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To: Clients and Friends

From: David F. Dulock

Subject: 2011 Legislative Update – Senate Bill 1124 (Residential Mortgage Loan Originator Licensing and Regulation) Effective September 1, 2011

This legislative update for the 2011 legislative session of the Texas Legislature summarizes Senate Bill 1124, which amends Chapters 156 (Mortgage Brokers), 157 (Registration of Mortgage Bankers), and 180 (Texas SAFE Act) of the Texas Finance Code. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Federal SAFE Act) required all states to enact a system for licensing and registering loan originators that meets its the requirements. To be in compliance with the Federal SAFE Act the Texas Legislature, in the 2009 legislative session, enacted Chapter 180 and amended Chapters 156 and 157. A number of provisions in Chapters 156, 157, and 180, however, still need to be reconciled due to the differences in definitions, powers and terminology that exist in these Chapters. Senate Bill 1124 reconciles these differences, harmonizes the text, where applicable, and conforms the terminology of these Chapters to that used in the Federal SAFE Act. In addition, Senate Bill 1124 makes other amendments to these Chapters.

In the November 4, 2011 issue of the Texas Register, the Finance Commission of Texas issued final administrative rules implementing the changes to Chapters 156 and 157 enacted by Senate Bill 1124 (*see* 7 TAC Chapter 80, §§80.1 - 80.7 (repealed); and §§80.9, 80.13 - 80.15, 80.20 - 80.23, 80.301 - 80.305, and 80.307 (amended), concerning Texas Residential Mortgage Loan Originator Regulations; 7 TAC Chapter 81, §§81.1 - 81.5, 81.7, 81.8, 81.10 - 81.12, and 81.15 (amended) and §81.20 (new), concerning Mortgage Banker Registration and Residential Mortgage Loan Officer Licensing.) These administrative rule changes are not addressed in this legislative update but will be the subject of a separate memorandum.

SENATE BILL 1124 SUMMARY

- Effective September 1, 2011, except for new Section 180.171 concerning certain individuals originating residential mortgage loans exclusively for a federally chartered depository institution that takes effect on November 1, 2011 (*see* SECTION 63 below).

- Changes the heading of Chapter 156 from “Mortgage Brokers” to “Residential Mortgage Loan Companies and Residential Mortgage Loan Originators,” changes the title of Chapter 156 from the “Mortgage Broker License Act” to the “Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act,” and replaces the terms “mortgage broker” and “loan officer” with the terms “residential mortgage loan company” and “residential mortgage loan originator,” respectively.

- Establishes the license types and qualifications established in the Federal SAFE Act and sets a December 31 expiration date for all licenses. Senate Bill 1124 establishes

a process for the reinstatement of a license and provides that individuals who fail to maintain their license for at least five consecutive years must retake the prelicensing education and testing.

- Requires a company licensed under Chapter 156 or registered under Chapter 157 to file periodic mortgage call reports and increases the administrative penalty the Texas Savings and Mortgage Lending Commissioner (commissioner) is authorized to impose against a person licensed under Chapter 156 or Chapter 157.

- Amends the process for criminal background checks and revises sponsorship and registration requirements.

- Provides for one recovery fund to be established, administered and maintained by the commissioner for the purposes of Chapters 156 and 157.

- Adds to Chapter 180 the long-standing licensing exemption in Chapter 156 for certain property owners who owner-finance residential mortgage loans.

- Includes a provision to address a drafting oversight in the Texas SAFE Act, which shifted jurisdiction for oversight of the second mortgage liens from the Office of the Consumer Credit Commissioner (OCCC) to the Texas Department of Savings and Mortgage Lending (SML). In doing so, the bill added oversight to SML but failed to eliminate the licensing requirement with OCCC.

SECTION BY SECTION SUMMARY

Our Comments:

1. This Section by Section Summary uses Senate Bill 1124 SECTION numbers to assist those who wish to refer to the actual text of the statutory changes enacted by Senate Bill 1124.
2. This legislative update does not summary those Senate Bill 1124 amendments that make only non-substantive changes in terminology.

Chapter 13, Finance Code

SECTION 2. Adds Section 13.016 [RECOVERY FUND], as follows:

(a) Requires the Texas Savings and Mortgage Lending Commissioner (commissioner) to establish, administer, and maintain one recovery fund for the purposes of Chapters 156 and 157. Requires the recovery fund to be administered and maintained under Subchapter F (Mortgage Broker Recovery Fund) of Chapter 156 (*i.e.*, Sections 156.501 through 156.508).

(b) Provides that the commissioner's authority under Section 13.016 includes the authority to set recovery fund fee amounts for deposit in the recovery fund and enforce disciplinary action for a person's failure to comply with the applicable statutory and administrative rule provisions relating to the recovery fund.

Chapter 156, Finance Code

SECTION 5. Amends Section 156.002 [DEFINITIONS] by adding, in pertinent part, new definitions and redefining certain existing definitions, as follows:

“(1) ‘Auxiliary mortgage loan activity company’ means a political subdivision of this state or the federal government doing business for consumers in this state, or an organization that qualifies for an exemption from state franchise and sales and use tax as a 501(c)(3) organization, that is involved in affordable home ownership lending programs.”

“(1-b) ‘Credit union subsidiary organization’ has the meaning assigned by Section 180.002.”

“(2) ‘Disciplinary action’ means an order by the commissioner that requires one or more of the following:

- (A) suspension or revocation of a license or registration under this chapter;
- (B) probation of a suspension or revocation of a license or registration under this chapter on terms and conditions that the commissioner determines appropriate;
- (C) a reprimand of a person licensed or registered under this chapter; or
- (D) an administrative penalty imposed on a person licensed or registered under this chapter under Section 156.302.”

“(4-a) ‘Independent contractor loan processor or underwriter company’ means a corporation, company, partnership, or sole proprietorship that receives compensation for an individual performing clerical or support duties as an independent contractor loan processor or underwriter at the direction of a licensed residential mortgage loan originator.”

“(6-a) ‘Loan processor or underwriter’ has the meaning assigned by Section 180.002.”

“(7) ‘Mortgage applicant’ means:

- (A) an applicant for a residential mortgage loan; or
- (B) a person who is solicited to obtain a residential mortgage loan.”

“(8) ‘Mortgage banker’ has the meaning assigned by Section 157.002.”

“(8-a) ‘Mortgage company’ means a corporation, company, partnership, or sole proprietorship that engages in the business of residential mortgage loan origination on residential real estate located in this state.”

“(10-b) ‘Qualifying individual’ means an individual who is licensed under this chapter as a residential mortgage loan originator and is designated by a residential mortgage loan company as the company’s representative for purposes of the Nationwide Mortgage Licensing System and Registry.”

“(10-c) ‘Recovery fund’ means the fund established and maintained by the commissioner under Subchapter F and Section 13.016.”

“(12) ‘Residential mortgage loan’ has the meaning assigned by Section 180.002.”

“(13) ‘Residential mortgage loan company’ means a person, other than an individual, that engages in the business of residential mortgage loan origination on residential real estate located in this state. The term includes a credit union subsidiary organization, auxiliary mortgage loan activity company, mortgage company, independent contractor loan processor or underwriter company, and financial services company.”

“(14) ‘Residential mortgage loan originator’ has the meaning assigned by Section 180.002.”

“(15) ‘Residential real estate’ has the meaning assigned by Section 180.002.”

SECTION 13. Amends Section 156.201 [LICENSES REQUIRED] by amending subsections (a), (b), and (c), and adding subsections (b-1) and (b-2), as follows:

(a) Prohibits a person from acting in the capacity of, engaging in the business of, or advertising or holding the person out as engaging in or conducting the business of a residential mortgage loan company in Texas unless the person holds an active residential mortgage loan company license, is registered under Section 156.214 (registered financial services company), or is exempt under Section 156.202.

(b) Prohibits an individual, except as provided by subsection (b-1), from acting or attempting to act as a residential mortgage loan originator unless the individual is: (1) licensed under Chapter 156 and sponsored by a licensed residential mortgage loan company and is acting for the residential mortgage loan company; or (2) exempt under Section 156.202.

(b-1) Prohibits, unless exempt under Section 180.003(b), an exclusive agent of a registered financial services company from acting or attempting to act as a residential mortgage loan originator unless the exclusive agent is licensed under Chapter 156 and sponsored by a registered financial services company and is acting for the company. (*See* Section 156.214 and SECTION 29 below.)

(b-2) Requires a residential mortgage loan originator to be sponsored by at least one residential mortgage loan company.

(c) Provides that each residential mortgage loan company and the company’s qualifying individual licensed under Chapter 156 is responsible to the commissioner and members of the public for any act or conduct performed by the residential mortgage loan originator sponsored by or acting for the residential mortgage loan company in connection with: (1) the origination of a residential mortgage loan; or, (2) a transaction that is related to the origination of a residential mortgage loan in which the qualifying individual knew or should have known of the transaction.

SECTION 14. Amends Section 156.202 [EXEMPTIONS] by amending subsection (a) and adding subsections (a-1), (a-2), and (c), as follows:

(a) Adds definitions for “depository institution,” “dwelling,” “federal banking agency,” and “immediate family member,” defining them as having the meanings assigned by Section 180.002.

(a-1) Amends and redesignates existing subsection (a) as subsection (a-1). As amended and renamed, exempts the following individuals or entities, and employees of those entities when acting for the benefit of those entities, from Chapter 156:

(1) a registered mortgage loan originator when acting for: (A) a depository institution; (B) a subsidiary of a depository institution that is (i) owned and controlled by the depository institution, and (ii) regulated by a federal banking agency; or (C) an institution regulated by the Farm Credit Administration;

(2) an individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member;

(3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney takes a residential mortgage loan application and offers or negotiates the terms of a residential mortgage loan;

(4) an individual who offers or negotiates the terms of a residential mortgage loan secured by the individual's residential dwelling;

(5) a nonprofit organization providing self-help housing that originates zero interest residential mortgage loans for borrowers who provided part of the labor to construct the dwelling securing the loan;

(6) a mortgage banker registered under Chapter 157;

(7) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the residential real estate for all or part of the purchase price;

(8) an entity that is: (A) a depository institution; (B) a subsidiary of a depository institution that is (i) owned and controlled by the depository institution, and (ii) regulated by a federal banking agency; or (C) an institution regulated by the Farm Credit Administration; and

(9) an individual exempt under Section 180.003(b). (*See* SECTION 61 below.)

(a-2) Provides that a person is not required to obtain a license or registration under Chapter 156 to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6), Article XVI, Texas Constitution, (*i.e.*, Texas home equity loan) if the person: (1) is enrolled in the Nationwide Mortgage Licensing System and Registry; (2) is licensed under Chapter 342; and (3) makes consumer loans subject to the following subchapters of Chapter 342 - Subchapter G (Interest and Other Charges on Secondary Mortgage Loans); **and** Subchapter E (Interest Charges on Non-Real Property Loans) **or** Subchapter F (Alternative Charges for Certain Loans).

(c) Authorizes the Texas Finance Commission to grant an exemption from the residential mortgage loan originator licensing requirements of Chapter 156 to a municipality, county,

community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the Texas Finance Commission determines that granting the exemption is not inconsistent with the intentions of the Federal SAFE Act.

Our Comments: This exemption is similar to the exemption in new Section 180.003(c) in SECTION 61 below. For an explanation of the Texas HOME Investment Partnerships program, see the TDHCA website at: <http://www.tdhca.state.tx.us/home-division/index.htm>.

SECTION 15. Amends Section 156.203 [APPLICATION FOR A LICENSE; FEES] by amending subsections (a), (b), and (c) and adding subsections (a-1) and (a-2), as follows:

(a) Provides that, for purposes of Section 156.203, an application for a residential mortgage loan company license means an application for: (1) a mortgage company license; (2) a credit union subsidiary organization license; (3) an auxiliary mortgage loan activity company license; or (4) an independent contractor loan processor or underwriter company license.

(a-1) Redesignates existing subsection (a) as subsection (a-1) with nonsubstantive changes in terminology.

(a-2) Adds requirements for an application for a financial services company registration (*see* SECTION 29 below) that are the same as for a residential mortgage loan company license and a residential mortgage loan originator license under (a-1) – *i.e.*, the application must be in writing, under oath and on the form prescribed by the commissioner.

(b) Makes nonsubstantive changes in terminology; deletes the recovery fund fee requirement.

(c) Makes nonsubstantive changes in terminology; increases the application fee from \$275 to \$375.

SECTION 16. Adds Sections 156.2041, 156.2042, 156.2043, 156.2044, and 156.2045 stipulating the qualifications and requirements for licenses or registration for the following:

- Section 156.2041 [Mortgage Company and Residential Mortgage Loan Originator].

(a) To be issued a mortgage company license, an applicant must:

- (1) submit an application with the applicable fees through the Nationwide Mortgage Licensing System and Registry (NMLSR);
- (2) designate control persons for the mortgage company through the NMLSR;
- (3) designate an individual licensed as a residential mortgage loan originator as the company's qualifying individual;
- (4) submit a branch application through the NMLSR for each branch office that engages in residential mortgage loan activity on residential real estate located in Texas;
- (5) not be in violation of Chapter 156, a rule adopted thereunder, or any order previously issued by the commissioner to the applicant;

- (6) have the company name or assumed name properly filed with either the secretary of state or with the appropriate county clerk's office;
- (7) maintain a physical office in this state; and
- (8) provide financial statements and any other information the commissioner requires.

(b) To be issued a mortgage company residential mortgage loan originator license, an individual must submit an application through the NMLSR with the applicable fees and establish to the commissioner's satisfaction that the applicant:

- (1) has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;
- (2) is not in violation of Chapter 156, a rule adopted thereunder, or any order previously issued by the commissioner to the applicant;
- (3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the application date;
- (4) at any time preceding the application date, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;
- (5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner;
- (6) has successfully completed at least 20 hours of NMLSR approved prelicensing education courses;
- (7) has passed both the state and national components of a written test that meets the requirements of Section 180.057;
- (8) has paid a recovery fund fee required by Section 156.502(a); and
- (9) is a United States citizen or a lawfully admitted alien.

- Section 156.2042 [Credit Union Subsidiary Organization and Residential Mortgage Loan Originator].

(a) To be issued a credit union subsidiary organization license, an applicant must comply with the same requirements that are specified in Section 156.2041(a)(1) through (5) for a mortgage company license.

(b) To be issued a credit union subsidiary organization residential mortgage loan originator license, an individual must comply with the same requirements that are specified in Section 156.2041(b) for a mortgage company residential mortgage loan originator license.

- Section 156.2043 [Auxiliary Mortgage Loan Activity Company and Residential Mortgage Loan Originator].

(a) To be issued an auxiliary mortgage loan activity company license, an applicant must comply with the same requirements that are specified in Section 156.2041(a)(1) through (a)(3) and (a)(5) for a mortgage company license.

(b) To be issued an auxiliary mortgage loan activity company residential mortgage loan originator license, an individual must comply with the same requirements that are specified in

Section 156.2041(b) for a mortgage company residential mortgage loan originator license.

- Section 156.2044 [Independent Contractor Loan Processor or Underwriter Company and Individual Loan Processor or Underwriter].

(a) To be issued an independent contractor loan processor or underwriter company license, an applicant must comply with the same requirements that are specified in Section 156.2041(a)(1) through (a)(3) and (a)(5) for a mortgage company license.

(b) An independent contractor loan processor or underwriter company is not authorized to originate residential mortgage loans with a license issued under subsection (a).

(c) To be issued an independent contractor loan processor or underwriter license, an individual must comply with the same requirements that are specified in Section 156.2041(b) for a mortgage company residential mortgage loan originator license.

- Section 156.2045 [Financial Services Company Registration and Exclusive Agent].

(a) To be issued a financial services company registration, an applicant must:

- (1) obtain preapproval from the commissioner that the company meets the eligibility requirements for registration as a financial services company under Section 156.214(b);
- (2) submit an application through the NMLSR with the applicable fees;
- (3) provide evidence to the commissioner that the company has obtained surety bond coverage in an amount equal to \$1 million;
- (4) designate an officer of the company to be responsible for the activities of the company's exclusive agents; and
- (5) not be in violation of Chapter 156, a rule adopted thereunder, or any order previously issued by the commissioner to the applicant.

(b) To be issued a financial services company exclusive agent license, an individual must submit an application through the NMLSR and must establish to the satisfaction of the commissioner that the applicant complies with the same requirements that are specified in Section 156.2041(b)(1) through (b)(7) and (b)(9) for a mortgage company residential mortgage loan originator license.

Also added by SECTION 16 is Section 156.2046 [CONVICTION OF OFFENSE] to provide that for the purposes of Sections 156.2041 through 156.2045, a person is considered to have been convicted of a criminal offense if: (1) a sentence is imposed; (2) the person received probation, community supervision, deferred adjudication or community service; or (3) the court deferred final disposition of the case.

SECTION 17. Amends Section 156.205 [FINANCIAL REQUIREMENTS] by creating subsection (a) from existing text and adding subsection (b), as follows:

(a) Makes nonsubstantive changes in terminology regarding a residential mortgage loan originator's financial requirements for a license (*i.e.*, met through participation in the recovery fund); and, refers to the financial requirements exception in subsection (b).

(b) Provides that a financial services company exclusive agent meets the agent's financial requirements for a residential mortgage loan originator license by obtaining surety bond coverage of \$1 million.

SECTION 19. Amends subsections (a), (b), and (c) of Section 156.206 [CRIMINAL AND OTHER BACKGROUND CHECKS], as follows:

(a) Makes nonsubstantive changes in terminology; adds the requirement that the commissioner is to conduct a credit history check in addition to the existing criminal background check in connection with a license application.

(b) Deletes existing subsection (b) text and replaces it with text that requires the commissioner to conduct criminal background and credit history checks in accordance with Section 180.054 (Criminal and Other Background Checks), and authorizes the commissioner, in connection with each application for a residential mortgage loan originator license or other individual license, to conduct a criminal background check through the Texas Department of Public Safety.

(c) Deletes the word "criminal" so that the commissioner must keep all background information obtained by the commissioner under Section 156.206 confidential, and may not release or disclose it except under the existing circumstances specified in subsection (c).

SECTION 22. Amends Section 156.208 [RENEWALS] by amending subsections (a-1) and (b-1) and adding subsection (b-2), as follows:

(a-1) Makes nonsubstantive changes in terminology; reduces the residential mortgage loan company license term from two years to a term ending December 31 of the year of issuance; deletes the license renewal requirement for payment of a recovery fund fee; adds the license renewal requirement that the residential mortgage loan company not have shown a pattern or practice of abusive mortgage activity and has no civil judgments or liens that, in the commissioner's opinion, directly impact the ability of the residential mortgage loan company to conduct business while safeguarding and protecting the public interest; deletes existing (a-1)(2) and (a-1)(3) text.

(b-1) Makes nonsubstantive changes in terminology; reduces the residential mortgage loan originator license term from two years to a term ending December 31 of the year of issuance; increases the renewal fee from \$275 to \$375; deletes existing (b-1)(2) text and replaces it with text that requires the residential mortgage loan originator to continue to meet the minimum license issuance requirements.

(b-2) Provides that a license issued to a registered financial services company's exclusive agent is valid through December 31 of the year of issuance and may be renewed on or before that date if the exclusive agent complies with subsections (b-1)(2) and (3) – *i.e.*, minimum license issuance and continuing education requirements.

SECTION 24. Amends subsections (b) and (c) of Section 156.2081 [REINSTATEMENT], as follows:

(b) Replaces existing text with text that permits a person who is otherwise eligible to renew a license, but has not done so before January 1, to renew the license before March 1 by paying the commissioner a reinstatement fee equal to 150 percent of the renewal fee.

(c) Amends first sentence of existing text to prohibit a person whose residential mortgage loan originator license has not been renewed before March 1 from renewing the license.

SECTION 26. Amends subsections (a), (b), (b-2), and (b-3) of Section 156.211 [CHANGE OF ADDRESS OR SPONSORSHIP; MODIFICATION OF LICENSE], as follows:

(a) Makes nonsubstantive changes in terminology; deletes existing text requiring a new license certificate be obtained before the mortgage broker may conduct business at the new location.

(b) Deletes existing text that requires: (1) a loan officer to act only for the mortgage broker sponsoring the loan officer; (2) a loan officer to be sponsored by only one mortgage broker at a time; and, (3) the mortgage broker to return the loan officer's license to the commissioner upon sponsorship termination. Makes nonsubstantive changes in terminology.

(b-2) Repeals \$25 name change fee when a licensed person changes the person's name.

(b-3) Amends existing text to require a licensed residential mortgage loan company that changes the company's qualifying individual to notify the commissioner not later than the 10th business day after the date of the change.

SECTION 27. Amends Section 156.212 [MAINTENANCE AND LOCATION OF OFFICES] by amending subsections (a) and (b) and adding subsection (a-1), as follows:

(a) Makes nonsubstantive changes in terminology and deletes existing text requiring the mortgage company's office address to be designated on the license certificate.

(a-1) Provides that if a residential mortgage loan company's main office is outside Texas, the requirement of subsection (a) that the company maintain a physical office in Texas is satisfied if the company has a branch office in Texas.

(b) Amends existing text regarding branch office licenses to require a residential mortgage loan company that maintains an office separate and distinct from the company's main office, whether located in Texas or not, that conducts mortgage business with Texas consumers or regarding Texas residential real estate, to apply for, pay a \$50 fee for, and obtain a separate license for each branch office.

SECTION 28. Amends subsections (a) and (b) of Section 156.213. [MORTGAGE CALL REPORT], as follows:

(a) Deletes portions of the existing text requiring an annual report and replaces it with text requiring periodic mortgage call reports to be filed with the commissioner or the commissioner's authorized designee by each licensed residential mortgage loan company or

licensed residential mortgage loan originator, as required by the commissioner, which must: (1) be on the prescribed form; (2) contain a statement of condition of the residential mortgage loan company and the company's operations, or a statement of condition of the residential mortgage loan originators it sponsors, including financial statements and production activity volumes; (3) include any other information the commissioner requires; and (4) be filed as frequently as the commissioner requires.

(b) Provides that the following mortgage call report information is confidential: (i) information related to residential mortgage loan origination volume; (ii) trade information; and, (iii) information used to determine statistical entries in the report related to loan origination volume. Prohibits the commissioner, the commissioner's authorized designee, or any department employee from disclosing this information.

Our Comments:

1. The 2001 legislative session mistakenly enacted two similar Sections 156.213 under separate bills - House Bill 1493 and House Bill 1636. SECTION 28 amends Section 156.213 enacted by House Bill 1636 and SECTION 65 below repeals Section 156.213 enacted by House Bill 1493.
2. Section 156.213 as amended by SECTION 28 is substantially similar to Section 157.020 amended by SECTION 55 below (mortgage banker call reports), except for who may request the additional information in the call report and who may require the frequency of reports.

SECTION 29. Amends subsection (c) of Section 156.214 [REGISTERED FINANCIAL SERVICES COMPANY], as follows:

(c) Deletes portions of the existing text and replaces it with text requiring the commissioner, if the commissioner determines a person has met Section 156.214(b) and Section 156.2045(a) requirements, to issue a registration to the person. Provides that a registration is valid for one year, expires on December 31 of each year, and must be renewed annually. Requires a person to renew an expired registration in the manner determined by the commissioner.

SECTION 31. Amends subsection (b) of Section 156.302 [ADMINISTRATIVE PENALTY], as follows:

(b) Changes the amount of the maximum administrative penalty from \$2,500 for each day of the violation to \$25,000 for each violation; and adds as a basis for assessing the amount of the penalty "the economic harm to property caused by the violation."

SECTION 32. Amends subsections (a), (a-1), (g), and (i) of Section 156.303 [DISCIPLINARY ACTION; CEASE AND DESIST ORDER] to make these subsections also applicable to a registered residential mortgage loan company and makes nonsubstantive changes in terminology.

SECTION 35. Amends Section 156.401 [HEARINGS AND JUDICIAL REVIEW] by adding subsection (e) to authorize the commissioner, in the commissioner's discretion, to rescind or vacate any previously issued revocation order.

SECTION 38. Amends and expands Section 156.501 [RECOVERY FUND] to cover violations by residential mortgage loan originators licensed under Chapter 157. (*See also* new Section 13.06 added by SECTION 2 above.)

SECTION 41. Amends subsection (b)(2)(D) of Section 156.504 [PROCEDURE FOR RECOVERY] to include violations by a residential mortgage loan originator licensed under Chapter 157 to that subsection's evidentiary burden the residential mortgage loan applicant must meet in order to receive payment out of the recovery fund.

SECTION 42. Amends the recovery fund recovery limits under subsection (b)(2) of Section 156.505 [RECOVERY LIMITS] to include claims against a person licensed under Chapter 157.

SECTION 43. Amends Section 156.506 [REVOCAION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND] to give the commissioner the following additional authority: (i) to suspend a residential mortgage loan originator license issued under Chapter 156 if the commissioner has made a recovery fund payment involving a claim against the license holder; (ii) to probate the license suspension; and (iii) to prohibit the offending license holder from having the license suspension lifted until the license holder has repaid in full the recovery fund amount paid on the license holder's behalf plus interest and costs. (*See also* new Section 157.0241 in SECTION 59 below for identical authority given to the commissioner relating to residential mortgage loan originators licensed under Chapter 157.)

Chapter 157, Finance Code

SECTION 45. Amends Section 157.002 [DEFINITIONS] by adding subdivisions (4-a) and (4-b) and amending subdivision (5) to define, respectively, "Nationwide Mortgage Licensing System and Registry" (as having the meaning assigned by Section 180.002), "Recovery fund" (as meaning the fund established and maintained under Chapter 156, and Section 13.016) and to redefine "Residential mortgage loan" (as having the meaning assigned by Section 180.002; and deleting existing text).

SECTION 46. Amends the registration provisions of Section 157.003 [REGISTRATION REQUIRED] by amending subsections (b) and (e) by deleting existing text and adding new text and by adding subsections (f) and (g), as follows:

(b) Provides that to register under Chapter 157, a mortgage banker must: (1) enroll with the NMLSR; (2) be in good standing with the secretary of state; (3) have a valid federal EIN; (4) meet the mortgage banker qualification requirements; and (5) provide to the commissioner a list of offices that are separate and distinct from the mortgage banker's primary office identified on the registration and that conduct residential mortgage loan business relating to Texas, regardless of whether the offices are located in Texas.

(e) Provides that mortgage banker registration is valid on the commissioner's approval and may be denied if the commissioner determines the mortgage banker does not meet the requirements of subsection (b). Authorizes the mortgage banker, on registration denial, to appeal the denial in the same manner as an applicant for a residential mortgage loan originator license may appeal a license denial under Section 157.017 (Denial of Applications and Renewals).

(f) Provides that a mortgage banker registration is valid through December 31 of the year in which it is approved.

(g) Provides that the registration may be withdrawn or revoked.

SECTION 49. Amends Chapter 157, as follows:

- Section 157.0061 [RENEWAL OF REGISTRATION] is added to provide that: (i) a mortgage banker registration expires on December 31 of the year in which it is approved; (ii) it must be renewed annually; and (iii) to renew it, a mortgage banker must comply with the requirements of Section 157.003 and pay a renewal fee not to exceed \$500.

- Section 157.0062 [REINSTATEMENT AFTER EXPIRATION OF REGISTRATION] is added to provide that a mortgage banker: (i) whose registration has expired may not engage in an activity for which registration is required until the registration is renewed; (ii) who is otherwise eligible to renew a registration, but has not done so before January 1, may renew the registration before March 1 by paying the commissioner a reinstatement fee not to exceed \$500; and, (iii) whose registration has not been renewed before March 1 may not renew the registration, but may obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

SECTION 50. Amends Section 157.007 [DISCLOSURE STATEMENT] by deleting the existing text setting forth the required language of the disclosure statement and replacing it with text requiring the Texas Finance Commission to adopt a standard disclosure form to be used by mortgage bankers, which form must include: (1) the name, address, and toll-free telephone number for the Texas Savings and Mortgage Lending Department; (2) information on how to file a complaint or recovery fund claim; and (3) the method for proof of delivery to the consumer.

Our Comments: The new disclosure form, effective November 13, 2011, may be downloaded and printed from the following TDSML web address: <http://info.sos.state.tx.us/fids/201104579-1.pdf>.

SECTION 51. Amends Section 157.012 [LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF MORTGAGE BANKERS], as follows:

(a) Deletes subsection (a) containing the definitions of “Nationwide Mortgage Licensing System and Registry” and “residential mortgage loan originator.” Redesignates existing subsection (b) as subsection (a) and adds the requirement that a residential mortgage loan originator employee of a mortgage banker must be sponsored by a registered mortgage banker.

Our Comments: The definition of “Nationwide Mortgage Licensing System and Registry” is moved to amended Section 157.002 (*see* SECTION 45 above). The definition of “residential mortgage loan originator” is already contained in existing Section 157.002.

(b) Redesignates existing subsection (c) as subsection (b).

(c) Redesignates existing subsection (d) as subsection (c) and adds to the residential mortgage loan originator license eligibility requirements that (i) the mortgage banker employee

must not be in violation of Chapter 180 or the rules adopted thereunder, and (ii) must be a United States citizen or lawfully admitted alien.

(d) Adds new subsection (d), which provides that a non-residential mortgage loan originator employee of a mortgage banker is not required to enroll with NMLSR or be licensed under Chapter 157.

Our Comments: The 2009 legislative session mistakenly enacted substantially similar Sections 157.012 under separate bills - House Bill 10 and House Bill 2779. Using the Section 157.012 enacted by House Bill 10 as a template, SECTION 51 harmonizes and amends these separately enacted Sections 157.012 into one Section 157.012.

SECTION 52. Amends subsection (b) of Section 157.013 [APPLICATION FOR LICENSE; FEES] to add the requirement that an application for a residential mortgage loan originator license must be accompanied by a recovery fund fee not to exceed \$20.

SECTION 54. Adds subsection (c) to Section 157.019 [MODIFICATION OF LICENSE] requiring a mortgage banker's residential mortgage loan originator employee to give the commissioner or authorized designee written notice of a sponsorship change and include with the notice a \$25 fee.

SECTION 55. Amends Section 157.020 [MORTGAGE CALL REPORT] to require a mortgage call report, in place of the annual call report required by existing Section 157.020, to be filed as frequently as required by the NMLSR and which, in addition to the existing information required by Section 157.020, is to include any other similar information required by the NMLSR.

Our Comments: Section 157.020 as amended by SECTION 55 is substantially similar to Section 156.213 amended by SECTION 28 above, except for who may request the additional information in the call report and who may require the frequency of reports.

SECTION 56. Adds Section 157.0201 [RECOVERY FUND] to require that the recovery fund under Section 13.016 and Subchapter F of Chapter 156 (*i.e.*, Sections 156.501 – 156.508) must be used as provided by Subchapter F of Chapter 156 to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by residential mortgage loan originators licensed under Chapter 157 when the act was committed.

SECTION 57. Amends subsections (a) and (b) of Section 157.023 [ADMINISTRATIVE PENALTY], as follows:

(a) Adds as an additional person subject to an administrative penalty an individual required to be licensed under Chapter 157.

(b) Increases the amount of the maximum administrative penalty from \$2,500 for each day of the violation to \$25,000 for each violation and adds as a basis for assessing the amount of the penalty "the economic harm to property caused by the violation."

SECTION 58. Adds subsection (l) to Section 157.024 [DISCIPLINARY ACTION; CEASE AND DESIST ORDER] to authorize the commissioner, in the commissioner's discretion, to

rescind or vacate previously issued orders.

SECTION 59. Adds Section 157.0241 [REVOCAION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND], as follows:

(a) Authorizes the commissioner to revoke or suspend a license issued under Chapter 157 on proof that the commissioner has made a payment from the recovery fund toward satisfaction of a claim against a residential mortgage loan originator licensed under Chapter 157.

(b) Authorizes the commissioner to collect from a residential mortgage loan originator the amount paid from the recovery fund on behalf of the residential mortgage loan originator and any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund, plus interest. Requires any amount, including interest, recovered by the commissioner to be deposited in the recovery fund.

(c) Authorizes the commissioner to probate the license revocation or suspension order.

(d) Prohibits the offending license holder from receiving a new license or having a license suspension lifted until the license holder has repaid in full the recovery fund amount paid on the license holder's behalf plus interest and costs.

(e) Provides that Section 157.0241 does not limit the commissioner's authority to take disciplinary action against a residential mortgage loan originator for a violation of Chapter 157 or the rules adopted by the Texas Finance Commission thereunder. Provides that the repayment in full to the recovery fund of all obligations of a residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding brought under Chapter 157.

Our Comments: Section 157.0241 is identical to the authority given to the commissioner by amended Section 156.506 (*see* SECTION 43 above) relating to residential mortgage loan originators licensed under Chapter 156.

Chapter 180, Finance Code

SECTION 61. Amends Section 180.003 [EXEMPTION] by creating subsection (a) from existing text, amending subsection (a) and adding subsections (b) and (c), as follows:

(a) Deletes exemption (a)(4) for an exclusive agent of a registered financial services company; adds exemption (a)(6) to exempt from Chapter 180 an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and adds exemption (a)(7) to exempt from Chapter 180 an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured.

Our Comments:

1. Before providing origination services for seller financiers exempt under (a)(6), residential mortgage loan originators should read the third Seller Financing FAQ located on the TDSML website at: http://www.sml.texas.gov/tdsml_faq_mb_texas_SAFE_Act_seller_financing.html.
2. A “dwelling” the subject of exemption (a)(7) is defined in subdivision (5) of Section 180.002 to include a mobile home and individual units of a condominium or cooperative.
3. Senate Bill 1124 did not add the (a)(7) dwelling exemption to the Chapter 156 exemptions in Section 156.202 (see SECTION 14 above).

(b) Provides that an individual is exempt from Chapter 180, other than Section 180.171, if the individual:

(1) in any 12-consecutive-month period originates five or fewer closed residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed within that period;

(2) is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the depository institution in (b)(1); and

(3) is sponsored by a life insurance company, or its affiliate, authorized to engage in business in Texas.

Our Comments: Pursuant to new Section 156.202(a-1)(9) in SECTION 14 above, the person is also exempt from Chapter 156.

(c) Adds subsection (c) authorizing the Texas Finance Commission to grant an exemption from the licensing requirements of Chapter 180 to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the Commission determines that granting the exemption is not inconsistent with the intentions of the Federal SAFE Act.

Our Comments: This exemption is similar to the exemption in new Section 156.202(c) in SECTION 14 above. For an explanation of the Texas HOME Investment Partnerships program, see the TDHCA website at: <http://www.tdhca.state.tx.us/home-division/index.htm>.

SECTION 62. Adds subsection (h) to Section 180.056 [PRELICENSING EDUCATIONAL COURSES] to require an individual who fails to maintain a residential mortgage loan originator license for at least five consecutive years to retake the prelicensing education requirements prescribed by the Federal SAFE Act.

SECTION 63. Adds Section 180.171 [ENROLLMENT WITH DEPARTMENT OF SAVINGS AND MORTGAGE LENDING] to provide limited requirements for individuals exempt from Chapter 180 under new Section 180.003(b) – see SECTION 61 above. New Section 180.171 requires these individuals to (1) enroll as a financial exclusive agent with the Department of Savings and Mortgage Lending before conducting residential mortgage loan business in Texas, but only until such time as federal law or regulation require registration with the NMLSR; (2) renew the enrollment annually; and (3) pay an annual fee to the commissioner not to exceed \$40.

SECTION 64. Amends Section 342.051 [LICENSE REQUIRED] by adding subsection (c-1) to provide that a person licensed or registered under Chapter 156 or 157 is not required to obtain a license under Section 342.051 to make, negotiate, or transact a residential mortgage loan, as defined by Section 180.002. (*See also* SECTION 65 below, which repeals the mortgage broker exemption in Section 342.051(f).)

SECTION 65. Repeals the following provisions of the Finance Code:

(1) Sections 156.002(4) (defines “fund”), (5) (defines “loan officer”), (6) (defines “loan processor”), (9) (defines “mortgage broker”), and (10) (defines “mortgage loan”);

(2) Section 156.2011 (Provisional Loan Officer License);

(3) Section 156.2015(a) (defines “credit union subsidiary organization,” “Nationwide Mortgage Licensing System and Registry,” and “residential mortgage loan originator”);

(4) Section 156.202(b) (exclusive agent being considered an employee of the registered financial services company);

(5) Section 156.204 (Qualifications);

(6) Section 156.2071 (Person Licensed in other Jurisdiction);

(7) Sections 156.208(f) (adopting a system under which licenses expire on certain dates), (g) (adopting rules related to the approval of courses for continuing education credit), (h) (conditions under which a person is considered convicted), and (i) (adopting a rule to require a mortgage broker or loan officer to attend not less than eight hours of continuing education courses before renewing a license);

(8) Sections 156.2081(d) (obtaining a new license for a certain person previously licensed in this state) and (e) (requiring the commissioner to send written notice of an impending expiration);

(9) Sections 156.214(e) (restrictions to being an exclusive agent of a registered financial services company), (f) (requiring a registered financial services company to submit certain information to the commissioner), and (g) (requiring the commissioner to notify a person and the registered financial services company as to whether or not the person is eligible to be an exclusive agent);

(10) Section 156.215 (Approval of Courses);

(11) Sections 157.003(b-1) (requiring the list of mortgage banker employees to be promptly updated to reflect any changes), (c) (an employee of a mortgage banker who is not an residential mortgage loan originator not being required to register or be licensed), and (d) (prohibiting the commissioner from requiring a mortgage banker to provide certain information);

(12) Section 157.009(b) (authorizing the commissioner to revoke registration of a mortgage banker under certain conditions);

(13) Section 157.016(d) (requiring the commissioner or an authorized representative to send written notice of an impending expiration);

(14) Section 157.018 (Probationary and Provisional Licenses);

(15) Section 342.051(f) (a mortgage broker not being required to obtain a license to make, negotiate, or transact a mortgage loan); and

(16) Section 156.213 (Annual Report) added by House Bill 1493, 2001 legislative session. **Our Comments:** The 2001 legislative session mistakenly enacted two Sections 156.213 under separate bills - House Bill 1493 and House Bill 1636. SECTION 65 repeals Section 156.213 enacted by House Bill 1493 and SECTION 28 above amends Section 156.213 enacted by House Bill 1636.

LEGISLATIVE UPDATE CONCLUSION

This legislative update is not a complete description of Senate Bill 1124. You are urged to review the entirety of Senate Bill 1124 for a complete description of its contents. You may request a copy of the bill from us, if you so desire, or print a copy of the bill from the following web address: <http://www.capitol.state.tx.us/flodocs/82R/billtext/pdf/SB01124F.pdf#navpanes=0>. The SECTION numbers in this legislative update are to aid you in locating the provisions of Chapters 156, 157 and 180 enacted, amended or repealed by Senate Bill 1124.

This is the fifth legislative update prepared by this firm for the 2011 legislative session of the Texas Legislature. Previously, we issued the following legislative updates for the 2011 legislative session summarizing those bills that we consider are of interest to our clients:

1. Legislative update dated July 27, 2011 (bills effective before September 1, 2011).
2. Legislative update dated August 15, 2011 (eight bills effective September 1, 2011).
3. Legislative update dated August 24, 2011 (Senate Bill 17 and House Bill 1146).
4. Legislative update dated September 2, 2011 (twelve bills effective September 1, 2011).

If you did not receive these legislative updates, you may request copies from us or print them from our website at <http://www.bmandg.com>.

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