

SUBJECT: Revised mortgage broker regulation, including licensing of corporations

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 7 ayes — Solomons, Flynn, Chavez, Anchia, Anderson, McCall, Orr
0 nays

WITNESSES: For — Tom Kapioltus, Dallas Fort Worth Association of Mortgage Brokers; Olga Kucerak, Texas Association of Mortgage Brokers;
(*Registered, but did not testify:* Randy Lee, Stewart Title Guaranty Co.)

Against — None

On — John Fleming, Department of Savings and Mortgage Lending

BACKGROUND: The Department of Savings and Mortgage Lending licenses and regulates mortgage brokers and loan officers. A corporation or partnership can act as a mortgage broker without becoming licensed if all of its mortgage brokers and loan officers are licensed.

DIGEST: CSHB 2783 would provide for corporate mortgage broker licensing, and would revise the Finance Code to distinguish statutes referring to corporate or individual mortgage broker licensees. A corporation, limited liability company, or limited partnership could not act as a mortgage broker unless the entity obtained a mortgage broker license. To be eligible for a mortgage broker license, the entity would designate an individual who was an officer, manager, or partner to the entity as its designated representative. The savings and loan commissioner could charge an entity up to \$25 to change its designated representative. The entity would pay an application fee in an amount determined by the commissioner not to exceed \$175.

Unless exempted, an individual could not act as a mortgage loan officer unless the individual was both licensed as a loan officer and sponsored by a licensed mortgage broker. The loan officer experience requirements necessary to become a licensed mortgage broker only would be fulfilled by experience as a licensed loan officer. The savings and loan commissioner could deny the renewal of a mortgage broker or loan officer

license if the commissioner became aware of any fact that would have been grounds for denial of an original license had it been known at issuance.

A person would not need to be licensed as a mortgage broker or loan officer if the person was an owner of real property who had made no more than five mortgage loans to purchasers within any 12-consecutive-month period.

The commissioner could order disciplinary action against a licensed mortgage broker or a licensed loan officer for providing false information during the course of an investigation or inspection. The commissioner could, on notice and opportunity for hearing, suspend a person's license if an indictment were filed or allegation were made that the person committed a criminal offense involving fraud, theft, or dishonesty. The suspension would continue until the criminal case was dismissed or the person was acquitted.

By the 10th day prior to a mortgage broker's doing business under an assumed name, the broker would have to file an assumed name certificate for each assumed name under which the mortgage broker intended to conduct business. The broker would pay a \$25 registration fee for each assumed name. For a name change, the person would have 10 days to pay a \$25 name change fee so the commission could issue an amended license certificate.

The Finance Commission could adopt rules establishing minimum standards for courses, approved course providers, and approved course instructors. The commission could charge a fee not to exceed \$200 for the review and approval of each course not provided and approved by a trade association representing residential mortgage originators.

The bill would take effect September 1, 2007, and a corporation would not be required to obtain a mortgage broker license before January 1, 2008.

**SUPPORTERS
SAY:**

CSHB 2783 would correct technical issues and remove outdated language in the Mortgage Broker License Act. When this act was created, loan officer experience requirements to obtain a mortgage broker license made sense because no one previously had been licensed. Now that loan officer licensing standards have been firmly established, it is appropriate that

licensing standards for a mortgage broker would require experience as a licensed loan officer.

The bill would provide for corporate mortgage broker licensing. The current licensing system lacks proper accountability, because a firm of mortgage brokers can evade responsibility for the actions of a rogue loan officer by stating that the loan officer is sponsored by another broker. This bill would enhance the department's ability to monitor and take action against mortgage fraud by holding the corporation liable for its loan officers' actions. This would pattern mortgage broker licensing after the real estate licensing statute.

The bill would allow for further disciplinary action by permitting a license revocation for a licensee who provided false information or made a material misrepresentation to the department relating to a complaint, investigation, or inspection. The department also could deny renewal of a license if it became aware of a fact that would have been grounds for denial of an original license.

The bill would modify the seller finance exemption to exclude developer/builders from exemption. Some builders perform financing but do not pay off the underlying mortgage loan. Under this bill, people who built and financed homes would be held accountable for their mortgage broker activities, but investors and homeowners who wanted to sell their home could finance this effort personally.

The bill would afford the Department of Savings and Mortgage Lending enhanced oversight for review and approval of education courses as well as enhanced monitoring of licensees operating under assumed names.

The bill would allow the commission to use appropriate prosecutorial discretion in determining if a person's license should be suspended pending investigation of an allegation of fraud, theft, or dishonesty. The commission only would issue such a suspension if it was deemed likely that the person could cause continued harm yet the department did not wish immediately to take administrative action for fear of interfering with a criminal prosecution. The bill would allow only a temporary suspension and not a permanent revocation, so a person against whom allegations were not proven could practice again after the determination was made.

OPPONENTS
SAY:

CSHB 2783 should not require licensing of corporations as mortgage brokers. This would add an additional level of regulation and fee assessment that should not be necessary, because all mortgage brokers at a corporation offering mortgage broker services still would be required to be licensed. Instead of focusing its attention on licensing more entities, the department should focus its efforts on better establishing personal accountability on the part of a mortgage broker who sponsored a rogue loan officer.

The commission should not be able to suspend a person's license in response to an allegation that the person committed a criminal offense involving fraud, theft, or dishonesty. A person's ability to make a living should not be taken away unless it had been proven that the person committed a crime. A suspension could have severe repercussions on the business of a falsely accused individual.

NOTES:

The fiscal note indicates a cost of \$168,414 over the biennium which would be covered by an equivalent increase in fees by the Department of Savings and Mortgage Lending.