



## Texas Administrative Code

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GENERAL PROVISIONS

RULE §55.1

Purpose and Applicability

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This chapter governs SML's administration and enforcement of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act (other than Subchapter C), and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act), concerning the licensing and conduct of residential mortgage loan originators. This chapter applies to individuals licensed by SML as a residential mortgage loan originator or those required to be licensed, except for individuals engaged in authorized activity subject to the authority of the regulatory official under Finance Code §180.251(c).

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**Source Note:** The provisions of this §55.1 adopted to be effective November 23, 2024, 49 TexReg 9203

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## GENERAL PROVISIONS

## RULE §55.2

## Definitions

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For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapters 157 (other than Subchapter C) and 180, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application," as used in Finance Code §157.002(6) and §180.002(19), and paragraphs (7) and (18) of this section means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(3) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(4) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(5) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

(6) "Making a residential mortgage loan," or any similar derivative or variation of that term, means when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the residential mortgage loan.

(7) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator in response to a solicitation) to obtain a residential mortgage loan and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., the Fannie Mae Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(8) "Mortgage banker" has the meaning assigned by Finance Code §157.002.

(9) "Mortgage company" means, for purposes of this chapter, a "residential mortgage loan company," as defined by Finance Code §157.002.

(10) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §157.002 and §180.002 in defining "Nationwide Mortgage Licensing System and Registry."

(11) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Code §157.002(6) and

§180.002(19), means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees, and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(12) "Originator" has the meaning assigned by Finance Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) and (18) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Finance Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Finance Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

(13) "Person" has the meaning assigned by Finance Code §180.002.

(14) "Residential mortgage loan" has the meaning assigned by Finance Code §157.002 and §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan secured by a structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(15) "Residential real estate" has the meaning assigned by Finance Code §180.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(16) "SML" means the Department of Savings and Mortgage Lending.

(17) "State Examination System" or "SES" means an online, digital examination system developed by the Conference of State Bank Supervisors that securely connects regulators and regulated entities on a nationwide basis to facilitate the examination process.

(18) "Takes a residential mortgage loan application," as used in Finance Code §157.002(6) and §180.002(19) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

(19) "Trigger Lead" means information concerning a consumer's credit worthiness (consumer report) compiled by a credit reporting agency (consumer reporting agency), obtained in accordance with the federal Fair Credit Reporting Act (15 U.S.C. §1681b(c)(1)(B)) that is not initiated by the consumer but, instead, is triggered by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction. The term does not include a consumer report obtained by a mortgage company licensed by SML or a mortgage banker registered with SML in response to an application for credit made by a consumer with that mortgage company or mortgage banker or that is otherwise authorized by the consumer.

(20) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

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RULE §55.3

BANKING AND SECURITIES

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

RESIDENTIAL MORTGAGE LOAN ORIGINATORS

GENERAL PROVISIONS

Formatting Requirements for Notices

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Any notice or disclosure (notice) required by Finance Code Chapters 157 or 180, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapters 157 or 180, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

- (1) Arial;
- (2) Aptos;
- (3) Calibri;
- (4) Century Schoolbook;
- (5) Garamond;
- (6) Georgia;
- (7) Lucinda Sans;
- (8) Times New Roman;
- (9) Trebuchet; and
- (10) Verdana.

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RULE §55.4	Electronic Delivery and Signature of Notices

Any notice or disclosure required by Finance Code Chapters 157 or 180, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

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RULE §55.5

Computation of Time

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The calculation of any time period measured in days by Finance Code Chapters 157 or 180, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

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RULE §55.6

Enforceability of Liens

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A violation of Finance Code Chapters 157 or 180, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

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## LICENSING

## RULE §55.100

## Licensing Requirements

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License Required. An individual, unless exempt as provided by Finance Code §157.0121 or §180.003, or acting under temporary authority as provided by Finance Code §180.0511 and §55.109 of this title (relating to Temporary Authority), is required to be licensed as an originator under Finance Code Chapter 157 if the individual acts or attempts to act in the capacity of an originator concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

- (1) representing or holding that individual out to the public through advertising or other means of communication as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise representing that the individual can or will perform residential mortgage loan origination services as an originator;
- (2) signing a residential mortgage loan application as the originator (e.g., signing the "Loan Originator Information" section of the Fannie Mae Form 1003 Uniform Residential Loan Application; which is deemed to be a certification by the originator that he or she took the residential mortgage loan application);
- (3) providing disclosures to a mortgage applicant or prospective mortgage applicant or discussing or explaining such disclosures (an individual who prepares a disclosure at the direction and under the supervision of a licensed originator who does not send the disclosure to or discuss the disclosure with the mortgage applicant or prospective mortgage applicant and does not sign the disclosure is deemed not to have provided a disclosure for purposes of this paragraph), including:
  - (A) the disclosures required by Finance Code §156.004 or §157.0021, and §55.200(a) of this title (relating to Required Disclosures);
  - (B) the good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar; and
  - (C) the disclosure for acting in the dual capacity of an originator and real estate broker, sales agent, or attorney, as described by Finance Code §157.024(a)(10);
- (4) determining the lender or investor to which the prospective residential mortgage loan will be submitted;
- (5) issuing or signing a conditional pre-qualification letter or conditional approval letter, or similar, as specified by Finance Code §156.105 and §157.02012, and §55.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters); and
- (6) being a loan processor or underwriter who is an independent contractor, as provided by Finance Code §180.051(b). An individual working for a mortgage company licensed by SML or a mortgage banker registered with SML, whose compensation for federal income tax purposes is not reported on a W-2 form (e.g., a self-employed worker who is issued an IRS Form 1099-NEC), that acts as a loan processor or underwriter, is deemed to be an independent contractor loan processor or underwriter for purposes of Finance Code §180.051(b) and must be licensed as an originator. All individuals working for a mortgage company that is an

independent loan processor underwriter company, regardless of how their income is documented (including W-2 employees), who act as a loan processor or underwriter or otherwise perform work in connection with the provision of loan processing or underwriting services by the company, are deemed to be independent contractors for purposes of Finance Code §180.051(b) and must be licensed as an originator.

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RULE §55.101

Applications for Licensure

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(a) NMLS. Applications for licensure must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapters 157 and 180 are met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

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LICENSING

RULE §55.102

Fees

(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §157.013(b)(1), exclusive of fees charged by NMLS, as described in subsection (b) of this section, and exclusive of the recovery fund fee required by Finance Code §157.013(b)(2). The Commissioner may establish different fee amounts for a new license versus renewal of the license. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The license fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges various fees to process the application. Such fees are determined by NMLS and must be paid by the applicant at the time he or she files the application. The current fees are set in NMLS and posted on the NMLS Resource Center website (nationwidelicensingsystem.org). Specifically, NMLS charges the following types of fees:

- (1) application processing fee;
  - (2) credit report fee; and
  - (3) criminal background check fee.
- (c) All fees are nonrefundable and nontransferable.

(d) Insufficient Funds Fee. The Commissioner may collect a fee in an amount determined by the Commissioner not to exceed \$50 for any returned check, credit card chargeback, or failed automated clearing house (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

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## LICENSING

## RULE §55.103

## Renewal of the License

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(a) A license may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees;

(2) a determination by SML that the originator continues to meet the minimum requirements for licensure, including the requirements of Finance Code §§157.012(c), 157.015(g), and 180.055; and

(3) completion of the continuing education required by Finance Code §180.060 and §55.108 of this title (relating to Required Education) as reflected in NMLS.

(b) Application of §55.101. A renewal request is a license application subject to the requirements of §55.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §55.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the originator to continue conducting regulated activities while the originator works diligently to resolve the deficiency. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the originator of the obligation to resolve the deficiencies. A license approved under this subsection is deemed to be a conditional license for which the originator, in order to maintain the license, must resolve the deficiencies within 30 days after the date the license is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the license.

(d) Reinstatement. This section applies to an individual seeking reinstatement of an expired license (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §157.016 and must be construed accordingly. An originator license cannot be renewed beyond the reinstatement period; instead, the individual must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.

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## LICENSING

## RULE §55.104

## NMLS Records; Notices Sent to the Originator

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(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the license status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available license status options and their meaning.

(b) Amendments to License Records Required. Unless Finance Code §157.019 applies and requires additional notice, an originator must amend his or her NMLS license records (MU4 filing) within 10 days after the date of any material change affecting any aspect of the MU4 filing, including, but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);

(2) phone number;

(3) email address (including his or her NMLS account email address, as described by subsection (d)(1) of this section);

(4) mailing address;

(5) residential history;

(6) employment history; and

(7) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(c) Amendments Requiring New Credit History Check. An originator amending his or her MU4 filing to make a financial disclosure is deemed to have authorized SML to retrieve a current copy of his or her credit report, as provided by Finance Code §157.0132 and §55.111 of this title (relating to Background Checks), and the originator must further amend his or her MU4 filing to formally consent to and request such credit report in NMLS, if requested by SML.

(d) Amendments Requiring New Criminal Background Check. An originator amending his or her MU4 filing to make a criminal disclosure is deemed to have authorized SML to perform an additional criminal background check in accordance with Finance Code §157.0132 and §55.111 of this title, and the originator must further amend his or her MU4 filing to formally consent to and request such criminal background check in NMLS, if requested by SML.

(e) Notices Sent to the Originator. Any correspondence, notification, alert, message, official notice, or other written communication from SML will be sent to the originator in accordance with this subsection using the originator's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the originator has designated for use

with his or her NMLS account (a/k/a the "NMLS account email address" or "individual account email address"). The NMLS account email address is the same email address to which NMLS-generated notifications are sent. Service by email is complete on transmission of the email to the license holder's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. An originator must monitor the email account designated as his or her NMLS account email address and ensure that emails from SML or system notifications from NMLS are not lost in a "spam folder" or similar, or undelivered due to intervention by a "spam filter" or similar. An originator is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. An originator is further deemed to have constructive notice of any NMLS system notifications sent to him or her by email.

(2) Service by Mail. Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the originator by mail and the document communicates a deadline by or a time during which the originator must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

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**Source Note:** The provisions of this §55.104 adopted to be effective November 23, 2024, 49 TexReg 9203

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LICENSING

RULE §55.105

Conditional License

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(a) Conditional License; Terms and Conditions. The Commissioner may, in his or her sole discretion, issue a license on a conditional basis. A conditional license will be assigned the license status "Approved - Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:

(1) requiring the originator to undergo additional credit checks or provide evidence of satisfaction concerning a debt, judgment, lien, child support obligation, or other financial delinquency affecting his or her financial condition;

(2) requiring the originator to undergo additional criminal background checks or provide information on a periodic basis or upon request concerning the status of a pending criminal proceeding that might affect his or her eligibility for the license;

(3) requiring the originator to take other specific action or provide other specified information to address a known deficiency; and

(4) requiring the originator to surrender the license upon the occurrence of an event that would render the originator ineligible for the license.

(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.

(c) Conditional License in Lieu of Denial. The Commissioner may issue a license on a conditional basis in lieu of seeking denial of the license where the Commissioner determines the individual applying for the license has the capacity to resolve the deficiency serving as grounds for the denial in a reasonable period of time. The granting of a license under this subsection is a voluntarily forbearance from seeking denial of the license and does not operate as a waiver by the Commissioner of any grounds he or she has to seek denial of the license. The Commissioner is under no obligation to continue the license on a conditional basis and may seek denial in the future based on the same or similar circumstances that existed at the time the conditional license was granted.

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LICENSING

RULE §55.106

Surrender of the License

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(a) Surrender Request. An originator may seek surrender of the license by filing a license surrender request (request) in NMLS. The request must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:

(1) the originator is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;

(2) the originator is in violation of an order of the Commissioner; or

(3) the originator has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML.

(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the originator's license will be assigned the license status "Approved - Inactive" in NMLS.

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## LICENSING

## RULE §55.107

## Sponsorship of Originator

(a) **Sponsorship Required.** In order to act in the capacity of an originator, an originator's license must be sponsored in NMLS by a mortgage company licensed by SML or a mortgage banker registered with SML. To establish sponsorship by a mortgage company or mortgage banker, the originator must amend his or her NMLS license records (MU4 filing) to reflect employment by such mortgage company or mortgage banker and grant such mortgage company or mortgage banker access to his or her license records to allow the mortgage company or mortgage banker to register a relationship with the originator in NMLS. The mortgage company or mortgage banker must make corresponding filings in NMLS to establish such sponsorship. Sponsorship is not effective until the mortgage company's or mortgage banker's sponsorship request has been reviewed and approved by SML. An originator must not act or attempt to act in the capacity of an originator on behalf of a mortgage company or mortgage banker until sponsorship with such mortgage company or mortgage banker has been established and is effective. Information about how to file for sponsorship is available on the NMLS Resource Center website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org)).

(b) **Number of Sponsorships.** An originator may be sponsored by more than one mortgage company or mortgage banker if:

(1) the originator clearly identifies to the mortgage applicant the sponsoring entity or entities on whose behalf the originator is acting prior to taking an application;

(2) the application clearly states the sponsoring entity on whose behalf the originator is acting (e.g., in the "Loan Originator Information" section of the Fannie Mae 1003 Uniform Residential Loan Application). The mortgage applicant may apply with more than one sponsoring entity, provided, there are separate applications for each such entity that clearly identifies the sponsoring entity to which the application was submitted;

(3) the authorization forms, disclosures, loan estimates, pre-qualification letters, conditional approval letters, closing disclosures, and other materials provided to the mortgage applicant clearly identify the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;

(4) the originator does not misrepresent or misconstrue to the mortgage applicant the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;

(5) the originator discloses to his or her sponsoring entities the existence the originator's multiple sponsorships;

(6) the originator does not steer the mortgage applicant to a sponsoring entity offering terms less favorable to the mortgage applicant and that might have the effect of increasing the originator's compensation; and

(7) the originator is only compensated for services actually performed and does not share or split any fee.

(c) **Inactive License Status Pending Sponsorship.** An applicant may be issued a license in an inactive status if the applicant has met all requirements for licensure except the requirement that the originator be sponsored by an appropriate entity, as provided by Finance Code §157.012(a)(1). While in an inactive status, an originator must not act in the capacity of an originator and must continue to meet the minimum requirements for licensure.

A license in an inactive status is assigned the license status "Approved - Inactive" in NMLS.

(d) Termination of Sponsorship. Sponsorship may be terminated by the mortgage company or mortgage banker, or the originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(e) Failure to Maintain Sponsorship; Inactive Status. If an originator's license does not maintain sponsorship by a mortgage company or mortgage banker, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the originator must not act or attempt to act in the capacity of an originator. An originator may voluntarily place his or her license in an inactive status by terminating all sponsorships as described by subsection (d) of this section.

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**Source Note:** The provisions of this §55.107 adopted to be effective November 23, 2024, 49 TexReg 9203

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## RULE §55.108

## Required Education

(a) Pre-Licensing Education and Examination. As provided by Finance Code §180.056, an individual applying for an originator's license (applicant) must complete the pre-licensing education and coursework prescribed by the federal S.A.F.E. Mortgage Licensing Act (federal SAFE Act) and approved by NMLS. Such education and coursework must include 3 hours of instruction relating to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas. As provided by Finance Code §180.057, an applicant must pass a written test prescribed by the federal SAFE Act and approved by NMLS.

(b) Lapsing of Pre-Licensing Education and Examination. An applicant other than a current license holder seeking renewal under §55.103 of this title (relating to Renewal of the License; i.e., an individual seeking a new license) must have completed the required pre-licensing education and coursework described by subsection (a) within the 3 years preceding the date of application; otherwise, the applicant must take the pre-licensing education and coursework approved and offered at the time of the application. Additionally, if an applicant for a new license did not pass the National Component with Uniform State Content examination approved by NMLS on or after April 1, 2013, the applicant must pass the current pre-licensing examination approved by NMLS in order to satisfy the requirements of Finance Code §180.057 (examinations taken prior to April 1, 2013, will not satisfy such requirements).

(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by Finance Code §180.056, SML will recognize pre-licensing education and coursework taken in another jurisdiction subject to the requirements of the federal SAFE Act; provided, it is approved by NMLS for that purpose and otherwise meets the requirements of the federal SAFE Act, and Finance Code Chapter 180. However, SML will not recognize those hours of pre-licensing education and coursework taken in another jurisdiction the content of which was specific to that jurisdiction and that comprised the 12-hour undefined electives portion of such pre-licensing education and coursework. An applicant may take coursework that is of limited duration and limited in scope to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas in order to supplement and remedy a shortfall in hours derived from non-recognition of pre-licensing education taken in another jurisdiction, as provided by this subsection.

(d) Continuing Education. As provided by Finance Code §180.060 and §55.103 of this title, an originator must complete, on an annual basis, continuing education and coursework approved by NMLS in order to renew the license.

**Source Note:** The provisions of this §55.108 adopted to be effective November 23, 2024, 49 TexReg 9203

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RULE §55.109

Temporary Authority

(a) Purpose. The purpose of this section is to specify how an originator licensed in another jurisdiction or by a different licensing authority, or who is a "registered mortgage loan originator" (as defined by Finance Code §180.002), may avail himself or herself of the ability to act in the capacity of an originator in Texas temporarily while he or she seeks licensure by SML, as provided by Finance Code §180.0511.

(b) Application Required. An individual seeking to act under temporary authority must comply with the requirements of Finance Code §180.0511. Among other requirements, Finance Code §180.0511 requires that the individual file an application with SML seeking licensure to be recognized as having temporary authority. An individual must not act or attempt to act in the capacity of an originator until the application has been filed and the individual has been assigned an NMLS license status by SML recognizing such temporary authority (see §55.104 of this title (relating to NMLS License Records; Notices Sent to the Originator)). An individual may confirm his or her temporary authority status by reviewing his or her license status in NMLS or on the NMLS Consumer Access website (nmlsconsumeraccess.org).

(c) Incomplete Applications. The requirements of §55.101(c) of this title (relating to Applications for Licensure), providing for the deemed withdrawal of an application that is not complete, do not apply to an application for which temporary authority status is conferred.

(d) Maximum Duration. Pursuant to Finance Code §180.0511, the maximum duration for temporary authority is 120 days. When an originator has received the cumulative benefit of 120 days of temporary authority, no further temporary authority is allowed. An originator acting under temporary authority who has exceeded the 120-day maximum duration will have his or license status conferring temporary authority removed. An individual making an application for licensure who previously received the benefit of 120 days of temporary authority will not be conferred temporary authority status.

**Source Note:** The provisions of this §55.109 adopted to be effective November 23, 2024, 49 TexReg 9203

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## RULE §55.110

## Licensing of Military Service Members, Military Veterans, and Military Spouses

(a) Purpose. This section specifies licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Occupations Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Occupations Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license in a timely manner if the individual establishes to the satisfaction of the Commissioner that he or she failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time period specified by Finance Code §157.016; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license (see §55.103 of this title (relating to Renewal of the License)).

(d) Expedited Review and Processing. Occupations Code §55.005 provides that a military service member, military veteran, or military spouse is entitled to expedited review and processing of his or her application for an originator license. A military service member, military veteran, or military spouse seeking expedited review of his or her application must, after applying for the license in NMLS, make a written request for expedited review using the current form prescribed by SML and posted on its website ([sml.texas.gov](http://sml.texas.gov)), including providing the supporting documentation specified in the form, to enable SML to verify the individual's status as a military service member, military veteran, or military spouse. SML, within 30 days after the date it receives a complete application and request for expedited review from a qualifying applicant who is a military service member, military veteran, or military spouse, will process the application, and, provided the applicant is otherwise eligible to receive the license, issue a license to the applicant, if the applicant:

- (1) is licensed as an originator in another jurisdiction with substantially equivalent licensing requirements; or
- (2) was licensed as an originator in Texas within the 5 years preceding the date of the application.

(e) Temporary Authority for Military Service Member or Military Spouse. Occupations Code §55.0041 provides that a military service member or military spouse may engage in a business or occupation for which a license is required without obtaining the license if the military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual licensed to act as an originator in another jurisdiction may act under temporary authority in this state (the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act), 12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Occupations Code §55.0041(c) further requires that a military service member or military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military service member or military spouse seeking to avail himself or herself of the temporary authority conferred by Occupations Code §55.0041 must apply for and seek temporary authority in accordance with Finance Code §180.0511 and §55.109 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Occupations Code §55.004, an originator license issued in another jurisdiction is substantially equivalent to a Texas originator license if it is issued in accordance with the requirements of the federal SAFE Act (12 U.S.C. §§5501-5117). SML will verify a license issued in another jurisdiction in NMLS.

(g) Credit for Military Experience. As provided by Occupations Code §55.007, with respect to an applicant who is a military service member or military veteran, SML will credit verified military service, training, or education toward the requirements for an originator license by considering the service, training, or education as part of the applicant's employment history. The following items cannot be substituted for military service, training, or education:

- (1) the pre-licensing education and coursework specified by Finance Code §180.056 and §55.108(a) of this title (relating to Required Education);
- (2) the pre-licensing examination specified by Finance Code §180.057 and §55.108(a) of this title; and
- (3) continuing education and coursework specified by Finance Code §180.060 and §55.108(d) of this title.

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RULE §55.111

Background Checks

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(a) NMLS Background Check; Fingerprints Required. An individual applying for an originator license (applicant) must provide fingerprints as prescribed by NMLS in order to facilitate a criminal background check through the Federal Bureau of Investigation. Additionally, an applicant must amend his or her license records (MU4 filing) to provide authorization for SML to obtain the criminal background check in NMLS.

(b) Background Checks by SML. Pursuant to Finance Code §157.0132 and Government Code §411.1385, SML is authorized to conduct a criminal background check through the Texas Department of Public Safety (DPS). If requested by SML, applicant must submit to the DPS criminal background check process, including providing fingerprints and paying any applicable fees to DPS or its designated third-party fingerprint processor to complete the criminal background check process.

(c) NMLS Credit Check. An applicant must amend his or her license records (MU4 filing) to provide authorization for SML to obtain a copy of the applicant's credit report concerning the applicant's credit history from a credit reporting agency (credit bureau) in NMLS.

(d) Supplemental Information. An applicant must provide information related to any administrative, civil, or criminal findings or proceedings by a governmental jurisdiction, including any information required by §55.112 of this title (relating to Procedures for Review of Background Checks) to SML. The information must be uploaded to NMLS.

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## RULE §55.112

## Procedures for Review of Background Checks

(a) Purpose. This section establishes procedures used by SML to perform background checks and review an individual's criminal background and credit history to determine his or her fitness and eligibility for licensure in accordance with Finance Code §157.0132.

(b) Supporting Information/Documentation for Criminal Background Check. An individual applying for an originator license (applicant) with a criminal history, when requested by SML, must provide the following information concerning each conviction or other criminal proceeding identified by SML:

(1) a detailed explanation, in writing, of the events and circumstances for each conviction or other criminal proceeding required to be self-disclosed in his or her application, signed and dated by the individual seeking licensure; and

(2) copies of court records or other documentation reflecting:

(A) the nature of the criminal offense (including the statutory provisions violated, and the severity or classification of the offense);

(B) the individual's plea (including any terms or other arrangements for the plea);

(C) the conviction (judgment or court order);

(D) the sentence imposed;

(E) any probation or community supervision imposed (including evidence of compliance); and

(F) any other action in the proceeding causing final disposition of the case to be deferred.

(c) Supporting Information/Documentation for Credit History Check. An applicant, when requested by SML, must provide the following information concerning each financial disclosure made in his or her application and each credit account on his or her credit report identified by SML:

(1) a detailed explanation, in writing, of the background and circumstances surrounding each financial disclosure made or credit account identified, signed and dated by the individual seeking licensure;

(2) if a bankruptcy proceeding is disclosed, a copy of the order of discharge, or if the proceeding is ongoing, the current bankruptcy petition, and the current financial schedules filed in the proceeding;

(3) if a judgment or lien is disclosed, a copy of such judgment or lien filing; and

(4) if delinquent child support is disclosed, a copy of the most recent statement of account or other documentation reflecting the current amount due, and if the individual is in a payment plan or has otherwise entered into terms for repayment, a copy of such plan or terms.

(d) Effect of Providing Supporting Documentation. By providing documentation to SML in accordance with

subsections (b) and (c) of this section, the applicant certifies that he or she has a good faith belief that such documents are true and correct copies of documents issued by the person that originally created the document that SML may rely on in making a decision on the application. By providing such supporting documentation, the applicant consents to such documentation being admissible at an adjudicative hearing if the Commissioner seeks to deny the application, resulting in a contested case, and the applicant is deemed to have waived any objections concerning the admissibility of such documentation into the administrative record at such adjudicative hearing.

(e) Certified Documents. Notwithstanding subsection (d) of this section, the applicant, at his or her own cost, must obtain and provide SML with certified or exemplified copies of any documents described in subsections (b) and (c) of this section, upon written request by SML.

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## RULE §55.113

## Criminal Conviction Guidelines

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(a) Purpose. This section establishes the criteria used by SML to review an individual's criminal history to determine his or her eligibility and fitness to be licensed by SML as an originator. This section implements the requirements of Occupations Code §53.025, requiring SML to establish guidelines related to such reviews, including designating particular crimes and offenses SML considers to be directly related to the duties and responsibilities of acting as an originator and may constitute grounds for denial of licensure. The Commissioner's authority to deny an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the Finance Code for denial of licensure based on an individual's criminal history, including outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure by operation of law due to his or her criminal history:

(1) an individual who, within the 7 years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere (no contest) to, a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Finance Code §180.055(a); and

(2) an individual who, at any time, has been convicted of, or pled guilty or nolo contendere to, a felony offense involving an act of fraud, dishonesty, breach of trust, or money laundering, in accordance with Finance Code §180.055(a). Any felony offense listed in the schedule contained in subsection (e) of this section having a nexus to residential mortgage loan origination arising from the categories of criminal offenses related to residential mortgage loan origination under subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Finance Code §180.055(a).

(c) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the lender or underwriter that determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses, and credit worthiness to determine whether he or she will qualify for a loan, and on what terms he or she might qualify. The originator may assist the consumer in completing the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including providing a conditional pre-qualification letter to establish the consumer's purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as interest rates in the marketplace fluctuate and is often a key

figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing to solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, surveyors, insurance providers, closing/settlement agents, and the representatives of various taxing authorities. In performing his or her duties, an originator has access to sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the Commissioner have determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

- (1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;
- (2) criminal offenses involving theft or embezzlement; and
- (3) criminal offenses involving intoxication by drugs or alcohol.

(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Commissioner have determined the criminal offenses in the following schedule meet one or more of the categories deemed to relate to residential mortgage loan origination by subsection (d) of this section and are directly related to the duties and responsibilities of an individual licensed by SML to act as an originator. The schedule includes those criminal offenses most likely to be encountered by SML and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses and does not limit SML from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include any criminal offense meeting one or more of the categories deemed to relate to residential mortgage loan origination, as provided by subsection (d) of this section. The schedule should further be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432), violations of the Uniform Code of Military Justice (10 U.S.C. §801 et seq.), or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.

#### [Attached Graphic](#)

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by SML to act as an originator, the Commissioner will consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to act as an originator;
- (3) the extent to which an originator license might offer an opportunity for the individual to engage in further criminal activity of the same type as that in which the individual has previously been involved;
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed originator; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.



(g) In addition to the factors in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Finance Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:

- (1) the extent and nature of the individual's past criminal activity;
- (2) the age of the individual when the crime was committed;
- (3) the amount of time that has elapsed since the individual's criminal activity;
- (4) the amount of time that has elapsed since the individual's release from incarceration;
- (5) the conduct and work activity of the individual before and after the criminal activity;
- (6) evidence of the individual's rehabilitation or rehabilitative efforts;
- (7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and the reasons the employer is recommending that the individual be considered fit to be licensed by SML; and

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## LICENSING

## RULE §55.114

## Request for Criminal History Eligibility Determination

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(a) Purpose and Applicability. This section establishes the procedures by which an individual may seek a preliminary review of his or her eligibility to be licensed by SML with respect to his or her criminal history prior to formally applying with SML for licensure, as authorized by Occupations Code Chapter 53. Pursuant to Occupations Code §53.102, this section applies to an individual who has reason to believe he or she is ineligible to be licensed by SML due to a conviction or deferred adjudication for a felony or misdemeanor offense, and who is enrolled or is planning to enroll in an educational program that prepares an individual to be licensed by SML. The Commissioner will not offer advisory opinions concerning criminal convictions or sentences that have not actually occurred.

(b) Request for Preliminary Eligibility Determination; Supporting Documentation. The request must be made using the current form prescribed by SML and posted on its website ([sml.texas.gov](http://sml.texas.gov)). The fee to make a request under this section is determined by the Commissioner and posted on SML's website. The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days.

(c) Review of Request for Preliminary Evaluation. A request made under this section will be reviewed by SML to determine the requestor's eligibility using the same procedures for review of an individual's criminal history when making an application for licensure and is subject to SML's criminal conviction guidelines in §55.113 of this title (relating to Criminal Conviction Guidelines). As a result, the requestor, in making the request, must list all offenses that actually resulted in a criminal conviction or that otherwise constitute a criminal conviction for purposes of Finance Code §157.0131 and §55.113 of this title. The requestor's incarcerated status that would render the individual ineligible for licensure pursuant to Occupations Code §53.021(b) will be disregarded; however, SML will consider the implications of the requestor's anticipated release from incarceration in making its determination.

(d) Determination of Eligibility. Within 90 days after the date the fully-completed request is received, SML will notify the requestor of his or her eligibility to receive a license issued under Finance Code Chapters 157 and 180.

(e) Effect of Determination. In the absence of new evidence known but not disclosed by the requestor, or not reasonably available to SML in consideration of the disclosures made by the requestor, the Commissioner's decision regarding eligibility of the requestor concerning his or her criminal history will be determinative for purposes of reviewing a subsequent application for licensure from the requestor. However, the Commissioner's decision regarding eligibility will not be determinative to the extent the request for preliminary eligibility determination contained fraudulent or misleading information or supporting documentation or otherwise failed to list a criminal conviction of the requestor that was not otherwise discovered by SML in investigating the request, regardless of whether or not the requestor was aware of the conviction at the time of the request, and including any subsequent conviction received by the requestor. A decision that the requestor is eligible will not be determinative if the requestor is determined to be ineligible for licensure by operation of law as provided by Finance Code §180.055(a) and §55.113 of this title.

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DUTIES AND RESPONSIBILITIES

RULE §55.200

Required Disclosures

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(a) Specific Notice to Applicant. An originator sponsored by a mortgage company licensed by SML must provide a mortgage applicant with the notice required by §56.200(b) of this title (relating to Required Disclosures). An originator sponsored by a mortgage banker registered with SML must provide a mortgage applicant with the notice required by §57.200(b) of this title (relating to Required Disclosures). The notice must be sent at the time the originator takes the initial application for a residential mortgage loan.

(b) Posted Notice on Websites. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.200(c) of this title. An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.200(c) of this title.

(c) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:

- (1) the name of the mortgage company or mortgage banker sponsoring the originator and its NMLS ID;
- (2) the mortgage company's or mortgage banker's website address, if it has a website; and
- (3) the name of the originator and his or her NMLS ID.

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**Source Note:** The provisions of this §55.200 adopted to be effective November 23, 2024, 49 TexReg 9203

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Conditional Pre-Qualification and Conditional Approval Letters

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(a) Compliance with Mortgage Company and Mortgage Banker Rules. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters). An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters).

(b) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the originator.

(c) Duty to Issue Accurate Letters; Caution. A conditional pre-qualification letter or conditional approval letter must be accurate and reflect the actual information that the originator considered in issuing the letter. An originator is cautioned that the issuance of an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter constitutes a violation as provided by §55.202 of this title (relating to Fraudulent, Misleading, or Deceptive Practices, and Improper Dealings) and may result in disciplinary action against the originator. Additionally, if an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter is relied on by the mortgage applicant to incur out-of-pocket costs in connection with the prospective mortgage loan, it may subject the originator to a recovery claim under Finance Code Chapter 156, Subchapter F.

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**Source Note:** The provisions of this §55.201 adopted to be effective November 23, 2024, 49 TexReg 9203

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## RULE §55.202

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## DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

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## DUTIES AND RESPONSIBILITIES

## Fraudulent, Misleading, or Deceptive Practices and Improper Dealings

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(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by an originator constitutes fraudulent and dishonest dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), a scheme to defraud a person for purposes of Finance Code §180.153(1), and a false or deceptive statement or representation for purposes of Finance Code §180.153(11):

- (1) knowingly misrepresenting the originator's relationship to a mortgage applicant or any other party to a residential mortgage loan transaction or prospective residential mortgage loan transaction;
- (2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense to a mortgage applicant or prospective mortgage applicant in connection with a residential mortgage loan;
- (3) knowingly overstating, inflating, altering, amending or disparaging any source or potential source of residential mortgage loan funds in a manner which disregards the truth or makes any knowing and material misstatement or omission;
- (4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;
- (5) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether to make or acquire a residential mortgage loan;
- (6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;
- (7) recommending or encouraging default or delinquency or the continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;
- (8) altering any document produced or issued by SML, unless otherwise permitted by statute or a rule of SML.
- (9) using a trigger lead in misleading or deceptive manner by, among other things:
  - (A) failing to state in the initial communication with the consumer:
    - (i) the originator's name and mortgage company or mortgage banker on behalf of which the originator is acting;
    - (ii) a brief explanation of how the originator or his or her sponsoring mortgage company or mortgage banker obtained the consumer's contact information to make the communication (i.e., an explanation of trigger leads);
    - (iii) that the originator and his or her sponsoring mortgage company or mortgage banker is not affiliated

with the creditor to which the consumer made the credit application that resulted in the trigger lead; and

(iv) that the purpose of the communication is to solicit new business for the mortgage company or mortgage banker sponsoring the originator;

(B) contacting a consumer who has opted out of prescreened offers of credit under the federal Fair Credit Reporting Act (FCRA; 12 U.S.C. §1681b(e)); or

(C) failing in the initial communication with the consumer to make a firm offer of credit as provided by the FCRA (12 U.S.C. §1681a(l) and §1681b(c)); or

(10) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper and Unfair Dealings. The following conduct by an originator constitutes improper dealings for purposes of Finance Code §157.024(a)(3) and unfair practices for purposes of Finance Code §180.153(2):

(1) Acting negligently in performing an act requiring a license under Finance Code Chapters 157 or 180;

(2) Violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 157 or 180, or this chapter, including, but not limited to:

(A) Consumer Credit Protection Act, Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.);

(B) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.);

(C) Regulation N (12 C.F.R. §1014.1 et seq.);

(D) Gramm-Leach-Bliley Act (GLBA; 15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

(E) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(F) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. 1024.1 et seq.);

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.);

(H) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et seq.);

(I) Finance Code Chapter 159 and Chapter 59 of this title; and

(J) Texas Constitution, Article XVI, §50 and Chapter 153 of this title;

(3) soliciting by phone a consumer who has placed his or her contact information on the national do-not-call registry maintained by the Federal Trade Commission (FTC), unless otherwise allowable under the FTC's Telemarketing Sales Rule (16 C.F.R. §310.4(b)(iii)(B));

(4) Issuing a conditional pre-qualification letter or conditional approval letter under §55.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the

required form for the letter or is inaccurate, erroneous, or negligently-issued;

(5) Representing to a mortgage applicant that a charge or fee which is payable to the originator or the mortgage company or mortgage banker sponsoring the originator is a "discount point" or otherwise benefits the mortgage applicant unless the loan closes and:

(A) the mortgage company or mortgage banker sponsoring the originator is making the residential mortgage loan (lender); or

(B) the mortgage company or mortgage banker sponsoring the originator is not the lender but demonstrates by clear and convincing evidence that the lender charged or collected discount points or other fees which the mortgage company or mortgage banker sponsoring the originator paid to the lender on behalf of the mortgage applicant to buy down the interest rate on the residential mortgage loan;

(6) Failing to accurately respond within a reasonable time to reasonable questions from a mortgage applicant or prospective mortgage applicant concerning the scope and nature of the originator's services and any costs; or

(7) acting as an originator when the originator is licensed but not sponsored by a mortgage company or mortgage banker, or the license is otherwise in an inactive status.

(c) Related Transactions. An originator engages in fraudulent and deceptive dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), and a scheme to defraud a person for purposes of Finance Code §180.153(1) when, in connection with the origination of a residential mortgage loan:

(1) the originator:

(A) offers other goods or services to a mortgage applicant in a separate but related transaction; and

(B) the originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) the originator:

(A) affiliates with another person that provides goods or services to a mortgage applicant in a separate but related transaction;

(B) the affiliated person engages in fraudulent, misleading, or deceptive acts in that transaction;

(C) the originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

(D) the originator failed to take appropriate steps to prevent or limit the fraudulent, misleading, or deceptive acts.

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RULE §55.203

Advertising

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An originator sponsored by a mortgage company licensed by SML must comply with the advertising requirements in §56.203 of this title (relating to Advertising). An originator sponsored by a mortgage banker registered with SML must comply with the advertising requirements in §57.203 of this title (relating to Advertising).

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**Source Note:** The provisions of this §55.203 adopted to be effective November 23, 2024, 49 TexReg 9203

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RULE §55.204

Books and Records

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An originator sponsored by a mortgage company licensed by SML must comply with the books and records requirements in §56.204 of this title (relating to Books and Records). An originator sponsored by a mortgage banker registered with SML must comply with the books and records requirements in §57.204 of this title (relating to Books and Records). An originator fulfills the requirements of §56.204 of this title and §57.204 of this title, as applicable, if his or her sponsoring mortgage company or mortgage banker maintains the required books and records on behalf of the originator. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the records arising from the originator's work are properly maintained by the mortgage company or mortgage banker sponsoring his or her license.

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RULE §55.205

Mortgage Call Reports

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(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports an originator is required to file under Finance Code §180.101.

(b) Fulfillment by Mortgage Company or Mortgage Banker. Mortgage companies licensed by SML and mortgage bankers registered with SML are required to file mortgage call reports. An originator is not expected to and should not attempt to file his or her own mortgage call reports. Instead, the originator's activity must be included in the mortgage call reports filed by the mortgage company or mortgage banker sponsoring the originator. An originator fulfills the requirements of Finance Code §180.101 if his or her sponsoring mortgage company or mortgage banker files mortgage call reports that include the originator's activity. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the originator's activity is included in a mortgage call report filed by his or her sponsoring mortgage company or mortgage banker in compliance with §56.205 of this title (relating to Mortgage Call Reports), applicable to mortgage companies licensed by SML, and §57.205 of this title (relating to Mortgage Call Reports), applicable to mortgage bankers registered with SML.

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**Source Note:** The provisions of this §55.205 adopted to be effective November 23, 2024, 49 TexReg 9203

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## SUPERVISION AND ENFORCEMENT

## RULE §55.300

## Examinations

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(a) Purpose. This section clarifies and establishes requirements related to examinations of an originator conducted by SML under Finance Code §157.021.

(b) State Examination System (SES). Examinations are conducted in SES ([stateexaminationsystem.org](http://stateexaminationsystem.org)). The mortgage company or mortgage banker sponsoring the originator must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage banker or mortgage company sponsoring the originator listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(e) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapters 156, 157 and 180, and this chapter, and will specifically address whether:

- (1) all persons are properly licensed and sponsored;
- (2) all office locations are properly licensed or registered, as provided by §56.206 of this title (relating to Office Locations; Remote Work) and §57.206 of this title (relating to Office Locations; Remote Work);
- (3) all required books and records are being maintained in accordance with §56.204 of this title (relating to Books and Records) and §57.204 of this title (relating to Books and Records);
- (4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator are being properly followed (including, but not limited to, the requirements described in §55.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings); and
- (5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 156, 157, and 180.

(f) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage transaction log required by §56.204(c)(1) or (d)(1) of this title, applicable to mortgage companies licensed by SML, or §57.204(c)(1) or (d)(1) of this title, applicable to mortgage bankers registered with SML. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

- (g) Failure to Cooperate; Disciplinary Action. Failure by an originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary action including, but not limited to, imposition of an administrative penalty.
- (h) Reimbursement for Costs. The examiners may require an originator, at his or her own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report. When the examiners must travel outside of Texas to conduct an examination of an originator because the required records are maintained at a location outside of Texas, SML will require reimbursement for the actual costs incurred in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Any such costs will be assessed against the originator in NMLS and must be paid in NMLS.

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**Source Note:** The provisions of this §55.300 adopted to be effective November 23, 2024, 49 TexReg 9203

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SUPERVISION AND ENFORCEMENT

RULE §55.301

Investigations

---

(a) Purpose. This section clarifies and establishes requirements related to investigations of an originator conducted by SML under Finance Code §157.021.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than creditable indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. An investigation may include:

- (1) review of documentary evidence;
- (2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;
- (3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;
- (4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and
- (5) other lawful investigative methods SML deems necessary or appropriate.

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**Source Note:** The provisions of this §55.301 adopted to be effective November 23, 2024, 49 TexReg 9203

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## SUPERVISION AND ENFORCEMENT

## RULE §55.302

## Confidentiality of Examination, Investigation, and Inspection Information

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §157.021.

(b) Confidential Information. All information obtained by SML during an examination, investigation, or inspection is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §156.301 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or created during an examination, investigation, or inspection;

(2) information that is derived from or is the product of the confidential information described by paragraph (1) of this subsection, including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an examination, investigation, or inspection, including assertions of any violations, deficiencies, or issues identified, or any directives, mandates, or recommendations for action by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection; including, but not limited to, any corrective or remedial action directed by SML or taken by the originator entity under §55.303 of this title (relating to Corrective Action); and

(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the regulated entity's compliance with any directives, mandates, or recommendations for action by the mortgage company and any corrective or remedial action taken by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.

(c) Loss of Confidentiality. Subsection (b) of this section notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).

**Source Note:** The provisions of this §55.302 adopted to be effective November 23, 2024, 49 TexReg 9203

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## RULE §55.303

## Corrective Action

(a) Corrective Action, Generally; Purpose. During an examination, investigation, or inspection, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the examination, investigation, or inspection, SML may direct the originator to voluntarily take corrective action to address the violations identified during the examination, investigation, or inspection. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the originator to conduct his or her own review to self-identify any other violations, compile information concerning such violations, and report his or her findings to SML. SML may direct the originator to take corrective action for any violations identified

(c) Refunds to Consumers. SML may direct the originator to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the mortgage applicant at his or her last known address. The originator must use reasonable diligence to determine the last known address of the mortgage applicant. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The originator must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation; or

(2) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's verified bank account. The originator must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

- (A) name of the sender and any relevant contact information;
- (B) sender's bank information (institution, routing number, and account number);
- (C) name of the recipient and any relevant contact information;
- (D) recipient's bank information (routing number and account number); and
- (E) the transaction reference number or confirmation code.

**Source Note:** The provisions of this §55.303 adopted to be effective November 23, 2024, 49 TexReg 9203





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## SUPERVISION AND ENFORCEMENT

## RULE §55.310

## Appeals

(a) Purpose. Finance Code Chapter 157 provides that certain decisions of the Commissioner adverse to an originator or other individual may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which an originator or other individual must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) License Denials. A license denial under Finance Code §157.017 must be appealed within 10 days after the date notice of the Commissioner's decision is received by the individual seeking the license.

(2) Order of Suspension for Violation of Final Order. An order of suspension issued by the Commissioner under Finance Code §157.024(h) must be appealed within 15 days after the date the order is issued.

(3) Notice of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. A notice of suspension issued under Finance Code §157.024(k) must be appealed within 15 days after the date the notice is issued.

(4) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 157.023(a), 157.024(a), or 157.024(b) must be appealed within 30 days after the date the notice is issued.

(5) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §157.024(c) or §157.031(b) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 157.023(a), 157.024(a), or 157.024(b) that was preceded by notice issued under paragraph (4) of this subsection.

(6) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date the notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email ([enforcement@sml.texas.gov](mailto:enforcement@sml.texas.gov)).

(d) Effect of Not Appealing. An originator or other individual who does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right he or she had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to him or her for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the originator.

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## RULE §55.311

## Hearings

(a) Hearings, Generally. Adjudicative hearings conducted under Finance Code Chapters 157 and 180 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

(b) Hearing Costs for License Denials. Hearing costs assessed against an individual under Finance Code §157.017(f) include:

- (1) filing fees;
- (2) the costs of a court reporter;
- (3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing;
- (4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings (i.e., the hearing of motions, status conferences, etc.), and any related travel expenses;
- (5) the cost of any outside counsel retained to represent SML; and
- (6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be \$500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their typical duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

**Source Note:** The provisions of this §55.311 adopted to be effective November 23, 2024, 49 TexReg 9203

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RULE §56.1	Purpose and Applicability

This chapter governs SML's administration and enforcement of Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act (other than Subchapters F and G), concerning the licensing, registration, and operations of mortgage companies, financial services companies, credit union subsidiary organizations, auxiliary mortgage loan activity companies, and independent contractor loan processor or underwriter companies (each a residential mortgage loan company). This chapter applies to persons licensed by SML as a residential mortgage loan company or those required to be licensed. Pursuant to Finance Code §156.2012(d) a person registered with SML as a financial services company is subject to the requirements of this chapter as if the company were licensed by SML as a residential mortgage loan company and the rules in this chapter must be construed accordingly.

**Source Note:** The provisions of this §56.1 adopted to be effective November 23, 2024, 49 TexReg 9206

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AGENCY DECISION TO REFUSE LICENSE OR PERMIT ISSUANCE OR RENEWAL AND AGENCY DECISION TO SUSPEND OR REVOKE AFFECTED LICENSE OR PERMIT

## RULE §56.2

Refusal to Issue or Renew Permit or License

(a) Criminal conduct. The department may refuse to issue or renew a license or permit to any person who has been finally convicted of or assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, G, L, R, or R-1;

(2) a provision of the Parks and Wildlife Code not described by paragraph (1) of this subsection that is a Parks and Wildlife Code:

(A) Class A or B misdemeanor;

(B) state jail felony; or

(C) felony;

(3) Parks and Wildlife Code, §63.002;

(4) Penal Code, §37.10 or §42.092;

(5) the Lacey Act (16 U.S.C. §§3371-3378);

(6) the Airborne Hunting Act (16 U.S.C. §742j-1); or

(7) any statutory or regulatory provision not described in this subsection involving conduct or behavior regulated by the permit or license the applicant seeks to obtain or renew. In determining whether a criminal conviction directly relates to the duties and responsibilities required under a permit or license sought by an applicant, the department shall consider each of the following factors:

(A) the relationship of the crime to the purposes for which a license or permit listed in §56.7 of this title is required;

(B) the extent to which the issuance of a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(C) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities under the license or



permit being sought; and

(D) any correlation between the elements of the crime and the duties and responsibilities of the license or permit being sought.

(b) Administrative compliance. The department may refuse to issue or renew a permit or license listed in §56.7 of this title (relating to Permits and Licenses Affected) if an applicant fails to submit in a timely manner any of the following:

(1) a completed application, including all application materials required by the department;

(2) the required fee;

(3) accurate required reports or notifications; or

(4) any additional information or material the department determines necessary to process the application.

(c) Outstanding liability to the department. The department may refuse to issue or renew a permit or license listed in §56.7 of this title, as applicable, if the applicant is liable to the state for fees or payment of penalties imposed pursuant to the Parks and Wildlife Code or commission rule, including liability under Parks and Wildlife Code, §12.301.

(d) Criteria for determination.

(1) If the department determines that a criminal conviction directly relates to the duties and responsibilities required under a permit or license, the department shall consider the following in determining whether to take an action authorized under this subchapter:

(A) the extent and nature of the person's past criminal activity with respect to the factors identified in this section;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity involving factors identified in this section;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision;

(G) other evidence of the person's fitness, including letters of recommendation; and

(H) other adverse or mitigating factors, including but not limited to:

(i) the number of final convictions or administrative penalties;

(ii) the seriousness of the conduct on which the final conviction or administrative penalty is based;

- (iii) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by subsection (a) of this section;
  - (iv) the length of time between the most recent final conviction or administrative penalty and the permit application;
  - (v) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;
  - (vi) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both;
  - (vii) the accuracy of the permit history information provided by the applicant;
  - (viii) for a renewal, whether the applicant agreed to any special provisions recommended by the department as conditions to the expiring permit.
- (2) A determination under this section is not permanent and the department shall consider the factors listed in this subsection in subsequent applications.

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**Source Note:** The provisions of this §56.2 adopted to be effective November 21, 2022, 47 TexReg 7737

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RULE §56.3

Subpermittees, Volunteers, Agents, and Surrogates

- (a) The department may prohibit any person from engaging in activities regulated under a permit or license as a subpermittee, agent, or volunteer if that person is prohibited for any reason from obtaining the permit or license or from engaging in activities authorized by the permit or license.
- (b) The department may refuse to issue or renew a permit or license for any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited for any reason from obtaining the permit or license or from engaging in activities authorized by the permit or license.

**Source Note:** The provisions of this §56.3 adopted to be effective November 21, 2022, 47 TexReg 7737

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<a href="#">RULE §56.2</a>	Definitions

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 156 (other than Subchapters F and G), the following definitions apply, unless the context clearly indicates otherwise:

- (1) "Application," as used in Finance Code §156.002(14) and paragraphs (9) and (22) of this section means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.
- (2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.
- (3) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.
- (4) "Control person" means an individual that directly or indirectly exercises control over a mortgage company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, whether through ownership of securities, by contract, or otherwise. Control person includes any person that:
  - (A) is a director, general partner, or executive officer;
  - (B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;
  - (C) in the case of a limited liability company, is a manager or managing member; or
  - (D) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10% or more of the partnership's capital assets.
- (5) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.
- (6) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

- (7) "Engage in or conduct the business of a mortgage company" or "engage in or conduct the business of residential mortgage loan origination," or any similar derivative or variation of those terms, means to contract for (as provider), provide, or offer to contract for or provide, residential mortgage loan origination services for compensation or gain or with the expectation of compensation or gain.
- (8) "Making a residential mortgage loan," or any similar derivative or variation of that term, means when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the residential mortgage loan.
- (9) "Mortgage applicant" has the meaning assigned by Finance Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.
- (10) "Mortgage banker" has the meaning assigned by Finance Code §156.002.
- (11) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as defined by Finance Code §156.002.
- (12) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §156.002 in defining "Nationwide Mortgage Licensing System and Registry."
- (13) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Code §156.002(14), means, among other things, when an individual:
- (A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;
  - (B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees, and other costs); or
  - (C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.
- (14) "Originator" has the meaning assigned by Finance Code §156.002 in defining "residential mortgage loan originator." Paragraphs (13) and (22) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Finance Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Finance Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.
- (15) "Person" has the meaning assigned by Finance Code §180.002.
- (16) "Qualified Individual" has the meaning assigned by Finance Code §156.002 in defining "qualifying individual."
- (17) "Residential mortgage loan" has the meaning assigned by Finance Code §180.002 and includes new loans and renewals, extensions,

modifications, and rearrangements of such loans. The term does not include a loan secured by a structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(18) "Residential real estate" has the meaning assigned by Finance Code §156.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(19) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage company or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage company or sponsored originator posts commercial messages or other content designed to solicit business.

(20) "SML" means the Department of Savings and Mortgage Lending.

(21) "State Examination System" or "SES" means an online, digital examination system developed by the Conference of State Bank Supervisors that securely connects regulators and regulated entities on a nationwide basis to facilitate the examination process.

(22) "Takes a residential mortgage loan application," as used in Finance Code §156.002(14) in defining "residential mortgage loan originator," means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

(23) "Trigger lead" means information concerning a consumer's credit worthiness (consumer report) compiled by a credit reporting agency (consumer reporting agency), obtained in accordance with the federal Fair Credit Reporting Act (15 U.S.C. §1681b(c)(1)(B)) that is not initiated by the consumer but, instead, is triggered by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction. The term does not include a consumer report obtained by a mortgage company licensed by SML or a mortgage banker registered with SML in response to an application for credit made by a consumer with that mortgage company or mortgage banker or that is otherwise authorized by the consumer.

(24) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

(25) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(26) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

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**Source Note:** The provisions of this §56.2 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.3	Formatting Requirements for Notices

Any notice or disclosure (notice) required by Finance Code Chapter 156, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 156, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice or disclosure must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

- (1) Arial;
- (2) Aptos;
- (3) Calibri;
- (4) Century Schoolbook;
- (5) Garamond;
- (6) Georgia;
- (7) Lucinda Sans;
- (8) Times New Roman;
- (9) Trebuchet; and
- (10) Verdana.

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BANKING AND SECURITIES  
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Electronic Delivery and Signature of Notices

Any notice or disclosure required by Finance Code Chapter 156, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

**Source Note:** The provisions of this §56.4 adopted to be effective November 23, 2024, 49 TexReg 9206

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Computation of Time

The calculation of any time period measured in days by Finance Code Chapter 156, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

**Source Note:** The provisions of this §56.5 adopted to be effective November 23, 2024, 49 TexReg 9206

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BANKING AND SECURITIES  
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GENERAL PROVISIONS  
Enforceability of Liens

A violation of Finance Code Chapter 156, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

**Source Note:** The provisions of this §56.6 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.101

Applications for Licensure

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(a) NMLS. Applications for licensure must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org); viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation as deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapter 156 are met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

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**Source Note:** The provisions of this §56.101 adopted to be effective November 23, 2024, 49 TexReg 9206

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LICENSING

RULE §56.102

Fees

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(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §156.203(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new license versus renewal of the license. The current fee is set in NMLS and posted on SML's website ([sml.texas.gov](http://sml.texas.gov)). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The license fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges a fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS Resource Center website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org)).

(c) All fees are nonrefundable and nontransferable.

(d) Insufficient Funds Fee. The Commissioner may collect a fee in an amount determined by the Commissioner not to exceed \$50 for any returned check, credit card chargeback, or failed automated clearinghouse (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

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**Source Note:** The provisions of this §56.102 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.103

Renewal of the License

(a) A license may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage company continues to meet the minimum requirements for licensure, including the requirements of Finance Code §§156.2041(a), 156.2042, 156.2043(a), or 156.2044(a), as applicable, and 156.208(a-1).

(b) Application of §56.101. A renewal request is a license application subject to the requirements of §56.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §56.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage company to continue conducting regulated activities while the mortgage company works diligently to resolve the deficiencies. An application approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the mortgage company of the obligation to resolve the deficiencies. A license approved under this subsection is deemed to be a conditional license for which the mortgage company, in order to maintain the license, must resolve the deficiencies within 30 days after the date the license is approved unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the license.

(d) Reinstatement. This section applies to a person seeking reinstatement of an expired license (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §156.2081 and must be construed accordingly. A mortgage company license cannot be renewed beyond the reinstatement period; instead, the person must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.

**Source Note:** The provisions of this §56.103 adopted to be effective November 23, 2024, 49 TexReg 9206

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## LICENSING

## RULE §56.104

## NMLS License Records; Notices Sent to the Mortgage Company

(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the license status options available in NMLS. The NMLS Resource Center (nationwidelicensingsystem.org) describes the available license status options and their meaning.

(b) Amendments to NMLS Records Required. A mortgage company must amend its NMLS license records (MU1 filing) within 10 days after the date of any material change affecting any aspect of the MU1 filing, including, but not limited to:

- (1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);
- (2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);
- (3) the contact information under "Identifying Information";
- (4) the contact information under "Resident/Registered Agent";
- (5) the contact information under "Contact Employee Information"; and
- (6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(c) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (control persons and Qualified Individuals) to make the proper filings in NMLS using the current form prescribed by NMLS (MU2 filing) and must ensure such associations are amended within 10 days after the date of any material change affecting such associations.

(d) Notices Sent to the Mortgage Company. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage company in accordance with this subsection using the mortgage company's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the mortgage company has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by email is complete on transmission of the email to the mortgage company's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company must monitor such email account and ensure that emails sent by SML are not lost in a "spam folder" or similar, or undelivered due to intervention by a "spam filter" or similar. A mortgage company is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage company is further deemed to have

constructive notice of any NMLS system notifications sent to it by email.

(2) Service by Mail. Service by mail is made using the address the mortgage company has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage company by mail and the document communicates a deadline by or a time during which the mortgage company must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

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**Source Note:** The provisions of this §56.104 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.105

Conditional License

---

(a) Conditional License; Terms and Conditions. The Commissioner may, in his or her sole discretion, issue a license on a conditional basis. A conditional license will be assigned the license status "Approved - Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:

(1) requiring the mortgage company to undergo additional credit checks or provide evidence of satisfaction concerning a debt, judgment, lien, child support obligation, or other financial delinquency affecting its financial condition;

(2) requiring the mortgage company to undergo additional criminal background checks or provide information on a periodic basis or upon request concerning the status of a pending criminal proceeding that might affect its eligibility for licensure;

(3) requiring the mortgage company to take other specific action or provide other specified information to address a known deficiency; and

(4) requiring the mortgage company to surrender the license upon the occurrence of an event that would render the mortgage company ineligible for the license.

(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.

(c) Conditional License in Lieu of Denial. The Commissioner may issue a license on a conditional basis in lieu of seeking denial of the license where the person applying for the license has the capacity to resolve the deficiency serving as grounds for the denial in a reasonable period of time. The granting of a license under this subsection is a voluntarily forbearance from seeking denial of the license and does not operate as a waiver by the Commissioner of any grounds he or she has to seek denial of the license. The Commissioner is under no obligation to continue the license on a conditional basis and may seek denial in the future based on the same or similar circumstances that existed at the time the conditional license was granted.

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**Source Note:** The provisions of this §56.105 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.106

Surrender of the License

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(a) Surrender Request. A mortgage company may seek surrender of the license by filing a license surrender request (request) in NMLS. The request must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:

(1) the mortgage company is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;

(2) the mortgage company is in violation of an order of the Commissioner;

(3) the mortgage company has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML; or

(4) the mortgage company has failed to file mortgage call reports as required by §56.205 of this title (relating to Mortgage Call Reports).

(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage company's license will be assigned the license status "Approved - Inactive" in NMLS.

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**Source Note:** The provisions of this §56.106 adopted to be effective November 23, 2024, 49 TexReg 9206

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## RULE §56.107

## Sponsorship of Originator; Responsibility for Originator's Actions

(a) **Sponsorship Required.** A mortgage company acts through one or more originators who must be sponsored by the mortgage company in NMLS. To sponsor an originator, the mortgage company must first register a relationship with the originator in NMLS. When a relationship has been registered, the mortgage company may then file a request in NMLS to establish sponsorship of the originator. An originator must make corresponding filings in NMLS to establish such sponsorship. Sponsorship is not effective until the sponsorship request has been reviewed and approved by SML. A mortgage company must not allow an individual to act on its behalf in the capacity of an originator until such sponsorship has been established and is effective. Information about how to file for sponsorship is available on the NMLS Resource Center website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org)).

(b) **Responsibility for Originator's Actions.** By sponsoring an originator, or otherwise allowing an individual to act on its behalf in the capacity of an originator, the mortgage company and the Qualified Individual for the mortgage company each assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. As provided by Finance Code §156.201, all violations of law by an originator or individual acting in the capacity of an originator are deemed to be attributable and imputed to the mortgage company sponsoring the originator or for which the individual acting as an originator was allowed to act, and the Commissioner may seek disciplinary action against the mortgage company, the Qualified Individual for the mortgage company, and the originator simultaneously for the same conduct giving rise to the violation. As a result, a mortgage company and its Qualified Individual are both charged with knowledge of and must ensure compliance by their sponsored originators with the requirements of Finance Code Chapters 157 and 180, and of SML's rules concerning originators in Chapter 55 of this title (relating to Residential Mortgage Loan Originators).

(c) **Termination of Sponsorship.** Sponsorship may be terminated by the mortgage company or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(d) **Failure to Maintain Sponsored Originator; Inactive Status.** If a mortgage company does not have sponsored originators that are licensed, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the mortgage company must not conduct regulated activities.

**Source Note:** The provisions of this §56.107 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.108	Qualified Individual

(a) Qualified Individual Required. A mortgage company must appoint at least one licensed originator to be the mortgage company's Qualified Individual. As provided by Finance Code §156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. To serve as the Qualified Individual, the originator must hold his or her license in a status which enables him or her to engage in regulated activities with the license and must be sponsored by the mortgage company for which he or she serves as the Qualified Individual. The contact information for the Qualified Individual listed by the mortgage company in its license records (MU1 filing), in the "Qualifying Individuals" section, must match the principal address (main address) of the mortgage company listed in the "Identifying Information" section of the MU1 filing. A mortgage company may appoint more than one originator as Qualified Individual. If a mortgage company appoints more than one Qualified Individual, each Qualified Individual is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or other individuals acting on its behalf in the capacity of an originator.

(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding filing in NMLS to reflect such appointment, using the current form prescribed by NMLS.

**Source Note:** The provisions of this §56.108 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.200

Required Disclosures

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage company is required to make under Finance Code §156.004.

(b) Specific Notice to Applicant. A mortgage company must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage company and its sponsored originator receives the initial application for a residential mortgage loan. The notice may be provided to the mortgage applicant by any means allowing for the mortgage company to capture and maintain records reflecting timely delivery, as required by §56.204(c)(2)(A)(iv) of this title (relating to Books and Records). The notice may be signed and dated by the mortgage applicant to evidence receipt. The notice must be in the form adopted by this subsection. However, the form may be modified by adding additional identifying information for the transaction (e.g., loan identification number, or the name and NMLS ID of the mortgage company or the investor); provided, any information added to the form is not misleading and does not contradict or frustrate the purpose of the disclosure:

[Attached Graphic](#) (see attached)

(c) Posted Notice on Websites. A mortgage company must post a notice concerning SML's regulatory oversight on each website of the mortgage company, other than a social media site, that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business or from which the mortgage company advertises to solicit such business, as provided by §56.203 of this title (relating to Advertising). The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked webpage with the link to such webpage displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to a mortgage applicant must include:

- (1) the mortgage company's name and NMLS ID; and
- (2) the mortgage company's website address, if it has a website.

**Source Note:** The provisions of this §56.200 adopted to be effective November 23, 2024, 49 TexReg 9206

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**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: \_\_\_\_\_

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## DUTIES AND RESPONSIBILITIES

## RULE §56.201

## Conditional Pre-Qualification and Conditional Approval Letters

(a) Conditional Pre-Qualification Letter. Except as provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (conditional pre-qualification letter) must include the information in Form A, Figure: 7 TAC §56.201(a). The information must be provided using Form A or an alternate form approved by the mortgage company that includes all of the information found on Form A. There is no requirement to issue a conditional pre-qualification letter. Form A or an alternate form may be modified by adding any of the following as needed:

[Attached Graphic](#) (see attached)

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) Conditional Approval Letter. When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral (conditional approval letter), must include the information in Form B, Figure: 7 TAC §56.201(b). The information must be provided using Form B or an alternate form approved by the mortgage company that includes all of the information found on Form B. There is no requirement to issue a conditional approval letter. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a) (1) - (3) of this section, or a disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional approval letter must not be issued unless the mortgage company or its sponsored originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.

[Attached Graphic](#) (see attached)

(c) Firm Offers of Credit. Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined by 15 U.S.C. §1681a(l).

(d) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage company's sponsored originator acting on behalf of the mortgage company to originate the prospective residential mortgage loan.

**Source Note:** The provisions of this §56.201 adopted to be effective November 23, 2024, 49 TexReg 9206

Figure: 7 TAC §56.201(a)

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 #



# Texas Administrative Code

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## RULE §56.202

## BANKING AND SECURITIES

## DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## RESIDENTIAL MORTGAGE LOAN COMPANIES

## DUTIES AND RESPONSIBILITIES

## Fraudulent, Misleading, or Deceptive Practices and Improper Dealings

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by a mortgage company or its sponsored originators constitutes fraudulent and dishonest dealings for purposes of Finance Code §156.303(a) (3):

(1) knowingly misrepresenting the mortgage company's or sponsored originator's relationship to a mortgage applicant or any other party to a residential mortgage loan transaction or prospective residential mortgage loan transaction;

(2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense to a mortgage applicant or prospective mortgage applicant in connection with a residential mortgage loan;

(3) knowingly overstating, inflating, altering, amending, or disparaging any source or potential source of residential mortgage loan funds in a manner which disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;

(5) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the mortgage company or sponsored originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

(7) recommending or encouraging default or delinquency or the continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(8) altering any document produced or issued by SML, unless otherwise permitted by statute or a rule of SML;

(9) using a trigger lead in a misleading or deceptive manner by, among other things:

(A) failing to state in the initial communication with the consumer:

(i) the mortgage company's name;

(ii) a brief explanation of how the mortgage company obtained the consumer's contact information to make the communication (i.e., an explanation of trigger leads);

(iii) that the mortgage company is not affiliated with the creditor to which the consumer made the credit application that resulted in the trigger lead; and

(iv) that the purpose of the communication is to solicit new business for the mortgage company;

(B) contacting a consumer who has opted out of prescreened offers of credit under the federal Fair Credit Reporting Act (FCRA; 12 U.S.C. §1681b(e)); or

(C) failing in the initial communication with the consumer to make a firm offer of credit as provided by the FCRA (12 U.S.C. §1681a(l) and §1681b(c)); or

(10) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper or Unfair Dealings. The following conduct by a mortgage company or its sponsored originators constitutes improper dealings for purposes of Finance Code §156.303(a)(3):

(1) acting negligently in performing an act requiring a license under Finance Code Chapters 156, 157, or 180;

(2) violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 156, 157, or 180, including, but not limited to:

(A) Consumer Credit Protection Act, Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.);

(B) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.);

(C) Regulation N (12 C.F.R. §1014.1 et seq.);

(D) Gramm-Leach-Bliley Act (GLBA; 15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

(E) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(F) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.);

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.);

(H) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et seq.);

(I) Finance Code Chapter 159 and Chapter 59 of this title; and

(J) Texas Constitution, Article XVI, §50 and Chapter 153 of this title;

(3) soliciting by phone a consumer who has placed his or her contact information on the national do-not-call registry maintained by the Federal Trade Commission (FTC), unless otherwise allowable under the FTC's Telemarketing Sales Rule (16 C.F.R. §310.4(b)(iii)(B));

(4) Issuing a conditional pre-qualification letter or conditional approval letter under §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the required form for the letter or is inaccurate, erroneous, or negligently-issued;

(5) representing to a mortgage applicant that a charge or fee which is payable to the mortgage company or

sponsored originator is a "discount point" or otherwise benefits the mortgage applicant unless the loan closes and:

(A) the mortgage company is making the residential mortgage loan (lender); or

(B) the mortgage company is not the lender but demonstrates by clear and convincing evidence that the lender has charged or collected discount points or other fees which the mortgage company actually paid to the lender on behalf of the mortgage applicant to buy down the interest rate on the residential mortgage loan;

(6) failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage company's services and any costs;

(7) Allowing a licensed originator to act on behalf of the mortgage company when the originator is not sponsored by the mortgage company or otherwise holds his or her license in an inactive status; or

(8) using the services of a mortgage company or mortgage banker to provide loan processing services when the mortgage company or mortgage banker providing the services holds its license or registration in an inactive status.

(c) Related Transactions. A mortgage company engages in fraudulent and dishonest dealings for purposes of Finance Code §156.303(a)(3) when, in connection with the origination of a residential mortgage loan:

(1) the mortgage company or sponsored originator:

(A) offers other goods or services to a mortgage applicant in a separate but related transaction; and

(B) the mortgage company or sponsored originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) the mortgage company or sponsored originator:

(A) affiliates with another person that provides goods or services to a mortgage applicant in a separate but related transaction;

(B) the affiliated person engages in fraudulent, misleading, or deceptive acts in that transaction;

(C) the mortgage company or sponsored originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

(D) the mortgage company or sponsored originator failed to take appropriate steps to prevent or limit the fraudulent, misleading, or deceptive acts.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company and its sponsored originators must not offer or agree to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under [Cont'd...](#)

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CHAPTER 56

## RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER C

## DUTIES AND RESPONSIBILITIES

## RULE §56.203

## Advertising

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(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan origination business for the mortgage company or its sponsored originators. The term includes "flyers," business cards, or other handouts, and messages or posts made on a social media site. The term does not include:

(A) any advertisement which indirectly promotes a residential mortgage loan transaction and contains only the name of the mortgage company or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;

(B) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(C) signs located on or adjacent to the mortgage company's licensed office as provided by §56.206 of this title (relating to Office Locations; Remote Work).

(2) "Team logo" means a logo, symbol, or other graphic used to identify the group using a team name.

(3) "Team name" means a name other than the mortgage company's legal name or a properly registered assumed name typically used by a geographically or administratively distinct group of employees working for the mortgage company as a division or team within the larger organization (e.g., the employees of a branch office).

(b) Compliance with Federal Law. A mortgage company or sponsored originator that advertises rates, terms, or conditions must comply with the requirements of Regulation N (12 C.F.R. §1014.1 et seq.), and Regulation Z (12 C.F.R. §1026.24).

(c) Required Content. Except as provided by subsections (d) and (e) of this section, an advertisement must contain:

(1) the mortgage company's name and NMLS ID;

(2) the mortgage company's website address, if it has a website; and

(3) the sponsored originator's name and NMLS ID.

(d) Advertising Directly by a Mortgage Company. A mortgage company may advertise directly to the public and is not required to advertise through a sponsored originator. The requirements of subsection (c)(3) of this section do not apply to an advertisement made directly by a mortgage company.

(e) Advertising on Social Media Sites. If the mortgage company or sponsored originator advertises on a social

media site, the requirements of subsection (c) of this section may be met by prominently displaying the required information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage company or sponsored originator on the social media site.

(f) Use of Team Names and Team Logos. A mortgage company and its sponsored originators may use team names and team logos in advertisements if the following requirements are met:

(1) Team names and team logos are permitted for advertising purposes only. A team name or team logo may not be used to conduct residential mortgage loan origination business. For clarity, a team name or team logo may not appear on any documentation sent to the mortgage applicant in connection with a residential mortgage loan or on any documentation in the residential mortgage loan file a mortgage company is required to maintain under §56.204(c)(2) of this title (relating to Books and Records).

(2) The mortgage company's legal name or an assumed name of the mortgage company and its NMLS ID must be used with the team name or team logo, in substantially equivalent prominence, and must be connected with an explanatory word or phrase that clearly links the two (e.g., "(team name) of (mortgage company name and NMLS ID)" or "(team name) powered by (mortgage company name and NMLS ID)"). The information must be presented in a manner that makes it readily apparent to the viewer what mortgage company is making the advertisement. The mortgage company may not obscure the information by, among other things, using graphics, shading, or coloration to deemphasize or mask the appearance of the mortgage company's name and NMLS ID. If the advertisement is made on a social media site, the requirements of this paragraph may be met by prominently displaying the information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage company or sponsored originator on the social media site.

(3) If a team logo is used, it must be used with the team name, unless the team name is contained in the team logo, and if so, the team logo may be used without the team name.

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**Source Note:** The provisions of this §56.203 adopted to be effective November 23, 2024, 49 TexReg 9206

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## DUTIES AND RESPONSIBILITIES

## RULE §56.204

## Books and Records

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the books and records a mortgage company and its sponsored originators are required to keep under Finance Code §156.301. Subsection (c) of this section applies to a mortgage company and its sponsored originators in connection with the origination of residential mortgage loans. Subsection (d) of this section applies to a mortgage company and its sponsored originators in connection with the provision of third-party loan processing or underwriting services (including independent loan processor or underwriter companies).

(b) Maintenance of Records, Generally. In order to ensure a mortgage company and its sponsored originators have all records necessary to facilitate an inspection (including an examination) by SML of the mortgage company and its sponsored originators, enable SML to investigate complaints against a mortgage company or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 156, and this chapter, a mortgage company and its sponsored originators must maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage company and its sponsored originators must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §56.206 of this title (relating to Office Locations; Remote Work).)

(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced to SML upon request. Failure by a mortgage company or its sponsored originators to produce records upon request after a reasonable time for compliance may result in disciplinary action against the mortgage company or its sponsored originators, including, but not limited to, suspension or revocation of the mortgage company's or sponsored originator's license.

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law. If a mortgage company terminates operations, the mortgage company must, within 10 days after the date the mortgage company terminates operations, provide SML with written notice of where the records required by this section will be maintained for the required period. If such records are transferred to another mortgage company licensed by SML, the transferee must provide SML with written notice within 10 days after the date it receives such records.

(5) Maintenance by the Mortgage Company. A mortgage company is required to maintain records on behalf of the originators it sponsors in connection with work performed by the originator for that mortgage company.

(6) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage company or its sponsored originators differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.



(c) Required Records (Origination). A mortgage company and its sponsored originators must maintain the following items in connection with the origination of residential mortgage loans by the mortgage company:

(1) Mortgage Transaction Log. A mortgage transaction log maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):

- (A) full name of each mortgage applicant (last name, first name);
- (B) application/loan identification number assigned by the mortgage company;
- (C) loan identification number assigned by the lender, if different than subparagraph (B) of this paragraph;
- (D) date of the initial loan application;
- (E) address of the subject property (street address, city, state, zip code);
- (F) interest rate;
- (G) description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);
- (H) loan product (conventional, FHA, VA, reverse, etc.);
- (I) full name of the lender that initially funded or acquired the loan and their NMLS ID, if applicable;
- (J) full name of the originator who took the initial loan application and his or her NMLS ID;
- (K) closing date;
- (L) lien position (e.g., first lien, second lien, or wrap mortgage);
- (M) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence)); and
- (N) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

- (A) All Transactions. For all transactions, the following records:
  - (i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B (12 C.F.R. §1002.4(c));
  - (ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;
  - (iii) the final settlement statement (Regulation X, 12 C.F.R. §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) the disclosure required by Finance Code §156.004 and §56.200(b) of this title (relating to Required Disclosures), and records reflecting timely delivery of the disclosure to the mortgage applicant;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the conditional pre-qualification letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the conditional approval letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title;

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code §343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the residential mortgage loan or prospective residential mortgage loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

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## DUTIES AND RESPONSIBILITIES

## RULE §56.204

Books and Records

---

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the books and records a mortgage company and its sponsored originators are required to keep under Finance Code §156.301. Subsection (c) of this section applies to a mortgage company and its sponsored originators in connection with the origination of residential mortgage loans. Subsection (d) of this section applies to a mortgage company and its sponsored originators in connection with the provision of third-party loan processing or underwriting services (including independent loan processor or underwriter companies).

(b) Maintenance of Records, Generally. In order to ensure a mortgage company and its sponsored originators have all records necessary to facilitate an inspection (including an examination) by SML of the mortgage company and its sponsored originators, enable SML to investigate complaints against a mortgage company or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 156, and this chapter, a mortgage company and its sponsored originators must maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage company and its sponsored originators must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §56.206 of this title (relating to Office Locations; Remote Work).)

(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced to SML upon request. Failure by a mortgage company or its sponsored originators to produce records upon request after a reasonable time for compliance may result in disciplinary action against the mortgage company or its sponsored originators, including, but not limited to, suspension or revocation of the mortgage company's or sponsored originator's license.

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law. If a mortgage company terminates operations, the mortgage company must, within 10 days after the date the mortgage company terminates operations, provide SML with written notice of where the records required by this section will be maintained for the required period. If such records are transferred to another mortgage company licensed by SML, the transferee must provide SML with written notice within 10 days after the date it receives such records.

(5) Maintenance by the Mortgage Company. A mortgage company is required to maintain records on behalf of the originators it sponsors in connection with work performed by the originator for that mortgage company.

(6) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage company or its sponsored originators differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(c) Required Records (Origination). A mortgage company and its sponsored originators must maintain the following items in connection with the origination of residential mortgage loans by the mortgage company:

(1) Mortgage Transaction Log. A mortgage transaction log maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):

- (A) full name of each mortgage applicant (last name, first name);
- (B) application/loan identification number assigned by the mortgage company;
- (C) loan identification number assigned by the lender, if different than subparagraph (B) of this paragraph;
- (D) date of the initial loan application;
- (E) address of the subject property (street address, city, state, zip code);
- (F) interest rate;
- (G) description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);
- (H) loan product (conventional, FHA, VA, reverse, etc.);
- (I) full name of the lender that initially funded or acquired the loan and their NMLS ID, if applicable;
- (J) full name of the originator who took the initial loan application and his or her NMLS ID;
- (K) closing date;
- (L) lien position (e.g., first lien, second lien, or wrap mortgage);
- (M) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence)); and
- (N) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

- (A) All Transactions. For all transactions, the following records:
  - (i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B (12 C.F.R. §1002.4(c));
  - (ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;
  - (iii) the final settlement statement (Regulation X, 12 C.F.R. §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) the disclosure required by Finance Code §156.004 and §56.200(b) of this title (relating to Required Disclosures), and records reflecting timely delivery of the disclosure to the mortgage applicant;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the conditional pre-qualification letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the conditional approval letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title;

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code §343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the residential mortgage loan or prospective residential mortgage loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

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## RULE §56.206

## Office Locations; Remote Work

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Finance Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Finance Code §180.002(19)(B)(i); or

(C) an office or location which conducts any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Finance Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Finance Code §180.002(19)(B)(i);

(C) an office or location which conducts any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

(D) a "remote location" as defined by this section.

(3) "Licensed office" means a physical office of the mortgage company that is licensed by SML as its main office or a branch office.

(4) "Main office" means the office the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by SML through the mortgage company's license.

(5) "Remote location" means a location other than a licensed office or an administrative office of the mortgage company from which the employees or sponsored originators of the mortgage company conduct residential



mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A licensed office must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section. A branch office must be licensed by SML prior to conducting operations. A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after the date the branch office closes.

(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a remote location to the same extent as if such employees or originators were physically present at a licensed office of the mortgage company; provided, the mortgage company:

- (1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;
- (2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;
- (3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;
- (4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to SML on request;
- (5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and
- (6) adopts, maintains, and follows written procedures to ensure that:
  - (A) the mortgage company and its employees and sponsored originators comply with this section; and
  - (B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.

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**Source Note:** The provisions of this §56.206 adopted to be effective November 23, 2024, 49 TexReg 9206

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## RULE §56.210

## BANKING AND SECURITIES

## DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## RESIDENTIAL MORTGAGE LOAN COMPANIES

## DUTIES AND RESPONSIBILITIES

## Reportable Incidents

---

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage company's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:

(A) a "catastrophic event" as defined by this subsection; or

(B) a "security event" as defined by this subsection.

(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.

(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.

(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage company must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage company becomes aware of the reportable incident. The report must include:

(1) a detailed description of the nature and circumstances of the reportable incident;

(2) the number of Texas residents affected or potentially affected by the reportable incident;

(3) the measures taken by the mortgage company to resolve or address the reportable incident;

(4) the measures the mortgage company plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage company for inquiries by SML about the reportable incident.

(c) Incidents Reported to Other Agencies. A mortgage company must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:

(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and

(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).

(d) Root Cause Analysis for Security Events. For any security event triggering a notification described by subsection (c) of this section, the mortgage company must provide SML with a root cause analysis report within 120 days after the date the mortgage company becomes aware that the security event occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301 and §56.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).

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**Source Note:** The provisions of this §56.210 adopted to be effective November 23, 2024, 49 TexReg 9206

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## RULE §56.210

## Reportable Incidents

---

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage company's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:

(A) a "catastrophic event" as defined by this subsection; or

(B) a "security event" as defined by this subsection.

(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.

(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.

(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage company must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage company becomes aware of the reportable incident. The report must include:

(1) a detailed description of the nature and circumstances of the reportable incident;

(2) the number of Texas residents affected or potentially affected by the reportable incident;

(3) the measures taken by the mortgage company to resolve or address the reportable incident;

(4) the measures the mortgage company plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage company for inquiries by SML about the reportable incident.

(c) Incidents Reported to Other Agencies. A mortgage company must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:

(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and

(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).

(d) Root Cause Analysis for Security Events. For any security event triggering a notification described by subsection (c) of this section, the mortgage company must provide SML with a root cause analysis report within 120 days after the date the mortgage company becomes aware that the security event occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301 and §56.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).

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**Source Note:** The provisions of this §56.210 adopted to be effective November 23, 2024, 49 TexReg 9206

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(a) Purpose. This section clarifies and establishes requirements related to examinations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.

(b) State Examination System (SES). Examinations are conducted in SES ([stateexaminationsystem.org](http://stateexaminationsystem.org)). A mortgage company must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage company listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(e) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapters 156, 157, and 180, and this chapter, and will specifically address whether:

- (1) all persons are properly licensed and sponsored;
- (2) all office locations are properly licensed, as provided by §56.206 of this title (relating to Office Locations; Remote Work);
- (3) all required books and records are being maintained in accordance with §56.204 of this title (relating to Books and Records);
- (4) legal and regulatory requirements applicable to the mortgage company and its sponsored originators are being properly followed (including, but not limited to, the requirements described in §56.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings)); and
- (5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 156, 157, and 180.

(f) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage company's mortgage transaction log required by §56.204(c)(1) of this title or the loan processing or underwriting log required by §56.204(d) of this title. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(g) Failure to Cooperate; Disciplinary Action. Failure by a mortgage company or sponsored originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary action including, but not limited to, imposition of an

administrative penalty.

(h) Reimbursement for Costs. The examiners may require a mortgage company, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate. When SML must travel outside of Texas to conduct an examination of a mortgage company or its sponsored originators because the required records are maintained at a location outside of Texas, SML will require reimbursement for the actual costs incurred in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Costs assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

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**Source Note:** The provisions of this §56.300 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.301

Investigations

---

(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. An investigation may include:

- (1) review of documentary evidence;
- (2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;
- (3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;
- (4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and
- (5) other lawful investigative methods SML deems necessary or appropriate.

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**Source Note:** The provisions of this §56.301 adopted to be effective November 23, 2024, 49 TexReg 9206

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## BANKING AND SECURITIES

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## Confidentiality of Examination, Investigation, and Inspection Information

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301.

(b) Confidential Information. All information obtained by SML during an examination, investigation, or inspection is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §156.301 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or created during an examination, investigation, or inspection;

(2) information that is derived from or is the product of the confidential information described by paragraph (1) of this subsection, including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an examination, investigation, or inspection, including assertions of any violations, deficiencies, or issues identified, or any directives, mandates, or recommendations for action by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection; including, but not limited to, any corrective or remedial action directed by SML or taken by the regulated entity under §56.303 of this title (relating to Corrective Action); and

(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the regulated entity's compliance with any directives, mandates, or recommendations for action by the mortgage company and any corrective or remedial action taken by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.

(c) Loss of Confidentiality. Subsection (b) of this section notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).

**Source Note:** The provisions of this §56.302 adopted to be effective November 23, 2024, 49 TexReg 9206

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## RULE §56.303

## Corrective Action

(a) Corrective Action, Generally; Purpose. During an examination, investigation, or inspection, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the examination, investigation, or inspection, SML may direct the mortgage company to voluntarily take corrective action to address the violations identified during the examination, investigation, or inspection. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the mortgage company to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage company to take corrective action for any violations identified during the review.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage company to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage company to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the mortgage applicant at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage company must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;

(2) Corporate Check. The refund may be made by issuing a check to the mortgage applicant. The check must be drawn on a bank account owned by the mortgage company. The check must be sent to the mortgage applicant at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The mortgage company must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the mortgage applicant fails to cash the check, the mortgage company must comply with requirements of §56.304 of this title (relating to Unclaimed Funds);

(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's verified bank account. The mortgage company must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

(A) name of the sender and any relevant contact information;

(B) sender's bank information (institution, routing number, and account number);

- (C) name of the recipient and any relevant contact information;
- (D) recipient's bank information (routing number and account number); and
- (E) the transaction reference number or confirmation code; or

(4) Credit Against Indebtedness. If the mortgage company is the lender or holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage company may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage company on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage company began improperly holding the proceeds (typically inception of the residential mortgage loan). The mortgage company must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest as a result of the credit being applied.

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**Source Note:** The provisions of this §56.303 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §56.304

Unclaimed Funds

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(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a mortgage applicant or other customer of the mortgage company for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage company must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:

- (1) date of transfer to the escheat suspense account;
- (2) date the obligation to pay the funds arose;
- (3) full name and last known contact information of the mortgage applicant or other customer to whom funds are owed; and
- (4) amount of unclaimed funds.

(b) Required Records. The mortgage company must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant or customer.

(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.

(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.

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**Source Note:** The provisions of this §56.304 adopted to be effective November 23, 2024, 49 TexReg 9206

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(a) Purpose. Finance Code Chapter 156 provides that certain decisions of the Commissioner adverse to a mortgage company or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage company or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) License Denials. A license denial under Finance Code §156.209 must be appealed within 10 days after the date notice of the Commissioner's decision is received by the person seeking the license.

(2) Notice of Administrative Penalty for Violation of Final Cease and Desist Order. A notice of administrative penalty issued under Finance Code §156.303(e) must be appealed within 10 days after the date the notice is issued.

(3) Order of Suspension for Violation of Final Order. An order of suspension issued by the Commissioner under Finance Code §156.303(g) must be appealed within 15 days after the date the order is issued.

(4) Order of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. An order of suspension issued by the Commissioner under Finance Code §156.303(j) must be appealed within 15 days after the date the order is issued.

(5) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) must be appealed within 30 days after the date the notice is issued.

(6) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §156.303(b) or §156.406(c) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) that was preceded by notice issued under paragraph (5) of this subsection.

(7) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email ([enforcement@sml.texas.gov](mailto:enforcement@sml.texas.gov)).

(d) Effect of Not Appealing. A mortgage company or other person that does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a

final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage company or other person.

**Source Note:** The provisions of this §56.310 adopted to be effective November 23, 2024, 49 TexReg 9206

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## RULE §56.311

## Hearings

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(a) Adjudicative hearings conducted under Finance Code Chapter 156 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

(b) Hearing Costs for License Denials. Hearing costs assessed against a person under Finance Code §156.209(f) include:

- (1) filing fees;
- (2) the costs of a court reporter;
- (3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing and any ancillary proceedings;
- (4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings, and any related travel expenses;
- (5) the cost of any outside counsel retained to represent SML; and
- (6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be \$500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their normal duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

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**Source Note:** The provisions of this §56.311 adopted to be effective November 23, 2024, 49 TexReg 9206

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RULE §58.1

Purpose and Applicability

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This chapter governs SML's administration and enforcement of Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act, concerning the registration and operations of residential mortgage loan servicers. This chapter applies to persons registered with SML as a residential mortgage loan servicer or those required to be registered.

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**Source Note:** The provisions of this §58.1 adopted to be effective November 23, 2024, 49 TexReg 9215

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## GENERAL PROVISIONS

## RULE §58.2

Definitions

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For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 158, the following definitions apply, unless the context clearly indicates otherwise:

- (1) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.
- (2) "Control person" means an individual that directly or indirectly exercises control over a mortgage servicer. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage servicer, whether through ownership of securities, by contract, or otherwise. Control person includes any person that:
  - (A) is a director, general partner or executive officer;
  - (B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;
  - (C) in the case of a limited liability company, is a manager or managing member; or
  - (D) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10% or more of the partnership's capital assets.
- (3) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or a manufactured home, if it is used as a residence.
- (4) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).
- (5) "Mortgage servicer" has the meaning assigned by Finance Code §158.002 in defining "residential mortgage loan servicer."
- (6) "Mortgage servicing rights" means the contractual obligation to service a mortgage loan and the right to receive compensation for such services in accordance with the contract.
- (7) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §180.002 in defining "Nationwide Mortgage Licensing System and Registry."
- (8) "Person" has the meaning assigned by Finance Code §158.002.
- (9) "Residential mortgage loan" has the meaning assigned by Finance Code §158.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling but used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(10) "Residential real estate" has the meaning assigned by Finance Code §158.002 and includes improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(11) "SML" means the Department of Savings and Mortgage Lending.

(12) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

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**Source Note:** The provisions of this §58.2 adopted to be effective November 23, 2024, 49 TexReg 9215

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RULE §58.3

Formatting Requirements for Notices

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Any notice or disclosure (notice) required by Finance Code Chapter 158, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 158, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (this list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

- (1) Arial;
- (2) Aptos;
- (3) Calibri;
- (4) Century Schoolbook;
- (5) Garamond;
- (6) Georgia;
- (7) Lucinda Sans;
- (8) Times New Roman;
- (9) Trebuchet; and
- (10) Verdana.

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**Source Note:** The provisions of this §58.3 adopted to be effective November 23, 2024, 49 TexReg 9215

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RULE §58.4

Electronic Delivery and Signature of Notices

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Any notice or disclosure required by Finance Code Chapters 158, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

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**Source Note:** The provisions of this §58.4 adopted to be effective November 23, 2024, 49 TexReg 9215

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RULE §58.5

Computation of Time

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The calculation of any time period measured in days by Finance Code Chapter 158, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

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**Source Note:** The provisions of this §58.5 adopted to be effective November 23, 2024, 49 TexReg 9215

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REGISTRATION

RULE §58.100

Registration Requirements

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(a) Registration Required. A person, unless exempt as provided by Finance Code §158.052, is required to be registered with SML as a mortgage servicer under Finance Code Chapter 158 if the person:

(1) acts as a mortgage servicer or engages in or conducts the business of a mortgage servicer, concerning a residential mortgage loan secured by residential real estate in Texas; or

(2) advertises or holds that person out to the public as engaging in or conducting the business of a mortgage servicer in Texas.

(b) Wrap Mortgage Servicing. A "wrap lender," as defined by Finance Code §158.001, that holds the mortgage servicing rights for a wrap mortgage loan must be registered under Finance Code Chapter 158 and comply with the requirements of Finance Code Chapter 159, Subchapter F and Chapter 58 of this title (relating to Wrap Mortgage Loans).

(c) Master Servicers and Subservicers. With respect to a residential mortgage loan for which the mortgage servicing rights are held by a person who is not the owner of the note (a/k/a "master servicer"), the holder of the mortgage servicing rights must be registered under Finance Code Chapter 158 even if that person does not actually receive any payments from the borrower but, instead, contracts with another person to service the loan (a/k/a "subservicer").

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**Source Note:** The provisions of this §58.100 adopted to be effective November 23, 2024, 49 TexReg 9215

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RULE §58.101

Applications for Registration

(a) NMLS. Applications for registration must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org); viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 158 are met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

**Source Note:** The provisions of this §58.101 adopted to be effective November 23, 2024, 49 TexReg 9215

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REGISTRATION

RULE §58.102

Fees

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(a) Registration Fees. The registration fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §158.053(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new registration versus renewal of the registration. The current fee is set in NMLS and posted on SML's website ([sml.texas.gov](http://sml.texas.gov)). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The registration fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges a separate fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org)).

(c) All fees are nonrefundable and nontransferable.

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**Source Note:** The provisions of this §58.102 adopted to be effective November 23, 2024, 49 TexReg 9215

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RULE §58.103

Renewal of Registration

(a) A registration may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage servicer continues to meet the minimum requirements for registration, including the requirements of Finance Code §158.058(c).

(b) Application of §58.101. A renewal request is an application subject to the requirements of §58.101 of this title (relating to Applications for Registration). A renewal request withdrawn under §58.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage servicer to continue conducting regulated activities while the mortgage servicer works diligently to resolve the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS registration status "Approved - Deficient." Approval under this subsection does not relieve the mortgage servicer of the obligation to resolve the deficiencies noted. A mortgage servicer approved under this subsection must resolve the deficiencies within 30 days after the date the registration is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the registration.

(d) No Renewal After Expiration. If a mortgage servicer fails to make a renewal request during the annual renewal period (November 1 to December 31) while the registration is still active and before it expires, then the registration cannot be renewed. Instead, the person must apply for a new registration and comply with all current requirements and procedures governing issuance of a new registration.

**Source Note:** The provisions of this §58.103 adopted to be effective November 23, 2024, 49 TexReg 9215

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**TITLE 7****BANKING AND SECURITIES****PART 4****DEPARTMENT OF SAVINGS AND MORTGAGE LENDING****CHAPTER 58****RESIDENTIAL MORTGAGE LOAN SERVICERS****SUBCHAPTER B****REGISTRATION****RULE §58.104****NMLS Records; Notices Sent to the Mortgage Servicer**

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(a) NMLS Registration Status. SML is required to assign a status to the registration in NMLS. The registration status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the registration status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available registration status options and their meaning.

(b) Amendments to NMLS Records Required. A mortgage servicer must amend its NMLS registration records (MU1 filing) within 10 days after the date of any material change affecting any aspect of the MU1 filing, including, but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);

(2) the addition or elimination of an assumed name (also known as a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);

(3) the contact information under "Identifying Information";

(4) the contact information listed under "Resident/Registered Agent";

(5) the contact information listed under "Contact Employee Information"; and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(c) Amendments to MU2 Associations Required. A mortgage servicer must cause the individuals who are required to register an association with the mortgage servicer (control persons) to make the proper filings in NMLS using the current form prescribed by NMLS (MU2 filing) and must ensure such associations are amended within 10 days after the date of any material change affecting such associations.

(d) Notices Sent to the Mortgage Servicer. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage servicer in accordance with this subsection using the mortgage servicer's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by email is complete on transmission of the email to mortgage servicer's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. A mortgage servicer must monitor such email account and ensure that emails sent by SML are not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage servicer is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage servicer is further deemed to have



constructive notice of any NMLS system notifications sent to it by email.

(2) Service by Mail. Service by mail is made using the address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is made using the address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage servicer by mail and the document communicates a deadline by or a time during which the mortgage servicer must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

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REGISTRATION

RULE §58.106

Surrender of the Registration

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(a) Surrender Request. A mortgage servicer may seek surrender of the registration by filing a surrender request (request) in NMLS. The filing must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:

- (1) the mortgage servicer is the subject of a pending or contemplated investigation or enforcement action;
- (2) the mortgage servicer is in violation of an order of the Commissioner; or
- (3) the mortgage servicer has failed to pay any fee, charge, or other indebtedness owed to SML.

(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage servicer's registration will be assigned the registration status "Approved - Inactive" in NMLS.

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DUTIES AND RESPONSIBILITIES

RULE §58.200

Required Disclosures

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage servicer is required to make under Finance Code §158.101.

(b) Specific Notice to Borrower. A mortgage servicer must send written notice to the borrower concerning SML's regulatory oversight within 30 days after the date it begins servicing a residential mortgage loan. The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage servicer's role in servicing the loan, including any notice required by Regulation X (12 C.F.R. §1024.33(b)). This subsection applies to the servicing of residential mortgage loans secured by real property located in Texas. Mortgage servicers servicing a residential mortgage loan not secured by real property located in Texas must not provide the notice described by this section.

(c) Posted Notice on Websites. A mortgage servicer must post the notice required by subsection (b) of this section on each website of the mortgage servicer, other than a social media site, that is accessible by a borrower. The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked page with the link to such page displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to the borrower must include:

- (1) the mortgage servicer's name and NMLS ID; and
- (2) the mortgage servicer's website address, if it has a website.

**Source Note:** The provisions of this §58.200 adopted to be effective November 23, 2024, 49 TexReg 9215

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RULE §58.207

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DUTIES AND RESPONSIBILITIES

Periodic Statements

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A mortgage servicer that services a loan secured by a dwelling must comply with the requirements of Section 1026.41 of Regulation Z (12 C.F.R. §1026.41), governing the issuance, content, form, and layout of periodic statements sent to the borrower.

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## RULE §58.210

## BANKING AND SECURITIES

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## DUTIES AND RESPONSIBILITIES

## Reportable Incidents

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(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage servicer's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:

(A) a "catastrophic event" as defined by this subsection;

(B) a "security event" as defined by this subsection;

(C) the termination or curtailment of a line of credit or funding source; or

(D) the termination or curtailment of a service provided to the mortgage servicer by a third-party service provider.

(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.

(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.

(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage servicer must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage servicer becomes aware of the reportable incident. The report must include:

(1) a detailed description of the nature and circumstances of the reportable incident;

(2) the number of Texas residents affected or potentially affected by the reportable incident;

(3) the measures taken by the mortgage servicer to resolve or address the reportable incident;

(4) the measures the mortgage servicer plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage servicer for inquiries by SML about the reportable incident.

(c) Incidents Reported to Other Agencies. A mortgage servicer must provide SML with a copy of the following

notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:

(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and

(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).

(d) Root Cause Analysis for Security Events. For any security event triggering a notification described by subsection (c) of this section, the mortgage servicer must provide SML with a root cause analysis report within 120 days after the date the mortgage servicer becomes aware that the security event occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under subsection (b) or (d) of this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §158.102 and §58.302 of this title (relating to Confidentiality of Investigation Information).

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SUPERVISION AND ENFORCEMENT

RULE §58.301

Investigations

(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage servicer conducted by SML under Finance Code §158.102.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. Such investigation may include:

- (1) review of documentary evidence;
- (2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;
- (3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;
- (4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and
- (5) other lawful investigative methods as SML deems necessary or appropriate.

(d) Investigation Fee. The Commissioner may collect a fee for conducting an investigation on a mortgage servicer. The amount of the fee is determined by the Commissioner not to exceed \$975 per complaint. The investigation fee, if any, is assessed at the time SML closes the complaint. The investigation fee, if any, will be invoiced in NMLS and must be paid in NMLS.

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## SUPERVISION AND ENFORCEMENT

## RULE §58.302

## Confidentiality of Investigation Information

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an investigation, as provided by Finance Code §158.102.

(b) Confidential Information. All information obtained by SML during an investigation is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §158.102 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or generated during an investigation;

(2) information that is derived from or is the product of the confidential information described by paragraph (1) of this subsection, including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an investigation, including assertions of an actual or apparent violation of law or any directives, mandates, or recommendations for action by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation; and

(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the mortgage servicer's compliance with any directives, mandates, or recommendations for action by the mortgage servicer and any corrective or remedial action taken by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation.

(c) Loss of Confidentiality. Subsection (b) of this section notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).

**Source Note:** The provisions of this §58.302 adopted to be effective November 23, 2024, 49 TexReg 9215

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## SUPERVISION AND ENFORCEMENT

## RULE §58.303

## Corrective Action

(a) Corrective Action, Generally; Purpose. During an investigation, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the investigation, SML may direct the mortgage servicer to voluntarily take corrective action to address the violations identified during the investigation. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an investigation that a violation may be systemic, SML may direct the mortgage servicer to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage servicer to take corrective action for any violations identified during the review.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage servicer to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage servicer to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the borrower at his or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the borrower. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage servicer must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;

(2) Corporate Check. The refund may be made by issuing a check to the borrower. The check must be drawn on a bank account owned by the mortgage servicer. The check must be sent to the borrower at his or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the borrower. The mortgage servicer must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the borrower fails to cash the check, the mortgage servicer must comply with requirements of §58.304 of this title (relating to Unclaimed Funds);

(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the borrower's verified bank account. The mortgage servicer must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

(A) name of the sender and any relevant contact information;

(B) sender's bank information (institution, routing number, and account number);

(C) name of the recipient and any relevant contact information;

(D) recipient's bank information (routing number and account number); and

(E) the transaction reference number or confirmation code; or

(4) Credit Against Indebtedness. If, at the time of the refund, the mortgage servicer holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage servicer may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage servicer on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage servicer began improperly holding the proceeds. The mortgage servicer must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest payments as a result of the credit being applied.

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RULE §58.304

Unclaimed Funds

(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a borrower or other customer of the mortgage servicer for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage servicer must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:

- (1) date of transfer to the escheat suspense account;
- (2) date the obligation to pay the funds arose;
- (3) full name and last known contact information of the borrower other customer to whom funds are owed; and
- (4) amount of unclaimed funds.

(b) Required Records. The mortgage servicer must maintain records reflecting bona fide attempts to pay the funds to the borrower or customer.

(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.

(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.

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## RULE §58.310

## Appeals

(a) Purpose. Finance Code Chapter 158 provides that certain decisions of the Commissioner adverse to a mortgage servicer or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage servicer or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) Registration Denials. A registration denial under Finance Code §158.058(c), or otherwise, must be appealed on or before 10 days after the date notice of the Commissioner's decision is received by the person seeking the registration.

(2) Order to Take Affirmative Action or Order to Cease and Desist. An order issued by the Commissioner under Finance Code §§158.103(a), 158.105(a), or 158.106 must be appealed within 30 days after the date the order is issued.

(3) Notice of Revocation. A notice of revocation issued under Finance Code §158.059 must be appealed on or before 30 days after the date the notice is issued.

(4) Other Deadlines. Any appeal not otherwise addressed by this section must be made on or before 30 days after the date notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email ([enforcement@sml.texas.gov](mailto:enforcement@sml.texas.gov)).

(d) Effect of Not Appealing. A mortgage servicer or other person that does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage servicer or other person.

**Source Note:** The provisions of this §58.310 adopted to be effective November 23, 2024, 49 TexReg 9215

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# Texas Administrative Code

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SUPERVISION AND ENFORCEMENT

RULE §58.311

Hearings

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Adjudicative hearings conducted under Finance Code Chapter 158 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

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**Source Note:** The provisions of this §58.311 adopted to be effective November 23, 2024, 49 TexReg 9215

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