

## NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDERS WEBINAR

### SML Rulemaking – Chapter 78 September 21, 2021 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML or the Department) is considering new rules in 7 Texas Administrative Code (TAC) Chapter 78, concerning Wrap Mortgage Loans.

The Department will hold a stakeholder webinar on September 23, 2021 at 11:00 a.m. to discuss the pre-comment draft of the rule changes.

The Department will also accept informal written pre-comments until September 27, 2021 at 2:00 p.m.

The Department plans to present the rules for consideration by the Finance Commission at its October 15, 2021 meeting.

#### **Participating in the Webinar**

The webinar will be conducted utilizing the Webex platform by Cisco.

*Note: Participants need to preregister for the webinar. While WebEx has the capability for participants to appear by video, participation by the panelists and attendees will be by audio only (with screen sharing by the panelists).*

[Registration Link](#)

#### **Submission of Informal Pre-comments**

Informal written pre-comments regarding the Department's draft rules may be submitted by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov) or by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294. **Informal pre-comments must be received by 2:00 p.m. on September 27, 2021.**

#### **Overview of Changes:**

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New Rules Concerning Wrap Mortgage Loans. During the 87<sup>th</sup> Legislature (Regular Session), Senate Bill 43 (SB43) was enacted into law (eff. January 1, 2022) which, among other things, created new Finance Code Chapter 159, Wrap Mortgage Loan Financing. The rules, if adopted, would:

- create definitions necessary to administer Finance Code Chapter 159;
- clarify how time periods measured in days by Finance Code Chapter 159 are to be calculated;
- clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure), including:
  - establishing a model disclosure form, embedded in the rules as a graphic, that a wrap lender may rely on to satisfy the requirements of Finance Code §159.101;
  - establishing formatting requirements for the disclosure;
  - clarifying when a wrap lender is deemed to have provided the disclosure to the wrap borrower for purposes of §159.101;
  - establishing requirements concerning the requirement that a wrap lender provide a foreign-language version of the disclosure, for negotiations with the wrap borrower conducted primarily in a language other than English; and
  - clarifying that the disclosure may be delivered by the wrap lender and signed by the wrap borrower electronically;
- clarify and establish requirements related to the requirement, pursuant to Finance Code §159.105, that a wrap mortgage loan be closed by an attorney or a title company;
- establish requirements for the wrap borrower to make deductions from the amounts the wrap borrower is required to pay under the terms of the wrap mortgage loan, as provided by Finance Code §159.252;
- clarify and establish requirements related to the fiduciary duties owed by a person to a wrap borrower by a person who collects or receives payment from a wrap borrower, as provided by Finance Code §159.152, including:
  - clarifying that a wrap lender may not delegate or assign its fiduciary duties to another person except as a result of selling or assigning the wrap mortgage loan;
  - clarifying that, unless agreed to otherwise in writing by the wrap borrower and wrap lender, funds received from a wrap borrower must be placed in a trust account maintained for the benefit of the mortgage borrower; and

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- establishing requirements for the wrap lender to maintain a separate accounting for each wrap mortgage loan;
- clarify and establish requirements concerning the wrap lender's use of a third party to act as residential mortgage loan servicer of a wrap mortgage loan;
- establish requirements concerning the books and records a wrap lender that is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 must maintain; and
- clarify and establish requirements related to the savings and mortgage lending commissioner's authority to make inspections and conduct investigations of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

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**TITLE 7 BANKING AND SECURITIES**

**PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 78 WRAP MORTGAGE LOANS**

**SUBCHAPTER A GENERAL PROVISIONS**

**§78.1. Purpose and Applicability.**

This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.

**§78.2. Definitions.**

The following terms, when used in this subchapter, and in the Commissioner's administration and enforcement of Finance Code Chapter 159, have the following meanings, unless the context clearly indicates otherwise:

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation for an offer) of wrap 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, and/or the mortgage loan amount.

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(2) "Attorney" has the meaning assigned by Texas Insurance Code §2501.003.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

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

(5) "E-Sign Act" refers to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(6) "Inspection" includes examination.

(7) "Legal holiday" means these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(8) "Mortgage applicant" means an applicant for a wrap mortgage loan or a person who is solicited (or contacts a wrap lender in response to a solicitation) to obtain a wrap mortgage loan, and includes 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 Mortgage Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(9) "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Finance Code §180.002.

(10) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan which is secured by 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.

(11) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.

(12) "Residential mortgage loan servicer" has the meaning assigned by Finance Code §158.002.

(13) "Residential real estate" has the meaning assigned by Finance Code §159.001. For purposes of Finance Code §159.002(b)(1), the term does not include "unimproved residential estate," as that term is defined by Finance Code §159.002(a).

(14) "Superior lien" refers to any lien described by Finance Code §159.001(7)(A).

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(15) "Superior lienholder" means the holder of any lien described by Finance Code §159.001(7)(A).

(16) "Third-party servicer" means a person other than the wrap lender acting as residential mortgage loan servicer for a wrap mortgage loan.

(17) "Title company" means a "title insurance company" as that term is defined by Texas Insurance Code §2501.003

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

(19) "Wrap borrower" has the meaning assigned by Finance Code §159.001.

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

(21) "Wrap lender registrant" means a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

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

**§78.3. Computation of Time.**

Except with respect to the disclosure required by Finance Code §159.101 and §78.100 of this title (relating to Required Disclosure), the calculation of any time period measured in days by Finance Code Chapter 159 is to be made using calendar days. In computing a period of 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.

**SUBCHAPTER B LENDER REQUIREMENTS AND RESPONSIBILITIES**

**§78.100. Required Disclosure.**

(a) Purpose and Applicability. The purpose of this section is to clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure).

(b) Model Disclosure Form. In accordance with Finance Code §159.101(c), the following form (Figure: 7 TAC §78.100(b); model disclosure form) is deemed to satisfy the substantive requirements of Finance Code §159.101(a). Interested persons should visit the Department's website ([sml.texas.gov](http://sml.texas.gov)) for a form-fillable version of the model disclosure form and an editable version in Word format (including for purposes of

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attaching additional sheets to supplement the form with additional information, as necessary). A wrap lender may modify and customize the model disclosure form; provided, the form:

(1) contains all substantive information contained in the model disclosure form that is applicable to the person issuing the disclosure;

(2) conforms to the formatting requirements of subsection (d) of this section; and

(3) otherwise fulfills the requirements of Finance Code §159.101(a).

Figure: 7 TAC §78.100(b).

(c) Formatting Requirements. The disclosure must be made in 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. Those portions of the disclosure comprising the body must use a normal font type. Those portions of the disclosure comprising a heading must use a bolded font type. Those portions of the disclosure comprising the content required by Finance Code §159.101(a)(2) and Texas Property Code §5.016(a)(7) must use an "all caps" or "small caps" font type. The following typefaces are deemed to be easily readable for purposes of this section:

\_\_\_\_\_ (1) Arial;

\_\_\_\_\_ (2) Calibri;

\_\_\_\_\_ (3) Century Schoolbook;

\_\_\_\_\_ (4) Garamond;

\_\_\_\_\_ (5) Georgia;

\_\_\_\_\_ (6) Lucinda Sans;

\_\_\_\_\_ (7) Times New Roman;

\_\_\_\_\_ (8) Trebuchet; and

\_\_\_\_\_ (9) Verdana.

(d) Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).

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(e) Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection (d) of this section. A Spanish-language version of the model disclosure form is available on the Department's website (sml.texas.gov) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to negotiations with a wrap borrower conducted primarily in Spanish.

(f) Electronic Delivery and Signature. The wrap lender may provide, and the wrap borrower may sign, the disclosure electronically 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.

(g) Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.

**§78.101. Closing Requirements.**

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.

(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.

(c) Closing by Attorney. For purposes of Finance Code §159.105, a wrap mortgage loan may be closed by an attorney retained or otherwise selected by the wrap lender but may not be closed by an attorney who is an employee of the wrap lender.

**SUBCHAPTER C BORROWER'S RIGHTS AND RESPONSIBILITIES**

**§78.200. Purpose and Applicability.**

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The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.

**§78.201. Right to Deduct; Notice of Deduction.**

(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.

(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:

\_\_\_\_\_ (1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower on behalf of the wrap lender;

\_\_\_\_\_ (2) the dates on which such payments were made; and

\_\_\_\_\_ (3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.

**SUBCHAPTER D WRAP LENDER AND SERVICER REQUIREMENTS**

**§78.301. Purpose and Applicability.**

The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing a wrap mortgage loan.

**§78.302. Fiduciary Duties; Trust Account; Required Accounting.**

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.



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(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152.

(c) Trust Account. Unless agreed to otherwise in writing by the wrap borrower and wrap lender, funds received from a wrap borrower must be placed in a custodial, trust, or escrow account meeting the requirements of §78.303 of this section (relating to Trust Account; Maintenance of Funds Held in Trust) and maintained or disbursed in accordance with such section.

(d) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from the wrap borrower on the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender utilizes the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this section may be accomplished through administration of and the retention of records in connection with a trust account as provided by §78.303 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).

**§78.303. Trust Account; Maintenance of Funds Held in Trust.**

(a) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:

(1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).

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\_\_\_\_\_ (2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.

\_\_\_\_\_ (3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.

\_\_\_\_\_ (4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.

(b) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account at a financial institution authorized to conduct business in Texas.

(c) Trust Account Requirements.

\_\_\_\_\_ (1) The trust account must be clearly identified as such at the financial institution.

\_\_\_\_\_ (2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.

\_\_\_\_\_ (3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.

\_\_\_\_\_ (4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial institution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.

(d) A receiver may not:

\_\_\_\_\_ (1) commingle trust funds with non-trust funds;

\_\_\_\_\_ (2) deposit or maintain trust funds in a personal account or any form of business account;

\_\_\_\_\_ (3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than proper disbursement of trust funds.

(3) Disbursement of Trust Funds.

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(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.

(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.

**§78.304. Use of Third-Party Servicer.**

(a) Use of a Third-Party Servicer. A wrap lender is authorized to secure and utilize the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").

(b) Handling of Payments and Disbursements. To the extent a wrap lender secures and utilizes the services of a third-party servicer, the handling of payments and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer, including:

(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;

(2) disbursements made to the wrap lender; and

(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.

(c) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code Chapter §159.152.

**§78.305. Required Books and Records by a Wrap Lender Registrant.**

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other person is required to

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maintain as a licensee or registrant under Finance Code Chapter 156, 157, 158, or 342, as applicable.

(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.

(c) Required Records. A wrap lender registrant must maintain the following items:

(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that all entries must be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap mortgage loan;

(B) the name and contact information of each wrap borrower; and

(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.

(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.

(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any

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applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:

(A) for all wrap mortgage loan transactions:

(i) the promissory note, loan agreement, or repayment agreement, signed by the wrap borrower(s);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document signed by the wrap borrower(s);

(iii) the title insurance policy or abstract of title;

(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any other written or recorded information used to evaluate the mortgage application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(v) the real estate contract documenting the sale of the residential real estate securing the wrap mortgage loan;

(vi) the disclosure statement requirement by Finance Code §159.101 and §78.100 of this title (relating to Required Disclosure), including any foreign-language disclosure required by Finance Code §159.102;

(vii) the initial and any revised integrated loan estimate disclosure required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.37;

(viii) the initial, revised, and final closing disclosure as required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.38;

(ix) any rate lock agreements, or similar document;

(x) the records relating to the ability-to-repay the wrap mortgage loan required by Regulation Z, 12 C.F.R. §1026.25 and §1026.43;

(xi) copies of any appraisal reports or written valuation reports used to determine the value of the residential real estate;

(xii) the privacy notice required by Regulation P, 12 C.F.R. §1016.5;

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(xiii) the wrap borrower's authorization and consent to receive electronic documents as required by the E-sign Act and Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.17(a)(1);

(B) with respect to servicing the wrap mortgage loan, the following additional records are required to be maintained:

(i) any payoff requests received from the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(ii) any payoff statements issued to the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(iii) if the wrap mortgage loan is paid off or otherwise satisfied, a copy of the release of lien;

(iv) receipts or invoices along with proof of payment for any attorneys' fees assessed, charged, or collected in the collection of a delinquent wrap mortgage loan;

(v) if collateral protection insurance is acquired or purchased, a copy of the insurance policy or certificate of insurance and the notice required by Finance Code §307.052;

(vi) any periodic statements or billing invoices sent to the wrap borrower;

(vii) copies of any collection letters or notices sent by the wrap lender registrant or its agent to the wrap borrower;

(viii) any modification, reinstatement, or settlement agreement that is proposed or entered into between the wrap borrower and the wrap lender registrant;

(ix) any records related to a consumer inquiry, complaint, or error resolution;

(x) any records or documents relating to a request for protection under the Servicemembers Civil Relief Act, 50 U.S.C. §3901 et seq.; and

(xi) any other servicing notice, disclosure, or record required by federal or state law;

(C) for wrap mortgage loan transactions involving a foreclosure or attempted foreclosure, the following records:

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(i) for transactions involving judicial foreclosure:

(I) any records pertaining to a judicial foreclosure including records from the wrap lender registrant's attorneys, the court, or the wrap borrower or the wrap borrower's agent;

(II) any notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(III) any notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(IV) any notice of acceleration sent to the wrap borrower and each superior lienholder; and

(V) any records related to receipt of the foreclosure proceeds;

(ii) for transactions involving non-judicial foreclosure:

(I) the notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(III) the notice of acceleration sent to the wrap borrower and each superior lienholder;

(IV) the notice of sale required by Texas Property Code §51.002(b) including verification of delivery of the notice;

(V) any records related to the foreclosure sale by the trustee including the person purchasing the property, and the dollar amount of the proceeds received from the foreclosure sale;

(VI) any records related to a short sale, deed-in-lieu of foreclosure, or similar disposition;

(VII) proof of payment of reasonable fees or charges paid by the trustee in connection with the deed of trust or similar instrument including fees for

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enforcing the lien against or posting for sale, selling, or releasing the residential real estate secured by the deed of trust; and

(VIII) the foreclosure deed upon sale of the property;

(D) for wrap mortgage loan transactions where the wrap borrower provided an actionable notice of rescission and the wrap lender registrant did not avoid the rescission, a copy of the notice of rescission and documentation reflecting that the wrap lender registrant refunded to the wrap borrower all amounts required by Finance Code §159.104(c);

(E) for wrap mortgage loan transactions where the wrap lender avoided the rescission, documentation reflecting that the wrap lender:

(i) paid the outstanding balance due on the debt owed on the residential real estate to the superior lienholders;

(ii) paid any due and unpaid taxes or other governmental assessments owed on the residential real estate;

(iii) paid to the wrap borrower as damages for noncompliance the sum of \$1,000 and any reasonable attorneys' fees incurred by the wrap borrower; and

(iv) evidence of compliance with clause (i) or (ii) above provided to the wrap borrower;

(F) for wrap mortgage loan transactions where the wrap borrower has deducted from the amount owed to the wrap lender under the terms of the wrap mortgage loan as authorized by Finance Code §159.202, any records related to this action including the written notice from the wrap borrower required by §78.202 of this title (relating to Right to Deduct; Notice of Deduction), and any actions taken to address the deductions;

(4) General Business Records. General business records include:

(A) all servicing and sub-servicing agreements entered into by the wrap lender registrant as a residential mortgage loan servicer;

(B) policies and procedures related to the origination and servicing of wrap mortgage loans by the wrap lender registrant, including, but not limited to, Quality Control Policy / Compliance Manual, Identify Theft Prevention Program / Red Flags Rule required by 16 C.F.R. §681 et seq., Anti-Money Laundering Program required by Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978,



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Personnel Administration / Employee Policies, Ability-to-Repay Underwriting Policies, and an information security program required by 16 C.F.R. §314.1 et seq.;

(C) records reflecting the disbursement of money to pay the superior lienholders and payment of taxes and insurance for which the wrap lender registrant has received from the wrap borrower;

(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;

(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;

(F) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;

(H) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(I) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:

(A) loan identification number;

(B) loan repayment schedule and terms, itemized to reflect:

(i) the date of the loan;

(ii) the number of installments;

(iii) the due date of installments;

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\_\_\_\_\_ (iv) the amount of each installment; and

\_\_\_\_\_ (v) the maturity date;

\_\_\_\_\_ (C) name, address, and phone number of the wrap borrower(s);

\_\_\_\_\_ (D) legal description of the residential real estate;

\_\_\_\_\_ (E) principal amount;

\_\_\_\_\_ (F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

\_\_\_\_\_ (G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;

\_\_\_\_\_ (H) individual payment entries, itemized to show:

\_\_\_\_\_ (i) the date payment was received (dual postings are acceptable if the date of posting is other than the date of receipt);

\_\_\_\_\_ (ii) actual amounts received for application to principal and interest;  
and

\_\_\_\_\_ (iii) actual amounts paid for default, deferment, or other authorized charges;

\_\_\_\_\_ (J) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:

\_\_\_\_\_ (i) the actual date of disbursement; and

\_\_\_\_\_ (ii) the actual amounts disbursed;

\_\_\_\_\_ (K) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges refunded, including the refund of any unearned points; and

\_\_\_\_\_ (L) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts

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due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.

(g) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state or federal laws, rules, and regulations.

(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another wrap lender registrant, the transferee must provide the Department with written notice within ten days after receiving such records.

**§78.306. Examination of Wrap Lender Registrants.**

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the Commissioner's authority to make inspections of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the wrap lender registrant 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 the Department's examiners are scheduled to begin the examination. Failure to actually 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.

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(c) Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:

(1) all required books and records are being maintained in accordance with §78.305 of this title (relating to Required Books and Records by a Wrap Lender Registrant).

(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and

(3) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.

(d) The examiners will review a sample of wrap mortgage loan files identified by the examiners and randomly selected from the wrap lender registrant's wrap mortgage servicing log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require a wrap lender registrant, at its 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.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as required or expressly permitted by law.

(g) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a wrap lender registrant because the required records are maintained at a location outside of Texas, the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel, including, but not limited to, transportation, lodging, meals, communications, courier service, and any other reasonably related costs.

**§78.307. Investigation of Wrap Lender Registrants.**

(a) Purpose and Applicability. The purpose of this section is to implement the requirements of Finance Code §159.252 concerning the Commissioner's authority to conduct an investigation of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(b) Reasonable Cause for investigation. Pursuant to Finance Code §159.252(b), the Commissioner may, upon a finding of reasonable cause, examine a wrap lender registrant to determine whether the wrap lender registrant is complying with Finance

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Code Chapter 159, and this chapter. Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code Chapter 159, or this chapter.

(c) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

\_\_\_\_\_ (1) review and consideration of any complaints received by the Department against a wrap lender registrant;

\_\_\_\_\_ (2) review of documentary evidence;

\_\_\_\_\_ (3) interviews with complainants, licensees, and third parties;

\_\_\_\_\_ (4) obtaining reports, advice, and other comments and assistance from other state and/or or federal regulatory, enforcement, or oversight bodies; and

\_\_\_\_\_ (5) other lawful investigative techniques as the Commissioner deems necessary or appropriate, including, but not limited to, requesting that complainants or other parties that are the subject of a complaint provide explanatory, clarifying, or supplemental information.

Figure: 7 TAC §78.100(b)

**NOTICE OF WRAP-AROUND MORTGAGE FINANCING ENCUMBERED BY  
SUPERIOR LIEN PURSUANT TO TEXAS FINANCE CODE SECTION 159.101 AND  
TEXAS PROPERTY CODE SECTION 5.016**

**WARNING:** ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THE PROPERTY REFERENCED BELOW AND WILL BE IN A SUPERIOR POSITION TO ANY LIEN CREATED BY THE FINANCING YOU ARE SEEKING. THIS NOTICE CONTAINS INFORMATION CONCERNING WHETHER OR NOT THE SUPERIOR LIENHOLDER(S) HAVE CONSENTED TO THE PROPERTY BEING TRANSFERRED TO YOU. IF A SUPERIOR LIEN HAS NOT BEEN RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE SUPERIOR LIENHOLDER, IT IS POSSIBLE THE SUPERIOR LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE SECURED BY THE SUPERIOR LIEN AND MAY AFFECT YOUR RIGHTS AS BUYER OF THE PROPERTY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION OR DISCUSS THIS MATTER WITH AN ATTORNEY.

**IMPORTANT NOTICE REGARDING PROPERTY INSURANCE:** ANY INSURANCE MAINTAINED BY A SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THE PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO ENSURE YOUR INTERESTS ARE PROTECTED, YOU SHOULD PURCHASE YOUR OWN PROPERTY INSURANCE POLICY TO INSURE THE PROPERTY. BEFORE PURCHASING THIS PROPERTY, YOU MAY WISH TO CONSULT WITH AN INSURANCE AGENT LICENSED BY THE TEXAS DEPARTMENT OF INSURANCE REGARDING THE INSURANCE COVERAGE OPTIONS AVAILABLE TO YOU AS BUYER OF THE PROPERTY.

**PROPERTY INFORMATION:**

Physical Address		
Street:		
City:	State:	Zip:
Legal Description		

## NOTICE OF WRAP-AROUND MORTGAGE FINANCING

**ISSUED BY:**

<b>Lender</b>		
Legal Name:		
<b>Date of Issuance</b>		
Date:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Loan Originator (Company) License/Registration Information (if applicable)</b>		
Legal Name:		
NMLS ID:		

**LIENHOLDER(S) AND LIEN INFORMATION** (list by order of the date the lien was perfected, from oldest to newest; attach additional sheets as necessary):

<b><u>Lien 1:</u></b>		
<b>Lienholder</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Lien Information</b>		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
<b>Consent</b>		
Has the Lienholder Consented to the Transfer?	YES	NO

## NOTICE OF WRAP-AROUND MORTGAGE FINANCING

<b><u>Lien 2:</u></b>		
<b>Lienholder</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Lien Information</b>		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
<b>Consent</b>		
Has the Lienholder Consented to the Transfer?	YES	NO

**INSURANCE INFORMATION** (attach additional sheets as necessary):

<b><u>Policy 1:</u></b>		
<b>Insurer</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Policy Information</b>		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		



# NOTICE OF WRAP-AROUND MORTGAGE FINANCING

<b>Policy 2:</b>		
<b>Insurer</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Policy Information</b>		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

## PROPERTY TAX INFORMATION:

<b>Property Taxes Due on the Property</b>	
Amount:	
<b>Annual Property Tax Estimate</b>	
Amount:	Tax Year:

## ACKNOWLEDGMENT BY BUYER(S):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name