



DEPARTMENT OF
**SAVINGS AND
MORTGAGE LENDING**

HECTOR RETTA, COMMISSIONER

Examination

Common Violations and New Mortgage Rules

Ellena Meier
Chief Mortgage Examiner

Most Common Exam Violations

- Record Maintenance
- Mortgage Call Reports
- Advertisements
- Information Security Program
- Remote Work
- Conditional Letters
- Unlicensed Processor

Record Maintenance

- **Transaction log (updated new rule)**
 - Inaccurate loan application dates
 - Inaccurate MLO listed
 - Loan status inaccurate – denied / withdrawn / cancelled (adverse)
- **Loan files – Failure to Produce Records**
 - Unable to provide loan files or incomplete loan files
 - Missing documentation:
 - Signed disclosures
 - Invoices
 - Changed circumstance supporting documentation
 - Disclosure tracking
 - Correspondence
 - Missing or Incomplete Initial Privacy Notice

Mortgage Call Reports

- Failure to file before the quarterly filing deadline
- Accuracy – (updated new rule)
 - Reporting zero production
 - Carryover of applications from quarter to quarter
 - Data does not match the transaction log
 - Only reporting closed files
 - Failing to report denied and withdrawn files
- NMLS State Specific Supplemental Form (SSSF) - (updated new rule)

Advertisements

- Missing Originator and/or Company NMLS ID
- Missing Texas Consumer Complaint / Recovery Fund Notice
 - TX Notice must be displayed or contain an interactive hyperlink that links directly to the Company's webpage that houses the Notice (updated new rule)
 - Social Media, Website or other advertisement utilizes an unregistered trade name (dba) (updated new rule)

Information Security Program / Safeguards Rule

Required criteria:

- Designate a qualified individual to coordinate the Program;
- Perform risk assessment to identify and assess internal and external risks to confidentiality, security, and integrity of consumer information. If 5,000 or more consumers, written risk assessment required;
- Designs and implements safeguards to control risks identified through the risk assessment;
- Test and monitor key controls identified through risk assessment. If 5,000 or more consumers, perform penetration tests and vulnerability assessments;
- Document the selection and oversight measures to ensure that service providers safeguard information. Perform periodic assessment of service providers;
- Provide detailed policies and procedures for secure destruction and disposal of records;
- Provide information security awareness training to all employees as part of initial training and annually including specialized training to qualified individual and key personnel;
- Provide for periodic updating to reflect changes in risks. If 5,000 or more consumers, updates to reflect results of penetration test and vulnerability assessment;
- If 5,000 or more consumers, develop a written incident response plan; and
- If 5,000 or more consumers, qualified individual to provide annual report the Board or senior staff.

❑ Cybersecurity Questionnaire – Information Request

Remote Work

- If staff allowed to work remotely, a Remote Work Policy must be developed and implemented.
- Common missing criteria:
 - Safeguards to protect consumer data, information, and records including use of secure virtual private networks and data storage encryption where applicable;
 - Appropriate risk-based monitoring and oversight processes;
 - Monitor information systems for potential anomalies or security incidents;
 - Ensure electronic records are secured and physical records are not maintained at a remote location; and
 - Provide information security awareness (remote work) training to all employees as part of initial training and annually.

Conditional Letters

- Letters lacking the required information / outdated form reference
- Department Forms utilized – not fully completed
- Customized Letters - do not include requirements from the current Form
 - Missing Originator and Company/Banker NMLS IDs
 - Missing Originator contact information (phone, email, and address)
 - Missing expiration date
- Department Forms issued in every loan file – not required
- (Updated new rule)

Processor Violations

- Processor and/or processing company paid as a 1099 or directly at closing and not properly licensed by SML
- SML Independent Contractor Loan Processor and Underwriting Company employs unlicensed W-2 processors
- Properly licensed loan processor bills using an unlicensed company
- Dual Compensation – The originator and processor are the same individual and receiving compensation from the consumer and lender in connection with the mortgage loan
- Affiliated processing company does not employ processors and the Mortgage Company ultimately received the compensation (brokered files).

(Updated new rule)

New Mortgage Rules Requirements

- New Rules Requirements
 - Transaction Log
 - Processor Log
 - Processor requirements
 - Disclosures
 - Conditional Letters
 - Social Media
 - Team Names

Mortgage Transaction Log

- full name of each mortgage applicant (last name, first name);
- application/loan identification number assigned by the mortgage company;
- loan identification number assigned by the lender, if different than subparagraph (B) of this paragraph;
- date of the initial loan application;
- address of the subject property (street address, city, state, zip code);
- interest rate;
- description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);
- loan product (conventional, FHA, VA, reverse, etc.);
- full name of the lender that initially funded or acquired the loan and their NMLS ID, if applicable;
- full name of the originator who took the initial loan application and his or her NMLS ID;
- closing date;
- lien position (e.g., first lien, second lien, or wrap mortgage);
- description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence)); and
- description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

Effective November – mandatory compliance January 1, 2025

Mortgage Banker 7 TAC §57.204(c)(1)

Mortgage Company 7 TAC §56.204(c)(1)

Processing / Underwriting Transaction Log

**Effective November – mandatory
compliance January 1, 2025**

- full name of each mortgage applicant (last name, first name);
- application/loan identification number assigned by the mortgage company;
- application/loan identification number assigned by the mortgage company or mortgage banker to which the mortgage company is providing loan processing or underwriting services, if different than paragraph (2) of this
- loan identification number assigned by the lender, if different than paragraphs (2) or (3) of this subsection;
- address of the subject property (street address, city, state, zip code);
- full name and NMLS ID of the mortgage company or mortgage banker to which the mortgage company is providing loan processing or underwriting services;
- the name, NMLS ID, and employment status (e.g., W-2 or 1099) of each individual loan processor or underwriter performing loan processing or underwriting services on behalf of the mortgage company;
- closing date;
- description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));
- description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);
- dollar amount invoiced, assessed, charged, collected, and/or paid by the mortgage applicant for the loan processing or underwriting services provided by the mortgage company; and
- description of whether the fee for the loan processing or underwriting services was included on the Closing Disclosure as a fee paid directly to the mortgage company at closing (e.g., on CD, or not on CD).

Mortgage Banker 7 TAC §57.204(d)

Mortgage Company 7 TAC §56.204(d)

NMLS Supplemental Form – delayed implementation until January 1, 2026 (third-party processing / underwriting business activities)

Loan Processor

(6) being a loan processor or underwriter who is an independent contractor, as provided by Finance Code §180.051(b). An individual working for a mortgage company licensed by SML or a mortgage banker registered with SML, whose compensation for federal income tax purposes is not reported on a W-2 form (e.g., a self-employed worker who is issued an IRS Form 1099-NEC), that acts as a loan processor or underwriter, is deemed to be an independent contractor loan processor or underwriter for purposes of Finance Code §180.051(b) and must be licensed as an originator. All individuals working for a mortgage company that is an independent loan processor underwriter company, regardless of how their income is documented (including W-2 employees), who act as a loan processor or underwriter or otherwise perform work in connection with the provision of loan processing or underwriting services by the company, are deemed to be independent contractors for purposes of Finance Code §180.051(b) and must be licensed as an originator.

Residential Mortgage Loan Originators 7 TAC §55.100(6)

Required Disclosures

Mortgage Banker Disclosure

Specific Notice to Applicant (Origination Notice). A mortgage banker must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage banker and its sponsored originator receives the initial application for a residential mortgage loan. The notice may be provided to the mortgage applicant by any means allowing for the mortgage banker to capture and maintain records reflecting timely delivery, as required by §57.204(c)(2)(A)(iv) of this title (relating to Books and Records). The notice may be signed and dated by the mortgage applicant to evidence receipt. The notice must be in the form adopted by this subsection. However, the form may be modified by adding other identifying information for the transaction (e.g., loan identification number, or the name and NMLS ID of the mortgage banker or the investor); provided, any information added to the form is not misleading and does not contradict or frustrate the purpose of the disclosure.

Mortgage Banker 7 TAC §57.200(b)

Mortgage Company 7 TAC §56.200(b)

Required Disclosures

Figure: 7 TAC §56.200(b)

TEXAS MORTGAGE COMPANY DISCLOSURE

Pursuant to Texas Finance Code Section 156.004, you are notified of the following:

- We will either submit your loan application to a participating lender or make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.
- We will be compensated in compliance with the federal Truth in Lending Act and Regulation Z (see 12 C.F.R. § 1026.36(d)) (if applicable).

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE COMPANY OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML'S WEBSITE: SML.TEXAS.GOV.

ISSUED BY:

Residential Mortgage Loan Originator: _____

NMLS ID: _____

Figure: 7 TAC § 57.200(b)

TEXAS MORTGAGE BANKER DISCLOSURE

Pursuant to Texas Finance Code Section 157.0021, you are notified of the following:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML'S WEBSITE: SML.TEXAS.GOV.

ISSUED BY:

Residential Mortgage Loan Originator: _____

NMLS ID: _____

Required Disclosures

(d) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:

(1) the name of the mortgage company or mortgage banker sponsoring the originator and its NMLS ID;

(1) the mortgage company's or mortgage banker's **website address**, if it has a website; and

(1) the name of the originator and his or her NMLS ID.

Mortgage Banker 7 TAC §57.200(d)

Mortgage Company 7 TAC §56.200(d)

Effective November – mandatory compliance January 1, 2025

Conditional Letters

Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage banker's sponsored originator acting on behalf of the mortgage banker to originate the prospective residential mortgage loan.

Mortgage Banker 7 TAC §57.201(d)

Mortgage Company 7 TAC §56.201(d)

Effective November – mandatory compliance January 1, 2025

Team Names

- Team names and team logos are permitted for advertising purposes only. A team name or team logo may not be used to conduct residential mortgage loan origination business.
- The mortgage banker's legal name or an assumed name of the mortgage banker and its NMLS ID must be used with the team name or team logo, in substantially equivalent prominence, and must be connected with an explanatory word or phrase that clearly links the two (e.g., "(team name) of (mortgage company name and NMLS ID)" or "(team name) powered by (mortgage company name and NMLS ID)").
- If a team logo is used, it must be used with the team name, unless the team name is contained in the team logo, and if so, the team logo may be used without the team name.

Mortgage Banker 7 TAC §57.203(f)

Mortgage Company 7 TAC §56.203(f)

Resources

- **Mortgage Compliance Guide**

- Includes information regarding the Transaction Log, Loan Files, Policies & Procedures, and Mortgage Call Reports
- Available on the Department website under Mortgage Examination Resources
- <https://www.sml.texas.gov/mortgage-origination/examination/>

- **FAQs**

- <https://www.sml.texas.gov/mortgage-origination/faqs/>

- **Emerging Issues Meeting** held monthly on the 3rd Tuesday at 9:30 a.m. (Microsoft Teams)

- Email mortgage.exam@sml.texas.gov to sign-up for the Mortgage Contact Group

Questions?

Ellena Meier
Chief Mortgage Examiner
(512) 426-5765
emeier@sml.Texas.gov