



# DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

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## **NOTICE OF PRECOMMENT DRAFT**

### **SML Amendments to 7 Tex. Admin. Code § 77.73 March 6, 2020 Precomment Draft**

Please take notice that, on behalf of the Finance Commission of Texas (the "Commission"), the Department of Savings and Mortgage Lending ("SML" or "Department") is considering amendments to the requirements of 7 Tex. Admin. Code § 77.73.

The Department issues this notice to solicit informal written comments to the rule amendments being considered, prior to potential consideration of the amendments by the Finance Commission. The Department will accept informal written precomments until 5:00 p.m. on March 30, 2020. The Department tentatively plans to present these rules for proposal at the Finance Commission's April 17, 2020 meeting.

### **Background and Summary of Amendments**

7 Tex. Admin. Code § 77.73, in part, governs when a state savings bank must perform an appraisal or evaluation of real estate it acquires in satisfaction or partial satisfaction of indebtedness. The amendments being considered include the following:

- Amendments to subsections (e) and (g) of §77.73, if adopted, would raise the threshold for which a state savings bank may elect to perform an evaluation in lieu of a formal appraisal by a certified or licensed appraiser from \$250,000 to \$400,000. The amendments are being considered to mirror and conform to similar amendments adopted jointly by the United States Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, and the Federal Deposit Insurance Corporation to their regulations at 12 C.F.R. §§34.44, 225.64, and 323.3, respectively.
- Further amendments to subsection (e), if adopted, would clarify that an appraisal or evaluation must be performed no later than sixty days following the acquisition of real estate, replacing potentially ambiguous existing language.
- Further amendments to subsection (e), if adopted, would allow the Department's commissioner to extend the deadline to obtain an appraisal or evaluation for good cause shown.

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- The amendments, if adopted, would create a new subsection (i) requiring a state savings bank to perform an appraisal or evaluation in accordance with applicable federal regulations.

The Department invites stakeholders to comment on the rule amendments being considered. In particular, the Department would like to know what costs and benefits stakeholders will experience if the rule amendments are adopted.

**Submission of Informal Precomments**

Informal precomments regarding the Department's March 6, 2020 draft may be submitted by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) with the subject line "Public Comment - Real Estate Appraisals," or by mail to Iain A. Berry, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294.

***Informal precomments on the Department's March 6, 2020 draft rule amendments must be received by 5:00 p.m. on March 30, 2020.***

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***Title 7, Texas Administrative Code***

***Chapter 77, Loans, Investments, Savings, and Deposits***

***Subchapter A, Authorized Loan and Investments***

***§77.73. Investment in Banking Premises and Other Real Estate Owned.***

(a) No savings bank, without prior written consent of the commissioner, shall invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) No savings bank shall acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank, or for the use of the bank in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings bank's facilities not improved and occupied as banking facilities within five (5) years from the date of its acquisition shall be sold or otherwise disposed of. Existing bank facilities shall be sold or otherwise disposed of within five (5) years of the date the real estate ceases to be used for banking purposes. The commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank shall be held by a savings bank for no more than five years, unless the commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a state savings bank must substantiate the market value of the real estate by obtaining an appraisal within sixty (60) days ~~following~~ the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is ~~[less than]~~ \$40[25]0,000 or less. The commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings bank acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than one (1) year old.

(g) An evaluation shall be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of \$40[25]0,000.

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(h) Notwithstanding any other provision of this section, the commissioner may require an appraisal of real estate if the commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the Federal Deposit Insurance Corporation in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.