

AN ACT

relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan; providing licensing and registration requirements; authorizing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 156.202, Finance Code, is amended by amending Subsection (a-1) and adding Subsection (b) to read as follows:

(a-1) The following entities are exempt from this chapter:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) a mortgage banker registered under Chapter 157;

(3) subject to Subsection (b), any owner of residential real estate who in any 12-consecutive-month period makes no more than three [~~five~~] residential mortgage loans to

1 purchasers of the property for all or part of the purchase price of
2 the residential real estate against which the mortgage is secured;
3 and

4 (4) an entity that is:

5 (A) a depository institution;

6 (B) a subsidiary of a depository institution that
7 is:

8 (i) owned and controlled by the depository
9 institution; and

10 (ii) regulated by a federal banking agency;
11 or

12 (C) an institution regulated by the Farm Credit
13 Administration.

14 (b) In determining eligibility for an exemption under
15 Subsection (a-1)(3), two or more owners of residential real estate
16 are considered a single owner for the purpose of computing the
17 number of mortgage loans made within the period specified by that
18 subdivision if any of the owners are an entity or an affiliate of an
19 entity, including a general partnership, limited partnership,
20 limited liability company, or corporation, as defined by Section
21 1.002, Business Organizations Code.

22 SECTION 2. Section 157.0121, Finance Code, is amended by
23 amending Subsection (c) and adding Subsection (f) to read as
24 follows:

25 (c) Employees of the following entities, when acting for the
26 benefit of those entities, are exempt from the licensing and other
27 requirements of this chapter applicable to residential mortgage

1 loan originators:

2 (1) a nonprofit organization:

3 (A) providing self-help housing that originates
4 zero interest residential mortgage loans for borrowers who have
5 provided part of the labor to construct the dwelling securing the
6 loan; or

7 (B) that has designation as a Section 501(c)(3)
8 organization by the Internal Revenue Service and originates
9 residential mortgage loans for borrowers who, through a self-help
10 program, have provided at least 200 labor hours or 65 percent of the
11 labor to construct the dwelling securing the loan;

12 (2) subject to Subsection (f), any owner of
13 residential real estate who in any 12-consecutive-month period
14 makes no more than three [~~five~~] residential mortgage loans to
15 purchasers of the property for all or part of the purchase price of
16 the residential real estate against which the mortgage is secured;
17 and

18 (3) an entity that is:

19 (A) a depository institution;

20 (B) a subsidiary of a depository institution that
21 is:

22 (i) owned and controlled by the depository
23 institution; and

24 (ii) regulated by a federal banking agency;

25 or

26 (C) an institution regulated by the Farm Credit
27 Administration.

1 (f) In determining eligibility for an exemption under
2 Subsection (c)(2), two or more owners of residential real estate
3 are considered a single owner for the purpose of computing the
4 number of mortgage loans made within the period specified by that
5 subdivision if any of the owners are an entity or an affiliate of an
6 entity, including a general partnership, limited partnership,
7 limited liability company, or corporation, as defined by Section
8 1.002, Business Organizations Code.

9 SECTION 3. Subtitle E, Title 3, Finance Code, is amended by
10 adding Chapter 159 to read as follows:

11 CHAPTER 159. WRAP MORTGAGE LOAN FINANCING

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 159.001. DEFINITIONS. In this chapter:

14 (1) "Commissioner" means the savings and mortgage
15 lending commissioner.

16 (2) "Finance commission" means the Finance Commission
17 of Texas.

18 (3) "Residential mortgage loan" has the meaning
19 assigned by Section 180.002.

20 (4) "Residential real estate" has the meaning assigned
21 by Section 180.002.

22 (5) "Wrap borrower" means a person obligated to pay a
23 wrap mortgage loan.

24 (6) "Wrap lender" means:

25 (A) a person who makes a wrap mortgage loan; or

26 (B) an owner of residential real estate who
27 contracts with another person to make a wrap mortgage loan to a wrap

1 borrower on the owner's behalf to finance the purchase of the
2 owner's residential real estate.

3 (7) "Wrap mortgage loan" means a residential mortgage
4 loan:

5 (A) made to finance the purchase of residential
6 real estate that will continue to be subject to an unreleased lien
7 that:

8 (i) attached to the residential real estate
9 before the loan was made; and

10 (ii) secures a debt incurred by a person
11 other than the wrap borrower that was not paid off at the time the
12 loan was made; and

13 (B) obligating the wrap borrower to the wrap
14 lender for payment of a debt the principal amount of which includes:

15 (i) the outstanding balance of the debt
16 described by Paragraph (A)(ii); and

17 (ii) any remaining amount of the purchase
18 price financed by the wrap lender.

19 Sec. 159.002. INAPPLICABILITY OF CHAPTER. (a) In this
20 section, "unimproved residential real estate" means residential
21 real estate on which a dwelling has not been constructed.

22 (b) Notwithstanding any other provision of this chapter,
23 this chapter does not apply to a wrap mortgage loan:

24 (1) made by or on behalf of an owner of unimproved
25 residential real estate to a purchaser of that residential real
26 estate if:

27 (A) the residential real estate purchased will

1 not continue to be subject to any unreleased lien described by
2 Section 159.001(7)(A) that secures a debt that is subject to a
3 due-on-sale clause in connection with which the lienholder may
4 foreclose the lien; or

5 (B) the residential real estate purchased will
6 continue to be subject to an unreleased lien described by Paragraph
7 (A) and the holder of that unreleased lien has consented to the sale
8 of the residential real estate; or

9 (2) for a sale of residential real estate that is the
10 wrap lender's homestead.

11 Sec. 159.003. EXEMPTIONS. (a) The following persons are
12 exempt from this chapter:

13 (1) a federally insured bank, savings bank, savings
14 and loan association, Farm Credit System Institution, or credit
15 union;

16 (2) a subsidiary of a federally insured bank, savings
17 bank, savings and loan association, Farm Credit System Institution,
18 or credit union;

19 (3) the state or a governmental agency, political
20 subdivision, or other instrumentality of the state, or an employee
21 of the state or a governmental agency, political subdivision, or
22 instrumentality of the state who is acting within the scope of the
23 person's employment; or

24 (4) subject to Subsection (b), an owner of residential
25 real estate if the owner does not in any 12-consecutive-month
26 period make, or contract with another person to make, more than
27 three wrap mortgage loans to purchasers of the property for all or

1 part of the purchase price of the residential real estate against
2 which the mortgage is secured.

3 (b) In determining eligibility for an exemption under
4 Subsection (a)(4), two or more owners of residential real estate
5 are considered a single owner for the purpose of computing the
6 number of mortgage loans made within the period specified by that
7 subdivision if any of the owners are an entity or an affiliate of an
8 entity, including a general partnership, limited partnership,
9 limited liability company, or corporation, as defined by Section
10 1.002, Business Organizations Code.

11 SUBCHAPTER B. LICENSING OR REGISTRATION

12 Sec. 159.051. LICENSE OR REGISTRATION REQUIRED. A person
13 may not originate or make a wrap mortgage loan unless the person is
14 licensed or registered to originate or make residential mortgage
15 loans under Chapter 156, 157, or 342 or is exempt from licensing or
16 registration as provided under an applicable provision of those
17 chapters.

18 SUBCHAPTER C. TRANSACTION REQUIREMENTS; REMEDIES

19 Sec. 159.101. DISCLOSURE STATEMENT; OPTION TO RESCIND. (a)
20 A wrap lender must, on or before the seventh day before the wrap
21 mortgage loan agreement is entered into, provide to the wrap
22 borrower a separate written disclosure statement in at least
23 12-point type that:

24 (1) contains the information required for a written
25 disclosure statement under Section 5.016, Property Code; and

26 (2) includes a statement in a form substantially
27 similar to the following:

1 NOTICE REGARDING PROPERTY INSURANCE: ANY INSURANCE MAINTAINED BY A
2 SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THIS
3 PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS
4 A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO
5 ENSURE THE BUYER'S INTERESTS ARE PROTECTED, THE BUYER SHOULD
6 PURCHASE THE BUYER'S OWN PROPERTY INSURANCE. BEFORE PURCHASING
7 THIS PROPERTY, YOU MAY WISH TO CONSULT AN INSURANCE AGENT REGARDING
8 THE INSURANCE COVERAGE AVAILABLE TO YOU AS A BUYER OF THE PROPERTY.

9 (b) The disclosure statement required under Subsection (a)
10 must be dated and signed by the wrap borrower when the wrap borrower
11 receives the statement.

12 (c) The finance commission by rule shall adopt a model
13 disclosure statement that satisfies the requirements of Subsection
14 (a).

15 (d) If the disclosure statement required under Subsection
16 (a) and any disclosure required by Section 159.102 are received by
17 the wrap borrower on or before the closing date of the wrap mortgage
18 loan, the wrap borrower may rescind the wrap mortgage loan
19 agreement and any related purchase agreement or other agreement
20 relating to the loan transaction not later than the seventh day
21 after the date of receipt of the disclosure statement, regardless
22 of whether the disclosure is timely made. On rescission under this
23 subsection, the wrap borrower is entitled to a return of any earnest
24 money, escrow amounts, down payment, or other fees or charges paid
25 in connection with the wrap mortgage loan, the related purchase
26 transaction, and any other related transaction.

27 Sec. 159.102. FOREIGN LANGUAGE REQUIREMENT. If the

1 negotiations that precede the execution of the wrap mortgage loan
2 agreement are conducted primarily in a language other than English,
3 the wrap lender shall provide a copy of a written disclosure
4 statement required under Section 159.101 of this code or Section
5 5.016, Property Code, in that language to the wrap borrower.

6 Sec. 159.103. FAILURE TO PROVIDE DISCLOSURE: TOLLING OF
7 LIMITATIONS. If a wrap lender fails to provide the disclosure
8 statement as required by Section 159.101 or fails to provide the
9 disclosure statement in the language required by Section 159.102,
10 the limitations period applicable to any cause of action of the wrap
11 borrower against the wrap lender arising out of the wrap lender's
12 violation of a law of this state in connection with the wrap
13 mortgage loan transaction is tolled until the 120th day after the
14 date the required disclosure statement is provided.

15 Sec. 159.104. FAILURE TO PROVIDE DISCLOSURE BEFORE CLOSING;
16 RIGHT OF RESCISSION. (a) Subject to Subsection (b), if a wrap
17 mortgage loan is closed without the wrap lender providing the
18 disclosure statement required by Section 159.101 or any disclosure
19 required by Section 159.102, the wrap borrower may rescind the wrap
20 mortgage loan agreement and the related purchase agreement at any
21 time by providing the wrap lender notice of rescission in writing.

22 (b) If the wrap borrower receives a required disclosure
23 statement under Section 159.101 or 159.102 after the date the wrap
24 mortgage loan is closed but before the wrap borrower provides
25 notice of rescission, the wrap borrower may rescind the wrap
26 mortgage loan agreement and the related purchase agreement in
27 writing on or before the 21st day after the date of receipt of the

1 disclosure statement.

2 (c) Not later than the 30th day after the date the wrap
3 borrower provides notice of rescission under this section, the wrap
4 lender shall return to the wrap borrower:

5 (1) all principal and interest payments made by the
6 wrap borrower on the wrap mortgage loan;

7 (2) any money or property given as earnest money, a
8 down payment, or otherwise in connection with the wrap mortgage
9 loan or related purchase transaction; and

10 (3) any escrow amounts for the wrap mortgage loan or
11 related purchase transaction.

12 (d) On the date on which all of the returned money or
13 property described by Subsection (c) is received by the wrap
14 borrower, the wrap borrower shall convey to the wrap lender or the
15 wrap lender's designee the residential real estate described by
16 Section 159.001(7)(A). The wrap borrower shall surrender
17 possession of the residential real estate not later than the 30th
18 day after the date of the wrap borrower's receipt of the money or
19 property returned as described by this subsection.

20 (e) Notwithstanding Subsection (a) or (b), the wrap lender
21 may avoid rescission if not later than the 30th day after the date
22 of receipt of notice of rescission under Subsection (a), the wrap
23 lender:

24 (1) pays the outstanding balance due on any debt
25 described by Section 159.001(7)(A)(ii);

26 (2) pays any due and unpaid taxes or other government
27 assessment on the residential real estate described by Section

1 159.001(7)(A);

2 (3) pays to the wrap borrower as damages for
3 noncompliance the sum of \$1,000 and any reasonable attorney's fees
4 incurred by the wrap borrower; and

5 (4) provides to the wrap borrower evidence of
6 compliance with Subdivisions (1) and (2).

7 Sec. 159.105. ENFORCEABILITY OF WRAP LIEN. A lien securing
8 a wrap mortgage loan is void unless the wrap mortgage loan and the
9 conveyance of the residential real estate securing the loan are
10 closed by an attorney or a title company.

11 Sec. 159.106. BORROWER'S RIGHT OF ACTION. (a) A wrap
12 borrower may bring an action to:

13 (1) obtain declaratory or injunctive relief to enforce
14 this subchapter;

15 (2) recover any actual damages suffered by the wrap
16 borrower as a result of a violation of this subchapter; or

17 (3) obtain other remedies available under this
18 subchapter or in an action under Section 17.50, Business & Commerce
19 Code, as otherwise authorized under this subchapter.

20 (b) A wrap borrower who prevails in an action under this
21 section may recover court costs and reasonable attorney's fees.

22 Sec. 159.107. WAIVER OR AVOIDANCE PROHIBITED. (a) Any
23 purported waiver of a right of a wrap borrower under this subchapter
24 or purported exemption of a person from liability for a violation of
25 this subchapter is void.

26 (b) A person who is a party to a residential real estate
27 transaction may not evade the application of this subchapter by any

1 device, subterfuge, or pretense, and any attempt to do so is void
2 and a deceptive trade practice under Subchapter E, Chapter 17,
3 Business & Commerce Code, and is actionable under that subchapter.

4 Sec. 159.108. RULEMAKING AUTHORITY. The finance commission
5 may adopt and enforce rules necessary for the intent of or to ensure
6 compliance with this subchapter.

7 SUBCHAPTER D. DUTIES OWED TO WRAP BORROWER

8 Sec. 159.151. MONEY HELD IN TRUST. A person who collects or
9 receives a payment from a wrap borrower under the terms of a wrap
10 mortgage loan holds the money in trust for the benefit of the
11 borrower.

12 Sec. 159.152. FIDUCIARY DUTY. A person who collects or
13 receives a payment from a wrap borrower under the terms of or in
14 connection with a wrap mortgage loan owes a fiduciary duty to the
15 wrap borrower to use the payment to satisfy the obligations of the
16 obligee under each debt described by Section 159.001(7)(A)(ii) and
17 the payment of taxes and insurance for which the wrap lender has
18 received any payments from the wrap borrower.

19 SUBCHAPTER E. WRAP BORROWER'S RIGHTS

20 Sec. 159.201. APPLICABILITY OF SUBCHAPTER. This subchapter
21 applies only to a wrap mortgage loan for a purchase of residential
22 real estate to be used as the wrap borrower's residence.

23 Sec. 159.202. WRAP BORROWER'S RIGHT TO DEDUCT. The wrap
24 borrower, without taking judicial action, may deduct from any
25 amount owed to the wrap lender under the terms of the wrap mortgage
26 loan:

27 (1) the amount of any payment made by the wrap borrower

1 to an obligee of a debt described by Section 159.001(7)(A)(ii) to
2 cure a default by the wrap lender caused by the lender's failure to
3 make payments for which the lender is responsible under the terms of
4 the wrap mortgage loan; or

5 (2) any other amount for which the wrap lender is
6 liable to the wrap borrower under the terms of the wrap mortgage
7 loan.

8 SUBCHAPTER F. ENFORCEMENT OF CERTAIN REGISTRATION REQUIREMENTS

9 Sec. 159.251. APPLICABILITY OF SUBCHAPTER. This subchapter
10 applies only to a wrap lender who is required to register as a
11 residential mortgage loan servicer under Chapter 158.

12 Sec. 159.252. INSPECTION; INVESTIGATION. (a) The
13 commissioner may conduct an inspection of a wrap lender registered
14 under Chapter 158 as the commissioner determines necessary to
15 determine whether the wrap lender is complying with that chapter
16 and applicable rules. The inspection may include an inspection of
17 the books, records, documents, operations, and facilities of the
18 wrap lender. The commissioner may share evidence of criminal
19 activity gathered during an inspection or investigation with any
20 state or federal law enforcement agency.

21 (b) For reasonable cause, the commissioner at any time may
22 investigate a wrap lender registered under Chapter 158 to determine
23 whether the lender is complying with that chapter and applicable
24 rules.

25 (c) The commissioner may conduct an undercover or covert
26 investigation only if the commissioner, after due consideration of
27 the circumstances, determines that the investigation is necessary

1 to prevent immediate harm and to carry out the purposes of Chapter
2 158.

3 (d) The finance commission by rule shall provide guidelines
4 to govern an inspection or investigation under this section,
5 including rules to:

6 (1) determine the information and records of the wrap
7 lender to which the commissioner may demand access during an
8 inspection or investigation; and

9 (2) establish what constitutes reasonable cause for an
10 investigation.

11 (e) Information obtained by the commissioner during an
12 inspection or investigation under this section is confidential
13 unless disclosure of the information is permitted or required by
14 other law.

15 (f) The commissioner may share information gathered during
16 an investigation under this section with a state or federal agency.
17 The commissioner may share information gathered during an
18 inspection with a state or federal agency only if the commissioner
19 determines there is a valid reason for the sharing.

20 (g) The commissioner may require reimbursement of expenses
21 for each examiner for an on-site examination or inspection of a
22 registered wrap lender under this section if records are located
23 out of state and are not made available for examination or
24 inspection by the examiner in this state. The finance commission by
25 rule shall set the maximum amount for the reimbursement of expenses
26 authorized under this subsection.

27 Sec. 159.253. ISSUANCE AND ENFORCEMENT OF SUBPOENA.

1 (a) During an investigation conducted under this subchapter, the
2 commissioner may issue a subpoena that is addressed to a peace
3 officer of this state or other person authorized by law to serve
4 citation or perfect service. The subpoena may require a person to
5 give a deposition, produce documents, or both.

6 (b) If a person disobeys a subpoena or if a person appearing
7 in a deposition in connection with the investigation refuses to
8 testify, the commissioner may petition a district court in Travis
9 County to issue an order requiring the person to obey the subpoena,
10 testify, or produce documents relating to the matter. The court
11 shall promptly set an application to enforce a subpoena issued
12 under Subsection (a) for hearing and shall cause notice of the
13 application and the hearing to be served on the person to whom the
14 subpoena is directed.

15 SUBCHAPTER G. ENFORCEMENT OF CHAPTER

16 Sec. 159.301. CEASE AND DESIST ORDER. (a) The
17 commissioner, if the commissioner has reasonable cause to believe
18 that a wrap lender or wrap mortgage loan originator to whom this
19 chapter applies has violated or is about to violate this chapter,
20 may issue without notice and hearing an order to cease and desist
21 from continuing a particular action or an order to take affirmative
22 action, or both, to enforce compliance with this chapter.

23 (b) An order issued under Subsection (a) must contain a
24 reasonably detailed statement of the facts on which the order is
25 made. If a person against whom the order is made requests a
26 hearing, the commissioner shall set and give notice of a hearing
27 before the commissioner or a hearings officer. The hearing shall be

1 governed by Chapter 2001, Government Code. Based on the findings of
2 fact, conclusions of law, and recommendations of the hearings
3 officer, the commissioner by order may find a violation has
4 occurred or not occurred.

5 (c) If a hearing is not requested under Subsection (b) on or
6 before the 30th day after the date on which an order is made, the
7 order is considered final and not appealable.

8 (d) The commissioner, after giving notice and an
9 opportunity for hearing, may impose against a person who violates a
10 cease and desist order an administrative penalty in an amount not to
11 exceed \$1,000 for each day of the violation. In addition to any
12 other remedy provided by law, the commissioner may institute in
13 district court a suit for injunctive relief and to collect the
14 administrative penalty. A bond is not required of the commissioner
15 with respect to injunctive relief granted under this subsection.

16 SECTION 4. Section 180.003, Finance Code, is amended by
17 amending Subsection (a) and adding Subsection (d) to read as
18 follows:

19 (a) The following persons are exempt from this chapter:

20 (1) a registered mortgage loan originator when acting
21 for an entity described by Section 180.002(16)(A)(i), (ii), or
22 (iii);

23 (2) an individual who offers or negotiates terms of a
24 residential mortgage loan with or on behalf of an immediate family
25 member of the individual;

26 (3) a licensed attorney who negotiates the terms of a
27 residential mortgage loan on behalf of a client as an ancillary

1 matter to the attorney's representation of the client, unless the
2 attorney:

3 (A) takes a residential mortgage loan
4 application; and

5 (B) offers or negotiates the terms of a
6 residential mortgage loan;

7 (4) an individual who offers or negotiates terms of a
8 residential mortgage loan secured by a dwelling that serves as the
9 individual's residence;

10 (5) subject to Subsection (d), an owner of residential
11 real estate who in any 12-consecutive-month period makes no more
12 than three [~~five~~] residential mortgage loans to purchasers of the
13 property for all or part of the purchase price of the residential
14 real estate against which the mortgage is secured; and

15 (6) subject to Subsection (d), an owner of a dwelling
16 who in any 12-consecutive-month period makes no more than three
17 [~~five~~] residential mortgage loans to purchasers of the property for
18 all or part of the purchase price of the dwelling against which the
19 mortgage or security interest is secured.

20 (d) In determining eligibility for an exemption under
21 Subsection (a)(5) or (6), two or more owners of residential real
22 estate are considered a single owner for the purpose of computing
23 the number of mortgage loans made within the period specified by
24 that subdivision if any of the owners are an entity or an affiliate
25 of an entity, including a general partnership, limited partnership,
26 limited liability company, or corporation, as defined by Section
27 1.002, Business Organizations Code.

1 SECTION 5. This Act takes effect January 1, 2022.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 43 passed the Senate on April 6, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 10, 2021, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 43 passed the House, with amendment, on May 5, 2021, by the following vote: Yeas 101, Nays 46, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor