

**Title 7. Banking and Securities
Part 4. Department of Savings and Mortgage Lending
Chapter 79 Residential Mortgage Loan Servicers
Subchapter B. Complaints and Investigations
Subchapter C. Hearings and Appeals
7 TAC §§ 79.20, 79.30**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to the name of § 79.20, concerning complaints, and an amendment to 7 TAC § 79.30 concerning hearings. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The new rules are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications

for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, and Finance Code § 158.003, which provides that the finance commission may adopt rules necessary to ensure that residential mortgage loan servicers comply with federal and state laws, rules, and regulations.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 158.

§79.20. [~~Complaints and~~] Investigations

(a) Investigations [~~Upon receipt of a signed, written complaint from a person setting forth known, suspected, or asserted facts relating to acts or omissions of a person required to be registered under the~~

~~Act, the Commissioner or the Commissioner's designee will:~~

~~(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation;~~

~~(2) if it has been determined that the complaint warrants an investigation, advise the residential mortgage loan servicer who is the subject of the complaint by written notice to the authorized office specified on that person's registration that a complaint has been filed;~~

~~(3) if it is determined that a complaint does not warrant investigation, so advise the complainant and close the file, advising the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered;~~

~~(4) if an investigation is to be conducted, advise the party who is the subject of the complaint that an investigation] will be conducted [and conduct such investigation] as [is] deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:~~

~~(1) [(A)] review of documentary evidence;~~

~~(2) [(B)] interviews with complainants, registrants, and third parties;~~

~~(3) [(C)] obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and~~

(4) ~~(D)~~ [~~such~~] other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(5) ~~(E)~~ If the Department requests reports or other information of registrant and registrant does not respond as required a \$150 penalty may be assessed against the registrant.

(b) A complaint investigation fee may be assessed against a person required to be registered under this Act [~~after the Department opens a fifth complaint or expends 12 hours of investigative work on an annual basis from September 1st to August 31st~~]. The amount of the complaint investigation fee assessed is limited to costs incurred, will be at the discretion of the Commissioner, and may [~~be set at an amount~~] not [~~to~~] exceed \$ 975 per complaint.

(c) The Commissioner may conduct a Departmental investigation if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of the Act.

§79.30 Hearings and Appeals [~~and Hearings~~]

As determined by the Commissioner, the [The] Hearings Officer for the Finance Commission or an Administrative Law Judge at the State Office of Administrative

Hearings (SOAH) may be [is] designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review and shall be a contested case governed by Chapter 2001, Government Code. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage
Lending