



Attorneys At Law

2905 Corporate Circle

Flower Mound, TX 75028

Phone: 972-353-4174

Fax: 972-221-9316

Partners

Shawn P. Black¹

Ryan Black²

Daniel S. Engle³

Steven Kubik

Senior Lawyers

Margaret A. Noles

Sydney Davis

Associates

Andrew Stokes

Of Counsel

David M. Tritter

Calvin C. Mann, Jr.

Gregory S. Graham⁴

Retired Partner(s)

Calvin C. Mann, Jr.

Thomas E. Black, Jr.*

Gregory S. Graham⁴

¹ Also Licensed in Kentucky and New York

² Also Licensed in District of Columbia

³ Also Licensed in New York

⁴ Also Licensed in Georgia

*Retired from the practice of law

November 15, 2024

To: Clients and Friends

From: Daniel S. Engle

Subject: Changes to Rules in the Texas Administrative Code Concerning Loan Originators, Mortgage Bankers, Mortgage Companies, and Mortgage Servicers

In the November 15 issue of the Texas Register (Volume 49, Number 46, Pages 9204-25), the Finance Commission of Texas on behalf of the Texas Department of Savings and Mortgage Lending ("TDSML") confirmed proposed changes to the rules concerning loan originators, bankers, mortgage companies, mortgage servicers, and wrap mortgage lending in the Texas Administrative Code that were originally proposed in the September 6, issue of the Texas Register (Volume 49, Number 36, Pages 6864-6949). No changes were made to the proposed rules. The rules will be effective November 23, 2024 for most provisions. Our understanding per communication from TDSML is that examination review for the new rules will begin on January 1, 2025. Selected highlights of the changes include:

1) A reorganization of the locations of the rules into new chapters located in Title 7, Part 4 of the Texas Administrative Code (TAC). Rules concerning residential mortgage loan originators will be in Chapter 55. Chapter 56 will contain rules concerning mortgage companies, and Chapter 57 will contain rules concerning mortgage bankers. Rules concerning mortgage servicers will be in Chapter 58. Chapter 59 will contain rules concerning wrap mortgage loans.

2) An update to modify the form of the initial disclosures given to applicants in Proposed Section 56.200 (mortgage companies) and Proposed Section 57.200 (mortgage bankers). It also establishes a requirement that the mortgage company's or mortgage banker's website address is listed on all correspondence sent to an applicant.

3) Section 55.201 establishes a requirement that any Conditional Pre-Qualification Letter (Form A) or Condition Pre-Approval Letter (Form B) be issued and signed by the individual loan originator handling the application. It also establishes that the individual loan originators have a duty to issue accurate pre-qualification or pre-approval letters and that an inaccurate, erroneous, or negligently-issued letter will be a violation and the originator could be subject to disciplinary action and may be subject to a recovery claim. Our understanding per communication with TDSML is that e-signatures may be used. As a note, the current model forms do not appear to contain signature lines so these will have to be added into forms used by loan originators.

4) Sections 56.204 (mortgage companies) and 57.204 (mortgage bankers) will add new requirements maintaining books and records. Of note, two new documents for Texas Home Equity Loans will need to be retained by lenders. For loans on which the borrowers will be paying bona fide discount points, lenders are to retain an acknowledgment form to evidence that the paid discount points were bona fide and correspond to a reduced interest rate. This is a new requirement, and lenders should begin to include a form meeting this requirement for Texas Home Equity loans in which bona fide discount points will be paid. Lenders will also be required to retain a copy of the Texas Home Equity Affidavit and Agreement (or similar form) that is used to help evidence that various Texas Home Equity requirements were met.

5) Sections 56.210 (mortgage companies) and 57.210 (mortgage bankers) will add requirements for lenders to notify the TDSML of data breaches that qualify as "reportable incidents."

6) Sections 56.203(f) (mortgage companies) and 57.203(f) (mortgage bankers) will add advertising rules concerning the use of “team names”. Team names should not be in communications with an applicant or documentation provided to an applicant during the application process unless the team name has been established as a authorized “DBA” for the mortgage company or mortgage banker in the State of Texas.

7) Sections 55.202(a)(9) (loan originators), 56.202(a)(9) (mortgage companies), and 57.202(a)(9) (mortgage bankers) introduce rules governing the use of “trigger leads” that establish certain requirements and prohibit certain practices. A violation of these rules would constitute violations of the applicable provisions in the Texas Finance Code governing fraudulent, misleading, or deceptive practices and improper dealings for loan originators (see Texas Finance Code Sections 157.024(a)(3), 180.153(2), 180.153(1), and 180.153(11)). For mortgage companies it would constitute “fraudulent or dishonest dealings” for the purposes of Section 156.303(a)(3) of the Texas Finance Code. For mortgage bankers, a violation would constitute “fraudulent or dishonest dealings” for the purposes of Section 157.009(d) of the Texas Finance Code. Trigger leads are defined in Sections 55.2(19) (loan originators), 56.2(23) (mortgage companies), and 57.2(21) (mortgage bankers).

Attached as an exhibit are sample updated forms for the initial disclosures for mortgage companies and mortgage bankers as well as the updated Form A and Form B for mortgage companies and mortgage bankers that were included in the September 6, 2024 issue of the Texas Register (49 TexReg 7069-77). A guide to the figures is as follows:

Figure 7 TAC §56.200(b): Mortgage Company Disclosure

Figure 7 TAC §56.201(a): Mortgage Company Form A

Figure 7 TAC §56.201(b): Mortgage Company Form B

Figure 7 TAC §57.200(b): Mortgage Banker Disclosure

Figure 7 TAC §57.201(a): Mortgage Banker Form A

Figure 7 TAC §57.201(b): Mortgage Banker Form B

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.

TEXAS MORTGAGE COMPANY DISCLOSURE

Pursuant to Texas Finance Code Section 156.004, you are notified of the following:

- We will either submit your loan application to a participating lender or make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.
- We will be compensated in compliance with the federal Truth in Lending Act and Regulation Z (see 12 C.F.R. § 1026.36(d)) (if applicable).

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE COMPANY OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML's WEBSITE: SML.TEXAS.GOV.

ISSUED BY:

Residential Mortgage Loan Originator: _____

NMLS ID: _____

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s)/ Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage company ____ has ____ has not reviewed the prospective applicant's/ applicant's credit report and credit score

The prospective applicant(s) /applicant(s) have provided the mortgage company with the following information:

Income ____ Yes ____ No ____ Not applicable

Available cash to close ____ Yes ____ No ____ Not applicable

Debts ____ Yes ____ No ____ Not applicable

Assets ____ Yes ____ No ____ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) have provided, the mortgage company has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested;

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided;
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes;
4. The collateral for the loan to satisfy the lender's requirements;
5. The loan, as described, to remain available in the market;
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires;
7. The following additional items (list):

This conditional pre-qualification expires on: _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? ____ Yes ____ No

Mortgage company has:

Reviewed prospective applicant's / applicant's credit report and credit score ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's income ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's available cash to close ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's debts and other assets ____ Yes ____ Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than \$_____
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable survey
4. The subject property's condition meets lender's requirements

5. The subject property is insured in accordance with lender's requirements
6. The prospective applicant(s) / applicant(s) executes all the documents lender requires and
7. The following additional conditions are complied with (list):

This conditional approval expires on _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Figure: 7 TAC §57.200(b)

TEXAS MORTGAGE BANKER DISCLOSURE

Pursuant to Texas Finance Code Section 157.0021, you are notified of the following:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML'S WEBSITE: SML.TEXAS.GOV.

ISSUED BY:

Residential Mortgage Loan Originator: _____

NMLS ID: _____

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage banker ____ has ____ has not reviewed the prospective applicant's / applicant's credit report and credit score

The prospective applicant(s) / applicant(s) has provided the mortgage banker with the following information:

Income ____ Yes ____ No ____ Not applicable

Available cash to close ____ Yes ____ No ____ Not applicable

Debts ____ Yes ____ No ____ Not applicable

Assets ____ Yes ____ No ____ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) has provided, the mortgage banker has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes
4. The collateral for the loan to satisfy the lender's requirements
5. The loan, as described, to remain available in the market
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires
7. The following additional items (list):

This conditional pre-qualification expires on _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? ____ Yes ____ No

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's income: ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's available cash to close: ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's debts and other assets: ____ Yes ____ Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than \$_____
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable property survey
4. The subject property's condition meets lender's requirements

5. The subject property is insured in accordance with lender's requirements

6. The prospective applicant(s) / applicant(s) executes all the documents the lender requires and

7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

Residential Mortgage Loan Originator Name

Mailing address

e-mail address

NMLS ID #