

*Title 7. Banking and Securities*

*Part 1. Finance Commission of Texas*

*Chapter 2. Residential Mortgage Loan Originators*

*Applying for Licensure with the Office of Consumer Credit Commissioner*

*Under the Secure and Fair Enforcement for Mortgage Licensing Act*

*§2.106. Denial, Suspension, or Revocation Based on Criminal History*

The Finance Commission of Texas (commission) adopts new 7 TAC §2.106, concerning Denial, Suspension, or Revocation Based on Criminal History, for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC).

The commission adopts the amendments without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4281).

The commission received no written comments on the proposal.

In general, the purpose of the adopted new rule is to implement Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for residential mortgage loan originator applicants and licensees under the OCCC's regulatory jurisdiction. The rule also implements Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the OCCC. In addition, the rule implements Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking a residential mortgage loan originator license.

Residential mortgage loan originators (RMLOs) are licensed in Texas under Chapter 180 of the Texas Finance Code. Section 180.054 currently authorizes the OCCC to collect criminal history record

information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent. To provide consistency, SB 1075 amends Texas Government Code, §411.095 by adding Chapter 180 of the Finance Code to the list of chapters under which the OCCC may obtain criminal history record information from the Department of Public Safety (DPS) relating to an individual applying for or holding a license with the OCCC under Chapter 180.

Adopted new §2.106 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of an RMLO license.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of an RMLO under the OCCC's jurisdiction. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being an RMLO, including the reasons the crimes relate to the licensed occupation, as provided by Texas Occupations Code, §53.025(a). Subsection

(c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies crimes related to financial responsibility, character, or general fitness that may be used as the basis for a denial, suspension, or revocation action by the OCCC.

Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

The new rule is adopted under Texas Occupations Code, §53.025, which authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license and any other criteria that affect the decisions of the licensing authority. The new rule is also adopted under Texas Government Code, §411.095, as amended by SB 1075, which authorizes the OCCC to obtain criminal history record information from the DPS that relates to a Chapter 180 applicant or licensee.

Additionally, the new rule is adopted under Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking an RMLO license. The new rule is also adopted under Texas Finance Code, §180.054, which authorizes the OCCC to collect criminal history information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent, and under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements for conducting background checks and other activities necessary for participation in the NMLS.

The statutory provisions affected by the adopted new rule are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, Chapters 180, 342, 347, 348, and 351.

*§2.106. Denial, Suspension, or Revocation Based on Criminal History.*

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprint information has been initially processed.

(b) Disclosure of criminal history by applicant. The applicant must disclose all criminal history information required to file a complete application with NMLS. Failure to provide any information required by NMLS or requested by the OCCC reflects negatively on the applicant's character and general fitness to hold a license. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensed residential mortgage loan originator, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating residential mortgage loans involves making representations to borrowers regarding the terms of the loan and collecting charges in a legal manner.

Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to hold a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to financial responsibility, character, or general fitness. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that relates to financial responsibility, character, or general fitness to hold a license, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A). Crimes that relate to

financial responsibility, character, or general fitness include the following:

(1) fraud, misrepresentation, deception, or forgery;

(2) breach of trust or other fiduciary duty;

(3) dishonesty or theft;

(4) money laundering;

(5) assault;

(6) violation of a statute governing lending of this or another state;

(7) failure to file a required report with a governmental body, or filing a false report; or

(8) attempt, preparation, or conspiracy to commit one of the preceding crimes.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years

before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) a conviction for, or plea of guilty or nolo contendere to, a felony during the preceding seven years or a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, as provided by Texas Finance Code, §180.055(a)(2) and §180.201(2)(A);

(4) a material misstatement or failure to provide information in a license application, as provided by Texas Finance Code, §180.201(2); and

(5) any other information indicating that the financial responsibility, character, or general fitness of the applicant or licensee do not command the confidence of the public or do not warrant the determination that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of Texas Finance Code, Chapter 180 and other appropriate regulatory laws of this state, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A).

### **Certification**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 21, 2015.

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