

BILL ANALYSIS

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S.B. 17
By: Carona
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Mortgage servicers are companies that interface directly with borrowers on behalf of a lender. The majority of mortgage servicing is conducted by banks, savings banks (also known as "thrifts"), credit unions, or their subsidiaries. In Texas, a few large national banks and their subsidiaries perform the vast majority of mortgage servicing. Though the federal government regulates these banks' operations that relate to banking, such regulation does not explicitly provide for regulations relating to their mortgage servicing activities.

A number of federal laws, such as the Real Estate Settlement and Procedures Act, affect how mortgages must be serviced. Congress' recent passage of the Dodd-Frank Act provides the newly created Bureau of Consumer Financial Protection (CFPB) with the authority to directly regulate the mortgage servicing industry, including mortgage servicing companies. However, it is unclear if and when such regulations may be implemented. The federal government regulates nationally chartered banks, thrifts, and credit unions who may also be involved in mortgage servicing, but federal regulators do not appear to regulate mortgage servicing matters as contemplated by this bill.

Texas does not currently regulate mortgage servicing activities, though seventeen states and Washington, D.C., regulate servicers of residential loans, and six states regulate servicers of commercial loans. The federal government also does not regulate this industry directly.

The Texas Department of Savings and Mortgage Lending (SML) currently regulates state chartered thrifts, as well as Mortgage Bankers and Mortgage Loan Originators (formerly known as Mortgage Brokers). The Texas Department of Banking regulates state chartered banks and their subsidiaries, and the Texas Credit Union Department oversees state credit unions. None of these agencies currently regulate mortgage servicing.

In the wake of the 2008 recession, reports of mortgage servicing companies mishandling accounts and using inappropriate business practices have substantially increased. Particular complaints include mortgage servicers modifying loans to actually increase monthly mortgage payments, failing to credit consumers for payments made, and failing to recognize existing consumer insurance policies.

S.B. 17 would require mortgage servicers to register with the SML with some exceptions. The jurisdiction of SML covers the majority of the mortgage industry that is regulated at the state level and, therefore, it would be the most appropriate agency to provide regulatory authority over mortgage servicers.

Under this bill, in order to be eligible to service mortgages in Texas, a person would be required to be: registered under the new chapter (Chapter 158, Finance Code), be a licensed or registered mortgage banker or mortgage loan originator under Chapters 156 (Mortgage Brokers) or 157 (Registration of Mortgage Bankers) and be authorized to act as a mortgage loan servicer, or exempt from registration. A servicer would be exempt from registration if the servicer: services only commercial loans, is a federal or state depository institution or subsidiary, is a second lien servicer licensed under Chapter 342 (Consumer Loans), Finance Code, or is an individual servicing residential loans made with their own fund for property they sell.

The registration requirement would likely result in the registration of between 20 to 25 servicers operating in the state, some of which are already registered voluntarily with SML.

Among other things, this bill includes the following provisions:

Bond Requirement – a registered entity would be required to post a bond to cover restitution costs as directed by the Commissioner of Saving and Mortgage Lending (commissioner) since there is no recovery fund for mortgage servicers as there is in other regulated areas.

Registration and Termination – entities would be required to renew their registration annually with a \$500 cap on annual renewal fees. Also, the bill provides the commissioner with the authority to revoke or deny renewal of an entity's registration. This important authority empowers the commissioner to terminate a company's ability to operate in Texas if the company does not abide by all applicable laws.

Cease and Desist – S.B. 17 would provide the commissioner with authority to issue a cease and desist order against someone servicing mortgages who is not registered under Chapter 158, Finance Code, and is not otherwise exempt from registration. Such an order may lead to consumer restitution, and a violator may be charged up to \$2,500 for each day of violation.

Investigation Fee – this bill would allow the commissioner to surcharge a registrant that is being investigated based on costs to the agency.

Complaint Handling – If the commissioner finds a violation of Chapter 158, Finance Code, or other applicable law, the commissioner may issue an order requiring the registrant to pay the consumer damages, or order the registrant to cease and desist from the inappropriate actions.

As proposed, S.B. 17 amends current law relating to the regulation of residential mortgage loan servicers, and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Sections 158.003, 158.055, 158.101, and 158.102, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 3, Finance Code, by adding Chapter 158, as follows:

CHAPTER 158. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 158.001. **SHORT TITLE.** Authorizes this chapter to be cited as the Residential Mortgage Loan Servicer Registration Act.

Sec. 158.002. **DEFINITIONS.** Defines "commissioner," "finance commission," "person," "registrant," "residential mortgage loan," "residential mortgage loan servicer," and "residential real estate" in this chapter.

Sec. 158.003. **RULES.** (a) Authorizes the Finance Commission of Texas (finance commission) to adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter.

(b) Requires the finance commission to consult with the savings and mortgage lending commissioner (commissioner) when proposing and adopting rules under this chapter.

[Reserves Sections 158.004-158.050 for expansion.]

SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN SERVICERS

Sec. 158.051. REGISTRATION REQUIRED. Prohibits a person from acting as a residential mortgage loan servicer, directly or indirectly, for a residential mortgage loan secured by a lien on residential real estate unless the person is:

- (1) registered under this chapter;
- (2) licensed under Chapter 156 (Mortgage Brokers) or registered or licensed under Chapter 157 (Registration of Mortgage Bankers) and, through the license or registration approval process, is authorized to act as a residential mortgage loan servicer; or
- (3) exempt under Section 158.052.

Sec. 158.052. EXEMPTIONS; APPLICABILITY. (a) Provides that this chapter does not require registration by:

- (1) a federal or state depository institution, or a subsidiary of a federal or state depository institution;
- (2) a person licensed under Chapter 156 or 157 and assigned a unique identifier, as defined by Section 180.002 (Definitions), if the person does not act as a residential mortgage loan servicer servicing loans for third parties;
- (3) a person licensed under Chapter 342 (Consumer Loans) or regulated under Chapter 343 (Home Loans), if the person does not act as a residential mortgage loan servicer servicing first-lien secured loans; or
- (4) a person making a residential mortgage loan with the person's own funds, or to secure all or a portion of the purchase price of real property sold by that person.

(b) Provides that this chapter does not apply to the servicing of commercial loans.

(c) Provides that nothing in this chapter permits a person who is not otherwise exempt from this chapter to act as a residential mortgage loan originator, as defined by Section 180.002, without obtaining a license under the applicable provisions of law.

Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) Requires a residential mortgage loan servicer, to register under this chapter, to file with the commissioner an application for registration that is required to:

- (1) be in writing;
- (2) be under oath;
- (3) be in the form prescribed by the commissioner; and
- (4) contain the name and the address of the principal place of business of the applicant; and the name, title, and address of the person authorized by the applicant to respond to complaints.

(b) Requires the applicant, at the time of making application, to pay to the commissioner a registration fee in an amount not to exceed \$500 as determined by the finance commission.

Sec. 158.054. UPDATE OF REGISTRATION. Requires a registrant registered under this chapter to notify the commissioner of a change in any of the information provided in the registration application not later than the 30th day after the date the information changes.

Sec. 158.055. BOND. (a) Requires an applicant for registration under this chapter, before approval of the registration, to file with the commissioner, and to keep in force while the registration remains in effect, a surety bond meeting the requirements of this section.

(b) Requires that the bond be in the amount of \$200,000, and payable to the commissioner.

(c) Authorizes the commissioner, if a registrant fails to comply with a final order of the commissioner, to make a claim on the bond to recover and pay a consumer the amount to which the consumer was entitled under the commissioner's order.

(d) Authorizes the commissioner, when an action is commenced on a registrant's bond, to require the filing of a new acceptable bond. Requires the registrant, immediately on recovery on any action on the bond, to file a new bond.

(e) Provides that the bond procedures established by this section are created to specifically exclude the participation of registrants registered under this chapter in the recovery fund established under Chapter 156.

(f) Authorizes the finance commission to adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety.

Sec. 158.056. APPROVAL OF REGISTRATION. Requires the commissioner to approve an application for registration under this chapter on the applicant's payment of the required fees and the commissioner's approval of the surety bond.

Sec. 158.057. NOTICE OF CHANGE OF REGISTRANT'S CONDITION. (a) Requires a registrant to notify the commissioner in writing not later than the 10th day after:

(1) the filing for bankruptcy or reorganization of the registrant;

(2) the filing of a criminal indictment related in any manner to the registrant's activities; or

(3) the receipt of notification of the issuance of a final order to cease and desist, a final order of the suspension or revocation of a license or registration, or another final formal or informal regulatory action taken against the registrant in this or another state.

(b) Requires that the notification required by Subsection (a)(3) include the reasons for a final regulatory action described by that subdivision.

Sec. 158.058. RENEWAL OF REGISTRATION. (a) Requires a registrant registered under this chapter, on or before December 31 of each year, to renew its registration for the next calendar year and to pay to the commissioner a renewal fee in an amount not to exceed \$500 as determined by the finance commission. Requires a registrant, to renew a registration, to continue to meet all standards for registration provided by this chapter.

(b) Provides that if a registrant fails to file a renewal and pay the renewal fee on or before December 31 of a calendar year, the registrant's registration is considered expired at that time and the registrant:

(1) is required to reapply for registration as provided by Section 158.053; and

(2) is prohibited from conducting business as a residential mortgage loan servicer until the registration is approved.

(c) Authorizes the commissioner to refuse to renew a registration if the registrant:

(1) has failed to pay any fees or penalties imposed under this chapter;

(2) has failed to provide the surety bond required under this chapter; or

(3) is not in compliance with any final order of the commissioner.

Sec. 158.059. REVOCATION OF REGISTRATION. Authorizes the commissioner, after notice and hearing, to revoke a registration under this chapter if:

(1) the registrant fails or refuses to comply with the commissioner's written request for a response to a complaint;

(2) the commissioner determines that the registrant has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes fraudulent, deceptive, or dishonest dealings; or

(3) the registrant is not in compliance with any final order of the commissioner.

Sec. 158.060. APPEAL OF CERTAIN COMMISSIONER ACTIONS. Provides that the denial, nonrenewal, or revocation by the commissioner of a registration under this chapter and the appeal of that action are governed by Chapter 2001 (Administrative Procedure), Government Code.

[Reserves Sections 158.061-158.100 for expansion.]

SUBCHAPTER C. INVESTIGATIONS, COMPLAINTS, AND ACTIONS AGAINST REGISTRANT

Sec. 158.101. DISCLOSURE STATEMENT. (a) Requires the servicer, at a residential mortgage loan servicer's first contact with a consumer, to provide to the consumer a written notice disclosing the process for filing a complaint with the Texas Department of Savings and Mortgage Lending (SML). Requires a servicer to maintain documentation evidencing the notice was provided to the consumer.

(b) Authorizes the finance commission to adopt and enforce rules necessary to ensure compliance with this section.

Sec. 158.102. INVESTIGATION OF COMPLAINTS AGAINST REGISTRANT; SURCHARGE. (a) Provides that on receipt of a signed written complaint concerning a registrant by SML, the commissioner or the commissioner's designee:

(1) is required to notify the representative designated by the registrant in the registration application in writing of the complaint and provide a copy of the complaint to the representative;

(2) is authorized to conduct an investigation with authority to access, receive, and use in the investigation any books, accounts, records, files, documents, information, or other evidence; and

(3) is authorized to request that the registrant provide documentary and other evidence considered by the commissioner necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures.

(b) Requires a registrant to promptly provide any evidence requested by the commissioner.

(c) Provides that information obtained by the commissioner during an investigation is confidential unless disclosure of the information is permitted or required by other law or court order. Authorizes the commissioner to share information gathered during an investigation with any state or federal agency.

(d) Authorizes the finance commission, in addition to the registration fee, by rule to impose on each registrant a surcharge based on complaint activity to cover the costs incurred by SML resulting from complaints against residential mortgage loan servicers.

Sec. 158.103. ACTION ON COMPLAINT. (a) Authorizes the commissioner, if, after conducting an investigation, the commissioner determines that the registrant has violated this chapter or another applicable law, to do one or more of the following:

(1) issue an order to the registrant to resolve the complaint by paying to the consumer the damages to which the consumer would be entitled under law; or

(2) order the registrant to cease and desist from the actions found to be in violation of law.

(b) Authorizes a registrant to appeal an order issued under this section. Provides that the appeal is a contested case governed by Chapter 2001, Government Code.

Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. Authorizes the commissioner or the commissioner's designee, to ensure that residential mortgage loan servicers to whom this chapter applies operate in this state in compliance with this chapter and with other law in accordance with this chapter, to participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

Sec. 158.105. CEASE AND DESIST ORDER. (a) Authorizes the commissioner, if the commissioner has reasonable cause to believe that a person who is not registered or exempt under this chapter has engaged, or is about to engage, in an act or practice for which registration is required under this chapter, to issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(b) Requires that an order issued under Subsection (a) contain a reasonably detailed statement of the facts on which the order is issued.

(c) Requires the commissioner, if, not later than the 30th day after the date an order is issued under this section, the person against whom the order is made requests a hearing, to set and give notice of a hearing before the commissioner or a hearings officer. Requires that the hearing be governed by Chapter 2001, Government Code.

(d) Provides that if a hearing is not requested under Subsection (c) not later than the 30th day after the date the order is issued, the order is considered final and not appealable.

(e) Authorizes the commissioner, after giving notice, to impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$2,500 for each day of the violation. Authorizes the commissioner, in addition to any other remedy provided by law, to institute in district court a suit for injunctive relief and to collect the administrative penalty. Provides that a bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

Sec. 158.106. RESTITUTION. Authorizes the commissioner to order a residential mortgage loan servicer to pay to a complainant any compensation received by the servicer in a violation cited in a final order of the commissioner.

SECTION 2. Effective date: September 1, 2011.