

SUBJECT: Regulating mortgage brokers

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 6 ayes — Marchant, Elkins, Grusendorf, Patterson, Smith, Solomons

0 nays

3 absent — Gutierrez, Ehrhardt, Giddings

WITNESSES: For — Susan Bodnar, Greater Houston Association of Mortgage Brokers; Harry H. Dinham, Dallas/Fort Worth Mortgage Brokers; J. Books Hiller, Evertt Ives and George Mountcastle, Texas Association of Mortgage Bankers

Against — None

On — Leslie Pettijohn, Office of Consumer Credit Commissioner; Ronald Walker, Texas Association of Realtors

DIGEST: CSHB 2352 would require mortgage brokers to register with the Office of the Consumer Credit Commissioner beginning January 1, 1998, establish qualifications for registration, and provide penalties for violators. The bill would take effect September 1, 1997.

Definition and qualifications. A mortgage broker would be defined as a person in the business of buying or selling single family to fourplex homes for another or finding a mortgage banker or other lender to make a mortgage for persons buying single family to fourplex homes. The definition would not include persons who deliver mortgage applications and other loan information to a mortgage broker on behalf of prospective buyers.

A registered mortgage broker would have to have one of the following credentials:

- an associate degree in an area relating to finance, banking, or business administration from an accredited college or university, including a

technical college;

- a National Association of Mortgage Brokers certificate, or similar certificate;
- a license to be a real estate broker or salesperson, attorney or certified public accountant in Texas; or
- three years of experience in the mortgage and lending field or the equivalent as determined by the commissioner.

Brokers also would be required to have net assets of at least \$25,000 and a \$25,000 surety bond, or a \$50,000 surety bond and command the public's confidence as a financially responsible person.

Registration. Brokers would have to obtain a registration certificate for each office from which they conducted business. The initial fee and the annual renewal fee for each certificate would be \$150; late renewals would incur an additional \$100 charge. The commissioner would be required to notify applicants in writing if their application was denied; applicants could appeal the decision within 30 days. The fees could only be used for purposes of registering and regulating mortgage brokers.

The commissioner could obtain criminal history records on each applicant from the Department of Public Safety. The bill would establish procedures for suspending, revoking or refusing a license.

Entities exempt from registration requirements would include: banks and savings and loans associations or their subsidiaries; credit unions, lenders approved by the federal Department of Housing and Urban Development (HUD); and mortgage bankers or persons licensed under state law to make secondary mortgages. Employees of mortgage brokers also would be exempt from registering with the consumer credit commissioner.

Prohibited acts. Registered mortgage brokers would be prohibited from publishing misleading advertising, engaging in fraudulent or dishonest dealings, using fees collected in advance of closing for other purposes, and receiving payment for work not yet complete. However, brokers could receive certain fees, including those for obtaining credit reports and appraisals, before all services are completed. A mortgage broker could not

collect a fee for locking in an interest rate, issuing a commitment letter, or processing a loan application unless the purchaser agreed in writing to the fees.

CSHB 2352 would specify that nothing in the bill would prohibit a mortgage broker from making secondary market transactions.

The commissioner would be authorized to adopt rules to enforce the bill's provisions, including rules to prohibit false, misleading or deceptive practices.

The commissioner also would have authority to investigate alleged violations and to issue cease and desist orders to violators. In addition, the commissioner could ask a state court to grant an injunction, restraining order, or other appropriate relief upon showing that a person was committing or about to commit a violation. The commissioner could subpoena witnesses or examine records or the place of business while investigating a violation.

Mortgage applicants injured by a violation could bring suit to recover damages and reasonable attorney's fees.

**SUPPORTERS
SAY:**

CSHB 2352 would give the public confidence in Texas' 800 mortgage broker professionals. Mortgage brokers are the only mortgage lending professionals who are not regulated in some way by the state. Furthermore, Texas is one of only a few states in the nation that do not require mortgage brokers to be registered.

Mortgage brokers have proliferated in the last 10 years. Some people hold themselves out as mortgage brokers, take application fees from unsuspecting customers, then leave town. Requiring mortgage brokers to be registered would help protect both the industry and the public from unscrupulous dealers and assure consumers that individuals purporting to be mortgage brokers were properly qualified to perform such services.

CSHB 2352 would provide the consumer credit commissioner with broad authority to respond to violations, including the power to issue cease and desist orders. Furthermore, it would provide consumers with the right to file

civil actions. The civil enforcement mechanisms would be sufficient to ensure compliance; there would be no reason to impose criminal penalties for failing to register.

OPPONENTS
SAY:

Although CSHB 2352 is laudable in that it would set minimum qualifications and require mortgage brokers to be licensed, it would not provide any criminal penalties for violating the law by engaging in fraudulent dishonest dealings or failing to register. Furthermore, there are no recordkeeping or continuing education requirements, criteria that are standards in most other regulated professions.

OTHER
OPPONENTS
SAY:

Persons holding only a real estate sales license rather than a real estate broker's license should not be allowed to register as a mortgage broker unless they meet one of the other educational or licensing qualifications. Real estate sales persons do not necessarily have the proper level of information about the business of financing mortgages to act as a mortgage broker.

NOTES:

The original version of the bill would have required mortgage brokers to maintain transaction records and the commissioner to examine the records as needed. It also would have allowed mortgage brokers to receive fees for title searches and land surveys and to collect a fee not to exceed 1.5 percent of the total amount of the loan for locking in an interest rate. The commissioner would have been able to initiate criminal proceedings upon evidence of criminal violation with the local district court or the attorney general. The bill would also have set up a six-member mortgage brokers advisory to assist the commissioner in regulating mortgage brokers and required at least eight hours of continuing education each year from courses approved by the commissioner. Failure to register as a mortgage broker would have been a Class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine. The same penalty would have applied to other violations.

The companion bill, SB 962 by Patterson, has been referred to the Senate Economic Development Committee.