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To: Clients and Friends

From: Daniel S. Engle

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

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In the September 6, issue of the Texas Register (Volume 49, Number 36, Pages 6864-6949), the Finance Commission of Texas on behalf of the Texas Department of Savings and Mortgage Lending (“TDSML”) announced proposed changes to the rules concerning loan originators, bankers, mortgage companies, mortgage servicers, and wrap mortgage lending in the Texas Administrative Code. Selected highlights of the proposed 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) Proposed 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.

4) Proposed 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) Proposed 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.”

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Stakeholders have thirty days from publication of the proposed changes on September 6, 2024 to make comments. Comments on the proposed changes may be submitted in writing to Iain A. Barry, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705 or by email to rule.comments@sml.texas.gov. The Texas Secretary of State provides online access to the Texas Register on its website: <https://www.sos.state.tx.us/texreg/index.shtml>.

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