, *License Record Changes*, provides that changes in address, personal name, or company or organization name must be filed through the Nationwide Mortgage Licensing System and Registry together with the payment of any applicable fees.

2. The amendment to §80.13, *Books and Records*, eliminates language regarding the transfer of records upon termination of a mortgage broker's sponsorship of a loan officer.

3. The amendment to §80.14, *Education Program*, provides that subsections (a) through (q) are rescinded effective January 1, 2011, and adds new subsection (r), effective April 2, 2010, that provides that pre-licensing and continuing education courses must be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

### **Subchapter D – Complaints and Investigations**

The amendment to §80.15, *Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions*, amends language regarding investigations subsequent to payments from the Recovery Fund and amends the maximum administrative penalty from \$2,500 per violation per day to \$25,000 per violation. The amendment also provides that the TDSML Commissioner shall consider economic harm to property caused by a violation and efforts by the licensee to correct the violation when determining the amount of any administrative penalty.

### **Subchapter I – Inspections and Investigations**

The amendment to §80.21, *Investigations*, clarifies that the person who is the designated representative of an entity is responsible for all acts and conduct performed by or through the entity including acts and conduct by residential mortgage loan originators sponsored by the entity.

### **Subchapter J – Forms**

The amendment to §80.22, *Loan Status Forms*, provides that a residential mortgage loan originator shall use the promulgated form (Form B – Conditional Approval Letter) when providing a loan applicant with confirmation that an application for a mortgage loan has been approved as to credit but not as to collateral. (**Note:** *The use of this form was optional under former §80.22(b).*)

### **Subchapter K - Annual Reports and Call Reports**

The amendment to §80.23, *Annual Reports and Call Reports*, adds a new subsection (b) that

requires a company or organization who held a license anytime during the reporting year to submit to the Nationwide Mortgage Licensing System and Registry a report of condition in the form and that contains the information required by the Nationwide Mortgage Licensing System and Registry.

*(Note: In addition to the above summary of the amended Rules, the amended Rules also, where applicable, replace the term “Mortgage Loan” with “Residential Mortgage Loan” and replace the terms “Mortgage Broker” and “Loan Officer” with the term “Residential Mortgage Loan Originator.” As these are the only amendments to §§80.8, 80.11, and 80.20, they are not separately summarized.)*

### **New Subchapter L - Licensing**

1. New §80.301, *Scope*, defines the terms “Residential Mortgage Loan Originator,” “Mortgage Company,” “Financial Services Company,” “Credit Union Subsidiary Organization,” “Auxiliary Mortgage Loan Activity Company,” and “Independent Contractor Loan Processor/Underwriter Company”; describes when a person must be licensed and describes persons who are exempt from licensure; and states that Subchapter L governs the licensing, registration and conduct of the persons defined in §80.301 “except for individuals engaged in authorized activity subject to the authority of [the Consumer Credit Commissioner].” *(Note: The Finance Commission’s preamble statement published with the Rules states that the above quoted exception to §80.301 clarifies that the Consumer Credit Commissioner administers and enforces Chapter 180 of the Finance Code (Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 – i.e., T-SAFE Act) with respect to individuals licensed under the following chapters of the Finance Code: Chapter 342 (consumer loans, including secondary mortgage loans), Chapter 347 (manufactured home loans), Chapter 348 (selling recreational vehicles as primary residences), and Chapter 351 (property tax loans), and, thus, preserve the regulation of licensees that existed prior to the T-SAFE Act.)*

2. New §80.302, *Definitions*, adds definitions for “Commercial mortgage loan,” “Loan Processor or Underwriter,” and “Nationwide Mortgage Licensing System and Registry”; substantially changes the definition in amended §80.2 for “Branch Office”; makes a change to the definition in amended §80.2 for “Physical Office” by substituting the word “licensee” for the words “Residential Mortgage Loan Originator”; omits the definition in amended §80.2 for “Criminal Offense”; and retains the remaining definitions in amended §80.2.

3. New §80.303, *Licensing-General*, provides that applications for individual, company, or organization licensure must be submitted through the Nationwide Mortgage Licensing System and Registry; incomplete applications may be deemed withdrawn after 30 days from the date of the TDSML’s request for information or additional documentation; and all licenses issued are valid for a term of not more than one year from the date of issuance and expire on December 31st of the year issued.

4. New §80.304, *Qualifications for Obtaining Licenses*, describes the minimum qualifications for licensure under the following license types offered by the TDSML under Subchapter L: (1) Mortgage Company License, (2) Mortgage Company Residential Mortgage Loan Originator

License, (3) Credit Union Subsidiary Organization License, (4) Credit Union Subsidiary Organization Residential Mortgage Loan Originator License, (5) Auxiliary Mortgage Loan Activity Company License, (6) Auxiliary Mortgage Loan Activity Residential Mortgage Loan Originator License, (7) Independent Contractor Loan Processor/Underwriter Company License, (8) Independent Contractor Loan Processor/Underwriter License, (9) Registered Financial Services Company, and (10) Financial Services Company Exclusive Agent License.

5. New §80.305, *Renewals*, describes the conditions under which an application for license renewal may be approved or denied. Additionally, §80.305 states that a licensed individual on active military duty serving outside of Texas is exempt from any late filing penalty fee for renewing after the expiration date of the license and is entitled to additional time to complete any education requirements or other requirements related to the renewal of the license.

6. New §80.306, *Sponsorship and Termination Thereof*, provides that companies or organizations affiliating with residential mortgage loan originators are required to sponsor their license; an applicant for a residential mortgage loan originator license without sponsorship may be issued an inactive license; and either the sponsoring company or the residential mortgage loan originator may remove sponsorship.

7. New §80.307, *Background Checks*, provides that each applicant for a residential mortgage loan originator license must provide authorization and fingerprints necessary to conduct a criminal background history check through the Federal Bureau of Investigation; the TDSML Commissioner may conduct background history checks through the Department of Public Safety; each applicant must provide authorization for the Nationwide Mortgage Licensing System and Registry and the TDSML Commissioner to obtain a credit report from a consumer credit reporting agency; and each applicant must provide information related to any administrative, civil, or criminal findings by a governmental jurisdiction. Additionally, §80.307 provides that, except under certain circumstances, information obtained under §80.307 shall be kept confidential and that an individual considering applying for a license may request a criminal history evaluation letter regarding the person's eligibility for a license.

Please do not rely solely on the above summary of the Rules. You are advised to read the complete text of the Rules published in the Texas Administrative Code, which may be found at: [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=7&pt=4&ch=80](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=7&pt=4&ch=80).

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.