



DERIVATION TABLE AND REDLINE DRAFT
DEPARTMENT ADMINISTRATION RULE REVIEW (APRIL 2025)

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 53 RECOVERY CLAIMS

NEW SECTION	OLD SECTION	REDLINE
53.1	51.300 and 51.500	<p>Purpose and Applicability.</p> <p>This chapter governs SML's administration of the recovery fund the Commissioner is required to establish, administer, and maintain in accordance;</p> <p>(1) Finance Code §13.016 and Chapter 156, Subchapter F., <u>creating a recovery fund that allows for claims to compensate persons for actual, out-of-pocket damages incurred because of violations committed by an individual licensed by SML as a residential mortgage loan originator under Finance Code Chapter 157; and</u></p> <p>(2) Finance Code §156.555, allowing for claims to be made against the Mortgage Grant Fund created under Finance Code Chapter 156, Subchapter G to compensate persons for actual, out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold a residential mortgage loan originator license under Finance Code Chapter 157.</p>
53.2	51.301 and 51.501	<p>Definitions.</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>In this chapter The following terms, when used in this subchapter, have the following <u>definitions apply: meanings,</u> unless the context clearly indicates otherwise-</p> <p>(1) "Application" means a request, in any form, for an offer (or a response to a solicitation of for 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, and or the mortgage loan amount.</p> <p>(2) "Claimant" means a mortgage applicant making or seeking to make a claim against on the recovery fund in accordance with Finance Code §156.504 <u>or against</u> the Mortgage Grant Fund in accordance with Finance Code §156.555.</p> <p>(3) "Commissioner" means the <u>savings and mortgage lending commissioner</u> Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.</p> <p>(4) "Department" means the Department of Savings and Mortgage Lending.</p> <p><u>(4) "Consumer Responsiveness Unit" or "CRU" means the section or unit within SML that receives inquiries and complaints from consumers and investigates complaints.</u></p> <p>(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts <u>a residential mortgage loan</u> 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 Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.</p> <p>(6) "Originator" has the meaning assigned by Finance Code §180.002 in defining the term "residential mortgage loan originator."</p> <p>(6) (7) "Mortgage Grant Fund" means the fund the Commissioner <u>administers</u> is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.</p> <p><u>(7) "Recovery claim" or "claim" means a claim made against the recovery fund in accordance with Finance Code §156.504 or against the Mortgage Grant Fund in accordance with Finance Code §156.555.</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(8) (7) "Recovery fund" means the fund the Commissioner administers is required to establish, administer, and maintain in accordance with Finance Code §13.016 and Chapter 156, Subchapter F.</u></p> <p><u>(9) (8) "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 which is 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 residence.</u></p> <p><u>(10) "Respondent" means an individual against whom a recovery claim is made.</u></p> <p><u>(11) "SML" means the Department of Savings and Mortgage Lending.</u></p>
53.3	51.302(a) and 51.502(a)	<p><u>Submitting a Claim Claims.</u></p> <p><u>(a) Application Required. A claimant submits a claim by filing a As provided by Finance Code §156.504, a claimant seeking to recover from the recovery fund much file a sworn written application <u>using</u> with the Department which must be made on the current form prescribed by the Commissioner and posted on <u>SML's the Department's</u> website (sml.texas.gov). <u>The application may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (complaintsubmission@sml.texas.gov). If sent by email, the claimant must include a quality, scanned version of the completed application, and must maintain the original application throughout the claims process and send it to SML by mail on request.</u></u></p> <p><u>(b) Incomplete Filings; Deemed Withdrawal. An application will only be accepted for filing if it is complete. If an application is incomplete, SML will send written notice to the claimant specifying the additional information required to render the application complete. The application may be deemed withdrawn if the claimant fails to provide the additional information within 30 days after the date written notice is sent to the claimant as provided by this subsection. Among other things, the application must:</u></p> <p><u>(1) be verified and sworn under oath before a notary;</u></p> <p><u>(2) identify a valid respondent; and</u></p> <p><u>(3) identify actual, out-of-pocket damages meeting the requirements of §53.12 of this title (relating to Recoverable Damages).</u></p>
53.4	NEW	<p><u>Investigating the Claim.</u></p> <p><u>When a claim is accepted for filing, it will be assigned to an investigator within the Consumer Responsiveness Unit to conduct an investigation. Claims are generally investigated in the same manner as a complaint under §51.4 of this</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>title (relating to Processing Inquiries and Complaints). If the claim relates to a pending complaint, the investigator may investigate the two simultaneously. If the claim relates to a closed complaint, the investigator may adopt the findings of that investigation instead of or in addition to investigating the claim.</u></p>
53.5	NEW	<p><u>Resolution by Agreement.</u></p> <p><u>The respondent and the claimant may resolve the claim by agreement at any time. If an agreement is reached, the parties must promptly send written notice to SML by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov). If an agreement is reached, SML may, in its sole discretion, consider the claim withdrawn or hold the claim in abatement pending satisfaction of the agreement. If held in abatement, the claim is deemed withdrawn upon satisfaction of the agreement.</u></p>
53.6	NEW	<p><u>Preliminary Determination; Requests for Appeal.</u></p> <p><u>(a) Preliminary Determination. After the claim is investigated, the claim will be referred to SML’s legal and enforcement section to issue a preliminary determination.</u></p> <p><u>(b) Requests for Appeal. The respondent or the claimant has 30 days to appeal the preliminary determination. An appeal must be in writing and received by SML within 30 days after the date the preliminary determination is issued. 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).</u></p> <p><u>(c) Effect of Not Appealing. A respondent or claimant who does not timely appeal the preliminary determination is deemed to have irrevocably waived any right they had to challenge the preliminary determination or request a hearing on the preliminary determination and is deemed not to have exhausted all administrative remedies for purposes of judicial review under Government Code §2001.171.</u></p>
53.7	NEW	<p><u>Administrative Hearings.</u></p> <p><u>(a) If an appeal is requested under §53.6 of this title (relating to Preliminary Determination; Requests for Appeal), SML will cause an administrative hearing to be set. The hearing is governed by §51.100 of this title (relating to Appeals, Hearings, and Informal Settlement Conferences). At the hearing, SML will present its preliminary determination issued under §53.6 of this title. The claimant will then have the opportunity to present their claim, and the respondent will have the opportunity to contest or defend against the claim.</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<u>(b) The claimant has the burden of proving they are entitled to recovery. The burden of proof is by a preponderance of the evidence.</u>
53.8	51.302(b), 51.502(b) and 51.302(c), 51.502 (c)	<p>Payment of <u>an</u> Approved <u>Claim Claims</u>.</p> <p><u>(a) (b)</u> Payment of <u>an</u> Approved <u>Claim Claims</u>. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund <u>or the Mortgage Grant Fund, as applicable</u>. The Commissioner will direct Department staff to cause disbursement of the. <u>The funds will be disbursed</u> after the date <u>on upon</u> which <u>the such</u> order becomes final and <u>is not appealable unappealable</u> for purposes of:</p> <p><u>(1) Finance Code §156.504(d), or if the Department's preliminary determination under Finance Code §156.504(e)(2) was disputed and an adjudicative a hearing is not required under §53.7, for purposes of this title (relating to Administrative Hearings); or</u></p> <p><u>(2) Government Code Chapter 2001, if a hearing is required under §53.7 of this title.</u></p> <p><u>(b) (c)</u> Cooperation by Claimant Required. The claimant must <u>comply cooperate</u> with <u>SML's Department staff's</u> instructions for <u>facilitating effectuating payment disbursement</u> of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete <u>forms such documentation</u> required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.</p>
53.9	51.303 and 51.503	<p><u>Consequences for the Respondent.</u></p> <p>(a) Administrative Penalty. If the Commissioner approves a claim made under Finance Code §156.504, the Commissioner may impose an administrative penalty <u>against the respondent for the violations of law giving rise to the claim.</u></p> <p>(b) Grounds for Denial. As provided by Finance Code § 180.201(1), failure Failure by the <u>respondent</u> to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.</p>
53.10	51.304 and 51.504	<u>Liability for Unpaid Claims.</u>

NEW SECTION	OLD SECTION	REDLINE
		<p>(a) No Liability. The recovery fund, <u>Mortgage Grant Fund</u>, the Commissioner, and SML the Department are not liable to a claimant for a claim approved by the Commissioner under Finance Code §156.504 if the funds in assets of the recovery fund <u>or Mortgage Grant Fund</u> are insufficient to pay the such claim.</p> <p>(b) Payment of Unpaid Claims. If the recovery fund <u>or Mortgage Grant Fund</u> contains insufficient funds assets to pay a claim approved by the Commissioner under Finance Code §156.504, the Commissioner will:</p> <p>(1) record the time and date the claim was approved; and</p> <p>(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) of this subsection as funds in the recovery fund <u>or Mortgage Grant Fund</u> become available, in the order of the recorded time and date of such claims.</p>
53.11	51.505	<p><u>Claims for Unlicensed Activity:</u> Eligibility</p> <p>(a) Purpose. Application of Finance Code Chapter 156, Subchapter F. Finance Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Finance Code §156.555.</p> <p>(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Finance Code §157.012 and §55.100 §81.100 of this title (relating to Licensing Requirements –General).</p> <p>(c) Fraudulent Acts. Recovery under Finance Code §156.555 is limited to acts of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the license required by Finance Code Chapter 157. Finance Code §156.501(b), applicable to claims made on the recovery fund, provides that recovery is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Finance Code §§157.024(a) and 156.304(b). As a result, in order to recover under Finance Code §156.555, a claimant must establish that the acts of the unlicensed individual, had he or she been licensed as a residential mortgage loan originator at the time of such acts would have constituted fraudulent dealings for purposes of Finance Code §157.024(a)(3), <u>had he or she been licensed as a residential mortgage loan originator at the time of such acts</u>.</p>
53.12	NEW	<p><u>Recoverable Damages.</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(a) Recoverable Damages. A claimant may only recover out-of-pocket monetary damages that reimburse the claimant for money they have actually lost (money losses). To be recoverable, the damages must be direct damages (also known as general damages) that are caused by and directly related to the respondent's actions and therefore conclusively presumed to have been foreseeable by the respondent as a usual and necessary consequence of the respondent's actions.</u></p> <p><u>(1) Recoverable damages can include the following expenses typically incurred by a mortgage applicant in connection with a residential mortgage loan, if they are paid by the claimant:</u></p> <ul style="list-style-type: none"> <u>(A) application fees;</u> <u>(B) appraisal fees;</u> <u>(C) rate lock fees;</u> <u>(C) origination fees;</u> <u>(D) loan processing fees; and</u> <u>(E) other fees for settlement services collected from the borrower when a residential mortgage loan is closed.</u> <p><u>(2) Recoverable damages can include the following expenses typically incurred by a mortgage applicant in a real estate transaction directly related to a residential mortgage loan, if they are paid by the claimant:</u></p> <ul style="list-style-type: none"> <u>(A) option fees;</u> <u>(B) earnest money;</u> <u>(C) home inspection fees; and</u> <u>(D) home warranty fees.</u> <p><u>(b) Damages Not Recoverable. A claimant may not recover consequential damages (also known as special damages), future damages, or noneconomic damages.</u></p> <p><u>(1) Noneconomic damages that are not recoverable include, but are not limited to:</u></p> <ul style="list-style-type: none"> <u>(A) compensation for physical pain and suffering;</u> <u>(B) mental or emotional pain and anguish;</u> <u>(C) loss of consortium;</u> <u>(D) disfigurement;</u> <u>(E) physical impairment;</u> <u>(F) loss of companionship and society;</u> <u>(G) inconvenience;</u> <u>(H) loss of enjoyment of life; and</u> <u>(I) injury to reputation.</u>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(2) The following damages are expenses that may be incurred by a mortgage applicant in connection with a real estate sales transaction related to a residential mortgage loan but are deemed to be consequential damages that are not recoverable (list is not exhaustive):</u></p> <p><u>(A) travel expenses paid in connection with the mortgage applicant shopping for real estate (e.g., fuel expenses, vehicle rental, plane tickets, and hotel fees);</u></p> <p><u>(B) expenses related to terminating the mortgage applicant's preexisting housing arrangements (e.g., lease termination fees, cleaning fees, reletting fees, and lost security deposit);</u></p> <p><u>(C) expenses paid in connection with the mortgage applicant relocating to their prospective housing arrangements (e.g., shipping fees, moving expenses, and storage fees);</u></p> <p><u>(D) expenses paid in connection with securing replacement housing (e.g., rent, hotel fees, utility costs, and home furnishings); and</u></p> <p><u>(E) daily living expenses (e.g., food, clothing, and personal care items).</u></p>