

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 89. Property Tax Lenders

The Finance Commission of Texas (commission) adopts amendments to §§89.102, 89.207, 89.208, 89.301, 89.302, 89.304, 89.306, 89.310, 89.403, 89.404, 89.502, 89.503, 89.504, 89.506, 89.507, 89.601, and 89.702; adopts new §89.303 and §89.405; and adopts the repeal of §§89.303, 89.405, and 89.406, in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The commission adopts the amendments to §§89.102, 89.207, 89.208, 89.301, 89.302, 89.304, 89.306, 89.310, 89.403, 89.404, 89.503, 89.506, 89.601, and 89.702; adopts new §89.303 and §89.405; and adopts the repeal of §§89.303, 89.405, and 89.406 without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4379).

The commission adopts the amendments to §§89.502, 89.504, and 89.507 with changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4379). The changes are a result of the comments received as outlined in the following paragraphs, as well as changes to make these provisions clearer.

The commission received three written comments on the proposal from the following parties: Kohm and Associates, PC, Sombrero Capital, and the Texas Property Tax Lienholders Association (TPTLA). Additionally, an oral comment was received from the TPTLA.

Two of the written comments express general support for the rule amendments as

proposed, but made some recommendations regarding the amended pre-closing disclosure requirements in §89.504 and §89.506. The other comments also made recommendations regarding the amended disclosure requirements. Some of the comments included recommendations on the following issues that were not addressed in the proposal: (1) the prohibition on a property tax loan for property financed by a below market rate loan under Texas Tax Code, §32.06(a-8)(1); (2) the limitation on fees for filing a release under current 7 TAC §89.602; and (3) waiver of the right of rescission under Texas Tax Code, §32.06(d-1).

The commission's responses to the official comments received are included after the purpose discussions following each respective rule provision receiving comments. The comments on below market rate loans, lien release fees, and the right of rescission are discussed after the purpose discussions for the rules that are part of this action.

In general, the purpose of the adoption regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 89 was published in the *Texas Register* on June 16, 2017 (42 TexReg 3167). The commission received four comments in response to that notice. The comments on the notice of intention to review were submitted by the Hunter-Kelsey of Texas, LLC, Propel Financial Services, Sombrero Capital, and the Texas Property Tax

Lienholders Association. The responses to the official comments on the rule review notice were included as part of the adopted rule review, as published in the *Texas Register* on September 1, 2017 (42 TexReg 4481).

The adopted rule changes generally relate to the following issues: disclosures provided by property tax lenders (including an updated version of the required pre-closing disclosure), licensing processes, fees charged by property tax lenders, and technical corrections. Additionally, certain sections have been repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholder meeting where attendees provided oral precomments. In addition, the agency received seven informal written precomments. Certain concepts recommended by the precommenters were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new rules, and repeals are provided in the following paragraphs.

Adopted amendments to §89.102 add definitions of the terms "residential property tax loan" and "commercial property tax loan." The definition of "residential property tax loan" states that the term refers to a property tax loan that includes a lien on residential property owned and used for personal, family, or household purposes. Property designated as "Category A (Real Property: Single-Family Residential)" is presumed to be residential property unless the property tax lender obtains an affidavit from the property owner stating that the

property is owned and used for a business or investment purpose, not for personal, family, or household purposes. The definition of "commercial property tax loan" states that the term refers to a property tax loan that is not a residential property tax loan. The new definitions of "residential property tax loan" and "commercial property tax loan" are intended to provide consistent terminology in provisions related to disclosures and closing costs. The term "residential property tax loan" is also used to specify the scope of the limitation on closing costs, as discussed later in this adoption in the description of amendments to §89.601(a).

Adopted amendments to §89.207 specify records that property tax lenders are required to maintain. These amendments ensure that the Office of Consumer Credit Commissioner (OCCC) can review a licensee's records to verify compliance with applicable law. First, an amendment to §89.207(3)(A)(viii) specifies that a property tax lender must maintain any affidavits signed by the borrower applicable to the property tax loan, in addition to signed agreements and disclosures required by the current rule. This would include an affidavit regarding the use of commercial property, as described in the definition of "residential property tax loan" in §89.102(10). Second, an amendment to §89.207(3)(B) specifies that the current requirement regarding the right of rescission refers to maintaining the notice of the right of rescission, as required by Regulation Z, 12 C.F.R. §1026.23. Third, an adopted amendment to §89.207(3)(H) provides that if a property tax loan is satisfied through a foreclosure, the property tax lender must maintain the foreclosure deed, instead of the release of lien required by the current rule. This amendment is in response to an official comment on the notice of intention to review, which requests

clarification on this issue. In the case of a foreclosure, there might not be a release of lien. Fourth, an adopted amendment to §89.207(3)(I)(ii) specifies that a property tax lender must maintain receipts and invoices for attorney's fees charged under Texas Finance Code, §351.0021(a)(6), which authorizes a reasonable post-closing fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state.

An adopted amendment to §89.208(h) explains that the annual percentage rate (APR) disclosed in a property tax loan advertisement must be calculated in accordance with the adopted amendment to §89.502(2). This amendment ensures that the method of calculating APR is consistent throughout the rules governing property tax lenders, as discussed later in this adoption in the description of amendments to §89.502. It will also ensure that potential borrowers receive information that will enable them to make an informed borrowing decision.

An adopted amendment to §89.301 adds a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition clarifies the provisions on mergers and license transfers in §89.303 and §89.304, discussed later in this adoption, and is consistent with other OCCC licensing rules.

Also in §89.301, an amendment to adopted §89.301(3)(A) (former §89.301(2)(A)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §89.302(1)(A)(iv)(I) removes the requirement to disclose community

property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §89.302(1)(C)(i)-(ii).

Section 89.303 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Previously, §89.303 described what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the former rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by

Texas Finance Code, §351.163. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing property tax lender license. Subsection (e)(5) explains that the application may include a request for permission to operate. Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §89.304, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to adopted new §89.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments in subsection (b) clarify situations where a merger is a transfer of

ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Adopted amendments to §89.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. Adopted new §89.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Adopted new §89.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An adopted amendment to §89.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Adopted amendments to §89.403 clarify the agency's procedure for providing delinquency notices to licensees that have

failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

An adopted amendment to §89.404 contains a technical correction to ensure that the rule refers to "the prior calendar year's loan activity."

Adopted new §89.405 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 a property tax lender license. This section replaces former §89.405 and §89.406, which have been repealed. 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 property tax lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a property tax lender, including the reasons the crimes relate to the 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) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). 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 adopted amendments to §§89.502, 89.503, 89.504, and 89.506 contain updated disclosure requirements for property tax loans. These amendments include a new version of the pre-closing disclosure required under Texas Tax Code, §32.06(a-4)(1), which provides that the commission will "prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer." The former version of this disclosure, located at §89.506(a), is a one-page form with information about what a property tax loan is, the possibility of foreclosure, and OCCC contact information. The new pre-closing disclosure in this adoption adds an itemization of the costs of a property tax loan, and for residential property tax loans, it includes the annual percentage rate (APR). The adopted amendments to §89.502

describe a standardized method for property tax lenders to calculate the APR.

The commission believes that it is appropriate for the pre-closing disclosure to include cost information and APR. When borrowers are aware of the cost of loans, they can make an informed borrowing decision. Borrowers can use cost information to shop among lenders, enhancing competition. In particular, an APR provides residential borrowers with a benchmark for comparing property tax loans to other loan products that may serve their needs.

Last year, the Fifth Circuit held that the federal Truth in Lending Act (TILA) does not apply to Texas property tax loans, because a property tax loan is not a "debt" under TILA. *Billings v. Propel Fin. Servs. L.L.C.*, 821 F.3d 608, 611-12 (5th Cir. 2016). In a closed-end consumer credit transaction TILA and its implementing rule, Regulation Z, require the creditor to make several disclosures, including five key pieces of information: the amount financed, the finance charge, the APR, the total of payments, and the payment schedule. TILA, 15 U.S.C. §1602(v) and §1604(a); Regulation Z, 12 C.F.R. §1026.18. After *Billings*, there is no general requirement for property tax lenders to disclose the APR and cost information before the closing of a property tax loan.

In light of *Billings*, the commission believes that it is an appropriate time to revisit the content of the required pre-closing disclosure, and to add information about costs and APR. The Texas Legislature recognized that much of this information is important to disclose to borrowers when it added Texas Finance Code, §351.0023 in SB 247 (2013). That section requires

property tax loan advertisements and solicitations to disclose information such as the terms of repayment and APR. In addition, the agency understands that most property tax lenders are already providing this information to borrowers in some form between application and closing. Another purpose of the adopted amendments is to provide a standardized method for disclosing this information that is already being provided, which further helps borrowers make an informed borrowing decision.

Two commenters on the notice of intention to review support reviewing the disclosure rules. One of these commenters recommends reviewing the rules to "[e]nsure that consumers receive adequate notices regarding the cost and terms of the underlying transaction," and to provide "[s]tandardization of the forms and calculation methods for certain terms (e.g., APR) to ensure consumers can make well-informed choices."

Adopted amendments to §89.502 add definitions of the terms "amount financed," "annual percentage rate," "finance charge," and "total of payments." The amount financed, finance charge, and total of payments are all used to calculate the APR. The definitions are intended to provide a standardized, uniform method of calculating the APR for a property tax loan. When this information is disclosed to borrowers through a standardized method, this enables borrowers to shop among lenders, enhancing competition. These terms are used in calculating the amounts on the amended pre-closing disclosure, as described later in the discussion of the adopted amendments to §89.504 and §89.506.

Under the adopted definition at §89.502(2), the APR would be calculated based on the methods described in Regulation Z, 12 C.F.R. §1026.22, which contains a standardized method for calculating APR that is generally used in consumer credit transactions. For this reason, the APR can provide residential borrowers with a benchmark for comparing property tax loans to other loan products that may serve their needs.

One of the key components used in calculating the APR is the finance charge. Generally, the finance charge is the cost of credit as a dollar amount. Regulation Z, 12 C.F.R. §1026.4(a). Other things being equal, a higher finance charge will result in a higher APR. The adopted definition in §89.502(3) explains that the finance charge includes all interest and closing costs paid to the property tax lender or an affiliated business. The term "affiliated business" is defined in current §89.102(1), and includes a business that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. At the stakeholder meeting, one stakeholder pointed out that certain property tax lenders impose internal costs that they retain, while other property tax lenders pass costs on to affiliated businesses. The stakeholder noted that if a property tax lender can exclude costs paid to the affiliated businesses from the finance charge, this will enable the property tax lenders using affiliated businesses to disclose a lower APR than property tax lenders imposing internal costs, even if the costs are substantially the same for the borrower. In response to this stakeholder statement, the new definition of "finance charge" in §89.502(3) specifies that the

finance charge includes interest and closing costs paid to an affiliated business. This definition will ensure that a prospective borrower can accurately compare rates between a property tax lender that generally retains fees for services performed at closing, and a property tax lender that passes fees on to an affiliated business.

Since the proposal, a change has been made to the definition of "finance charge" in §89.502(3) to divide parts of the definition into lettered subparagraphs, and to add a statement that the finance charge excludes an amount to pay off an existing property tax loan in the case of a refinance. This change is intended to make the definition clearer, and to conform to changes in §89.504(a)(6)(A) and (a)(8)(D), discussed later in this adoption.

The adopted amendments to §89.503(b) and (c) add the Calibri font to the list of typefaces considered to be readable, and specify that the text of the disclosure must generally be at least as large as 11 points in the Calibri font. These amendments reflect the updated pre-closing disclosure, which was prepared in the Calibri font for improved readability and design.

The adopted amendments to §89.504 describe the content of the amended pre-closing disclosure. These amendments generally maintain the elements that are required to be in the disclosure under current §89.504, while providing additional disclosures. Adopted amendments at §89.504(a)(1)-(4) require the pre-closing disclosure to include the parties' contact information, and for a residential property tax loan, require the disclosure to state the name and Nationwide Multistate Licensing System (NMLS) identification number of the residential mortgage loan originator.

Under Texas Finance Code, §351.0515, an individual who acts as a residential mortgage loan originator for a property tax loan must be individually licensed with the OCCC. Disclosing the originator's name and NMLS ID number helps ensure that the property tax lender has complied with this requirement.

Adopted §89.504(a)(6) requires the pre-closing disclosure to include a section labeled "Loan Terms," including the funds advanced under Texas Tax Code, §32.06(e) (labeled as the "loan amount"), the contract interest rate, the term of the property tax loan in months, the monthly payment amount, the payment schedule, and a provision explaining whether there is a prepayment penalty.

Several precommenters requested guidance about whether prepaid interest could be included in the funds advanced listed on the pre-closing disclosure. The funds advanced are expressly limited by Texas Tax Code, §32.06(e), which states: "Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." Interest paid to the property tax lender, including prepaid interest, is not part of the funds advanced under this section. Although this provision mentions interest, this refers to interest paid to the taxing unit as shown on the tax receipt. In response to the precommenters' request for guidance, adopted §89.504(a)(6)(A) explains that the funds advanced include the amounts described by Texas Tax Code, §32.06(e), and do not include prepaid interest. Prepaid interest is disclosed separately on the pre-closing disclosure, as explained later in the discussion of §89.504(a)(9). At the stakeholder meeting, one stakeholder

explained that some property tax lenders include prepaid interest (other than discount points) in the principal balance of the loan, but do not charge interest upon the prepaid interest. This adoption does not specifically address this practice, but it would require the lender to exclude any prepaid interest from the loan amount on the pre-closing disclosure.

Adopted §89.504(a)(7) requires the pre-closing disclosure for a residential property tax loan to include a section labeled "Loan Calculations," containing the APR, amount financed, finance charge, and total of payments. One commenter suggests that this section be titled "Loan Calculations" instead of "Loan APR Calculation." In response to this comment, §89.504(a)(7) as adopted uses the title "Loan Calculations."

Adopted §89.504(a)(8) requires the pre-closing disclosure to include a section labeled "Loan Amount Itemization," containing itemizations of the amounts paid to taxing units, closing costs, and recording costs. At the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, adopted §89.504(a)(8)(A)(i) explains that the itemization includes amounts paid to taxing units or other governmental entities as shown on the tax receipt.

Since the proposal, changes have been made to §89.504(a)(6)(A) and (a)(8)(D) in response to a comment. The commenter states that the pre-closing disclosure "should be altered to allow for a Refinance of an Existing Loan in the 'Loan Amount Itemization' section." In response to this comment, §89.504(a)(6)(A) as adopted explains that the funds advanced include any

amount to pay off an existing property tax loan in the case of a refinance. In addition, §89.504(a)(8)(D) as amended specifies that these amounts must be listed, along with the name of each property tax lender to which an amount will be paid, in a subsection labeled "Refinance of current property tax loan."

Adopted §89.504(a)(9) requires the pre-closing disclosure to include a section labeled "Prepaid Interest," containing the total amount of any prepaid interest, itemized into per diem interest and discount points.

Adopted §89.504(a)(10) requires the following tax office notice in boldface type: "Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office." This disclosure is based on Texas Finance Code, §351.0023(a), which requires this notice to be included on the first page of any solicitation materials in 12-point boldface type. Three precommenters stated that this notice is unnecessary on the pre-closing disclosure, arguing that it should apply only to advertisements and solicitations. The commission disagrees with this argument for two reasons. First, the pre-closing disclosure might be used as a solicitation, which would trigger the requirement in Texas Finance Code, §351.0023 to include the notice. Second, the notice provides potential borrowers with important information that they should consider before entering a property tax loan, as the legislature acknowledged by enacting Texas Finance Code, §351.0023.

Adopted §89.504(a)(23) contains updates to the OCCC's contact information in the pre-closing disclosure. In accordance

with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints.

Adopted amendments to §89.504(b) explain that the pre-closing disclosure must fit on two pages, but a property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, or additional government units receiving recording expenses.

Adopted §89.504(c) explains that all information on the disclosure must be accurate, and the APR must be accurate within 1/8 of 1 percentage point. If the property tax lender learns that the information is inaccurate, then it must notify the property owner of the inaccuracy and provide an updated disclosure.

Since the proposal, changes have been made to §89.504(c) in response to comments. All three written comments address §89.504(c), and the provision was also addressed in the oral comment. All of the commenters expressed concern about the requirement in proposed §89.504(c) that the property tax lender must "promptly" notify the property owner of any inaccuracy. One commenter "proposes that a pre-closing re-disclosure only be required if the APR increases or if closing costs increase. To the extent the APR is unchanged or decreases and/or non-financial terms are changed, we propose requiring a re-disclosure be provided at closing." In an oral comment, the commenter gave the following example.

The property tax lender provides an initial disclosure stating that there are \$500 in closing costs, with \$200 paid to a third party and \$300 paid to the property tax lender. Before closing, the property tax lender learns that \$300 will have to be paid to the third party, but the property tax lender determines that only \$200 will be paid to it, resulting in the same \$500 total closing costs and a slightly reduced APR compared to the initial disclosure. The commenter argued that the property tax lender should not be required to promptly provide an amended disclosure in this situation, because there is no increase in costs being paid by the property owner. Along the same lines, another commenter recommends: "Allow PTL to overstate APR initially, without having to re-disclose prior to closing, as long as the APR provided at closing is accurate." Finally, another commenter recommends that the commission allow the APR to be considered accurate if it is based on a finance charge that is either understated by \$100 or less or overstated by any amount, based on the accuracy tolerances for mortgage loans under Regulation Z, 12 C.F.R. §1026.22(a)(4).

In response to these comments, §89.504(c)(2) as adopted provides that a dollar amount on the disclosure will be considered accurate if it is not more than \$10 above or below the actual amount charged under the terms of the property tax loan. The commission believes that this \$10 amount is appropriate given the size of property tax loans and the amount of closing costs, which are generally limited to \$900 under §89.601 for residential property tax loans. The \$10 accuracy threshold strikes a balance between ensuring that property owners receive accurate information and allowing minor variances for changes that property tax lenders cannot predict. The

commission disagrees with the recommendation that the finance charge be considered accurate if it is understated by \$100 or overstated by any amount. This recommendation would not provide property owners with sufficiently accurate information about the cost of loans to enable them to make an informed borrowing decision.

Also in response to these comments, §89.504(c)(3) as adopted provides a general timing requirement, stating that the amended disclosure must be provided before the property owner executes a property tax loan contract. However, if the inaccuracy results in an increase of more than \$10 to certain amounts paid by the property owner, or an increase of more than 1/8 of 1 percentage point to the APR, then the property tax lender must promptly provide the amended disclosure after learning of the inaccuracy. The commission believes that this timing requirement strikes an appropriate balance by ensuring that property owners have accurate disclosures at the time of closing, and that they promptly receive updated disclosures if they will have to pay more than originally disclosed.

Adopted amendments at §89.504(d)-(g) contain technical corrections and updated citations. This adoption maintains the current requirements for delivering the pre-closing disclosure. In particular, the adoption does not amend the timing requirement currently in §89.504(c)(2)(B), which provides that the disclosure must be delivered "within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax

lender." One precommenter stated that this requirement should be maintained for the pre-closing disclosure, while another suggests that the disclosure should be provided at least three days before closing. The commission believes that the current requirement of providing the disclosure within three days of the application provides the borrower with an appropriate amount of time to review the cost information, consider alternatives, and reach an informed borrowing decision. If any information on the disclosure changes and renders the disclosure inaccurate, the property tax lender would be required to notify the property owner and provide an updated disclosure under §89.504(c)(3).

As adopted, §89.504(e)(2)(F) maintains the previous provision on verification of delivery by email, stating that email delivery may be verified by a dated reply email or affirmative consent under the E-Sign Act, 15 U.S.C. §7001(c). Regarding this provision, one commenter states: "Do not burden consumers with regulation. Technology allows email senders to receive a confirmation receipt. The proposed rules require a response from customer by email and it is inappropriate to place a regulatory burden on customers." The commission disagrees with the suggestion that §89.504(e)(2)(F) places a regulatory burden on property owners. This provision describes methods by which the property tax lender can verify compliance with its legal responsibility to provide the disclosure statement to the property owner. This provision does not impose a requirement on property owners. The commission believes that it is appropriate to maintain this requirement, so that property tax lenders can verify delivery of electronic disclosures. In addition, the E-Sign Act provides a widely accepted method for electronic delivery of

disclosures. The commenter's concern about providing email disclosures is partially addressed by the changes in adopted §89.504(c)(3), which allow certain amended disclosures to be provided at closing.

The adopted amendments to §89.506 contain the updated figures for the pre-closing disclosure, with one version for residential property tax loans and another for commercial property tax loans.

Adopted amendments to §89.507 describe the permissible changes to the pre-closing disclosure. As mentioned previously, at the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, adopted §89.507(a)(5) allows the property tax lender to replace "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to other governmental entities and these amounts are shown on the tax receipt.

Since the proposal, a change has been made to §89.507(a)(6) to allow the property tax lender to add or omit lines in the "Loan Amount Itemization" section as necessary to disclose any amounts to refinance an existing property tax loan. This change is intended to conform to changes in §89.504(a)(6)(A) and (a)(8)(D), discussed earlier in this adoption.

In addition, at the stakeholder meeting, one stakeholder suggested adding language to the pre-closing disclosure stating that the APR is not the same as the interest rate, while another stakeholder suggested that this disclosure should be optional. In response to these recommendations, adopted

§89.504(a)(7) allows the property tax lender to add the following sentence to the APR line: "This is not your interest rate." Other permissible changes adopted in §89.507 include omitting the loan identification number, adding or omitting lines in the loan amount itemization to disclose all amounts paid to third parties, omitting the prepaid interest section if there is no prepaid interest charged, and adding any required disclosure of affiliated businesses under §89.504(g).

One commenter requests "a January 1, 2017 implementation date for the new forms and disclosures." The agency understands the commenter to be requesting a delayed implementation date of January 1, 2018. In response to this comment, the agency will allow a delayed implementation date of January 1, 2018, for property tax lenders to provide the amended version of the pre-closing disclosure under §89.504 and §89.506. From the rule's effective date until January 1, 2018, property tax lenders may provide property owners with either the previous version of the disclosure or the amended version. Starting on January 1, 2018, property tax lenders must provide the amended version.

An adopted amendment to §89.601(a) specifies that the limitations in the rule governing closing costs for property tax loans apply to residential property tax loans, as defined by §89.102(10), discussed earlier in this adoption. This amends the former requirement, which stated that the limitations applied to property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

In two of the comments on the notice of intention to review, the commenters recommend limiting the scope of the closing cost rule's limitations to homestead property. Several stakeholders reiterated this recommendation at the stakeholder meeting and in written precomments on the proposal. In response to these comments and precomments, the adopted amendment to §89.601(a), read together with the new definition of "residential property tax loan" in §89.102(10), specifies that the closing cost limitations apply to all property tax loans including a lien on residential property, including all homestead property, as well as any property with a Category A designation, unless the property tax lender obtains an affidavit stating that the property is used for a business or investment purpose. Effectively, this means that the closing cost limitations in §89.601 would no longer apply to Category A property that is owned and used for a business purpose (e.g., rental property), as long as the property tax lender obtains and maintains the appropriate affidavit. All property tax loan closing costs are still required to be reasonable under Texas Tax Code, §32.06(e). The limitations for residential property tax loans in §89.601 are intended to strike an appropriate balance between consumer protection and industry cost recovery. The commission believes that these amendments help strike that balance. The commission disagrees with the suggestion that the rule should only apply to homestead property. Certain non-homestead property, such as a second home, is used as residential property for personal, family, or household use, and it is appropriate to ensure that these property owners can benefit from the consumer protections in §89.601.

Adopted amendments to §89.601(c)(4) deal with closing costs authorized for

additional parcels of land. Previously, the rule provided that the property tax lender may charge up to \$100, in addition to the general \$900 maximum, for each additional parcel of residential property described by §89.601(a). In two of the comments on the notice of intention to review, the commenters recommended allowing the additional \$100 in closing costs for each additional parcel of commercial property, for property tax loans that cover both residential and commercial property. Similarly, in one of the comments on the proposal, the commenter recommends clarifying that the property tax lender may charge up to \$100 for each additional property, regardless of property category. Property tax loans that cover both residential and commercial property are subject to the limitations of §89.601, but the former rule authorized the additional \$100 only for residential parcels. In response to these comments, the adopted amendments to §89.601(c)(4) remove language limiting the additional \$100 authorization to residential parcels, effectively allowing \$100 for each additional parcel regardless of whether it is residential or commercial. This is intended to reflect actual costs incurred by the property tax lender through closing for a property tax loan that includes both residential and commercial property.

Some precommenters recommended increasing the \$100 per parcel amount in §89.601(c)(4). Two precommenters suggested a general \$150 amount, while another suggested a \$300 amount for commercial property. The commission recently adopted the \$100 amount in 2015, following an extensive review of closing costs charged in connection with property tax loans. The commission believes that it is unnecessary to amend the \$100 amount at this time.

Adopted §89.702(d)(3) allows a permissible change to the certified statement signed by the taxing unit. In a comment on the notice of intention to review, one commenter explained that Texas Tax Code, §33.445 authorizes tax lien transfers when a taxing unit files suit to foreclose a tax lien and joins a tax lien transferee. The commenter recommended allowing the certified statement's citation to §32.06 to be amended in this situation. In response to this comment, adopted §89.702(d)(3) allows a taxing unit to replace "Texas Tax Code, §32.06" with "Texas Tax Code, §33.445" if the transfer occurs in connection with the joinder of a tax lien transferee under Texas Tax Code, §33.445(a).

Some of the comments make additional recommendations on the following issues that were not addressed in the proposal: (1) the prohibition on a property tax loan for property financed by a below market rate loan under Texas Tax Code, §32.06(a-8)(1); (2) the limitation on fees for filing a release under current 7 TAC §89.602; and (3) waiver of the right of rescission under Texas Tax Code, §32.06(d-1). Because these issues are outside the subject matter included in the proposal, adopting this change would require a separate rulemaking action with a new publication for comment. *See State Bd. of Ins. v. Deffebach*, 631 S.W.2d 794, 801 (Tex. App.--Austin 1982, writ ref'd n.r.e.). However, the agency invites responses from stakeholders as discussed in the following paragraphs.

Regarding below market rate loans, two comments request guidance on what constitutes a below market rate loan for purposes of Texas Tax Code, §32.06(a-8)(1). In order to determine whether a future rule action on this issue is appropriate, the agency invites responses from stakeholders

on the following questions: What types of real property financed by governmental or nonprofit loans have stakeholders encountered? What rates have stakeholders encountered in connection with these loans? Is it unclear whether these rates are below market rate? What would be the benefits and drawbacks of adopting a rule on this issue?

Regarding lien release fees, one commenter provided a list of real property record filing fees charged by a county, and requested an increase in the lien release fee under §89.602. In order to determine whether a future rule action on this issue is appropriate, the agency invites responses from stakeholders on the following questions: What costs have stakeholders encountered in filing a lien release? What are the actual costs charged by county clerks? What would be the benefits and drawbacks of amending the \$110 maximum in 89.602(c)?

Regarding waiver of the right of rescission under Texas Tax Code, §32.06(d-1), one commenter recommends that the commission "clarify scenarios where a PTL may waive the 3 Day Right to Rescind," including "foreclosure due to tax sale" or a "significant financial penalty." The commission disagrees with this recommendation. Texas Tax Code, §32.06(d-1), provides: "A right of rescission described by 12 C.F.R. Section 226.23 applies to a transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes." The situations where a borrower may waive the right of rescission are described in Regulation Z, 12 C.F.R. §226.23(e)(1) and §1026.23(e), which provide: "The consumer may modify or waive the right to rescind if the consumer determines that the extension

of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited" Because Regulation Z and its official commentary specify the situations where a right of rescission may be waived, the commission believes that additional rules on this issue are unnecessary at this time.

All of the amendments, repeals, and new rules are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The rule change in §89.207 is adopted under Texas Finance Code, §351.0023(f), which authorizes the commission to adopt rules to implement requirements on advertising. The rule changes in §§89.502, 89.503, 89.504, and 89.506 are adopted under Texas Tax Code, §32.06(a-4)(1), which authorizes the commission to adopt the form and content of the pre-closing disclosure statement. The rule changes in §89.601 are adopted under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other permitted charges.

The statutory provisions affected by the adopted rule changes are contained in Texas

Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

Title 7, Texas Administrative Code

Chapter 89. Property Tax Lenders

§89.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Commercial property tax loan--
A property tax loan that is not a residential property tax loan.

(4) [~~3~~] Commissioner--The Consumer Credit Commissioner of the State of Texas.

(5) [~~4~~] Date of consummation--The date of closing or execution of a loan contract.

(6) [~~5~~] Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351.

(7) [~~6~~] Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, the act of funding the loan, or the act of advancing money on behalf of a borrower to a third party. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(8) [~~7~~] Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(9) [~~8~~] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(10) Residential property tax loan--
A property tax loan that includes a lien on residential property owned and used by the property owner for personal, family, or household purposes. This includes any property tax loan that includes a lien on homestead property. For purposes of this definition, non-homestead property designated as "Category A (Real Property: Single-Family Residential)" will be presumed to be residential property owned and used by the property owner for personal, family, or household purposes, unless the property tax lender obtains and maintains and affidavit from the property owner stating that:

(A) the property is owned and used by the property owner for a business or investment purpose; and

(B) the property owner does not own or use the property for personal, family, or household use.

(11) [~~9~~] Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of

loan documents, and an advancement of money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) - (2) (No change.)

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property

tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) - (vii) (No change.)

(viii) copies of any other agreements, ~~or~~ disclosures, or affidavits signed by the borrower applicable to the property tax loan;

(ix) - (x) (No change.)

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the notice of the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;

(C) - (G) (No change.)

(H) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b), or if the property tax loan is satisfied through a foreclosure, the foreclosure deed;

(I) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) (No change.)

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4), ~~and~~ (a)(5), and (a)(6), including specific descriptions of services performed by the attorney, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file; and

(iii) (No change.)

(J) - (M) (No change.)

(4) - (9) (No change.)

§89.208. Advertising.

(a) - (g) (No change.)

(h) Annual percentage rate and terms of repayment. The annual percentage rate and terms of repayment described by Texas Finance Code, §351.0023(d) - (e) must be calculated and disclosed in accordance with the Truth in Lending Act, 15 U.S.C. §1664, ~~and~~ Regulation Z, 12 C.F.R. §1026.24, and §89.502(2) of this title (relating to Definitions).

§89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Parent entity--A direct owner of a licensee or applicant.

(3) [(2)] Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor [proprietors, including spouses with community property interest];

(B) - (H) (No change.)

§89.302. Filing of New Application.

An application for issuance of a new license must be submitted in a format prescribed by the OCCC [commissioner] at the date of filing and in accordance with the OCCC's [commissioner's] instructions. The OCCC [commissioner] may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in

the business and the name of any individual [who owns and who is] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.]

(II) - (VII) (No change.)

(B) - (E) (No change.)

(2) - (3) (No change.)

§89.303. Transfer of License; New License Application on Transfer of Ownership. {{This section replaces current section 89.303, which has been repealed.}}

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a property tax lender license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or

a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of

ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No property tax lender license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §351.163. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC

may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a property tax lender license at the time of the application, then the application must include the information required for new license applications under §89.302 of this title (relating to Filing of New Application). The instructions in §89.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a property tax lender license at the time of the application, then the

application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §89.302 of this title. The instructions in §89.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e)

includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a property tax lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §89.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing property tax lending activity under a license, the transferor is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing

property tax lending activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e) of this section, the transferee is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§89.304. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application] pursuant to §89.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger [If the merger of the parent entity of a licensee] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC [eommissioner] of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC [eommissioner] in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §89.310 of this title. This subsection does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §89.303 of this title.

(2) A proportionate change in which an owner that previously held under

10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer for ownership under §89.303 of this title.

§89.306. Updating Application and Contact Information [Reportable Actions After Application].

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [Any action, fact, or] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [; must be reported] within 14 calendar days after the person has knowledge of the [action, fact or] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

- (1) the names of principal parties;
 - (2) criminal history;
 - (3) actions by regulatory agencies;
- or
- (4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and

all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§89.310. Fees.

(a) - (b) (No change.)

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.]

(d) (No change.)

(e) License duplicates sent by mail. The fee for a license duplicate sent by mail is \$10.

(f) (No change.)

(g) Annual renewal and assessment fees.

(1) (No change.)

(2) An annual assessment fee not to exceed [øf] \$250 is required for each inactive license.

(3) (No change.)

§89.403. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §351.155 [(Acts 2007, 80th Leg., ch. 1220)],

and §89.309(d) of this title (relating to License Status), notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address [upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service].

§89.404. Annual Report.

Each licensee must file the required annual report by March 31 for the prior calendar year's [calendar] loan activity on forms prescribed by the OCCC [commissioner] and must comply with all instructions relating to submitting the report.

§89.405. Denial, Suspension, or Revocation Based on Criminal History. **{{This section replaces sections 89.405 and 89.406, both of which have been repealed.}}**

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. 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 fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, 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 or are current.

(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 licensee under Texas Finance Code, Chapter

351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions, property tax lending, or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(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 be a licensee, 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 character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal

parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

(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 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. 42A.054 or art. 62.001(6), as provided

by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

§89.502. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Amount financed--The total of payments minus the finance charge.

(2) Annual percentage rate--Has the meaning described by Regulation Z, 12 C.F.R. §1026.22, using a finance charge and amount financed described by this section.

(3) Finance charge--The cost of a property tax loan expressed as a dollar amount. The finance charge includes all interest scheduled to be paid to the property tax lender, including prepaid interest, and includes all closing costs to be retained by the property tax lender or an affiliated business.

(A) The finance charge does not include amounts actually paid to a taxing unit for taxes, penalties, interest, and collection costs.

(B) In the case of a refinance of an existing property tax loan, the finance charge does not include the amount paid to the existing property tax lender to pay off the existing loan.

(C) A property tax lender may exclude recording expenses actually paid to a governmental unit from the finance charge.

(D) A property tax lender may exclude closing costs actually paid to third parties from the finance charge only if the costs are bona fide, reasonable in amount, and paid to a person that is not an affiliated business.

(4) [(4)] Property tax lender--Has [has] the meaning assigned by Texas Finance Code, §351.002(1) [~~Aets 2007, 80th Leg., ch. 1220~~]. Another name for a "property tax lender" is a "transferee" as defined by Texas Tax Code, §32.06(a)(2) [~~§32.06(2)~~], and these terms may be used synonymously.

(5) [(2)] Property tax loan--Has [has] the meaning assigned by Texas Finance Code, §351.002(2) [~~Aets 2007, 80th Leg., ch. 1220~~]. Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(6) [(3)] Tax lien transfer--Has [has] the meaning assigned by Texas Finance Code, §351.002(2) [~~Aets 2007, 80th Leg., ch. 1220~~]. Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(7) Total of payments--The total amount the borrower will have paid after making all scheduled payments, including payments made at or before closing.

(8) [(4)] Transferee--Has [has] the meaning assigned by Texas Finance Code, §351.002(1), [~~Aets 2007, 80th Leg., ch. 1220~~] and Texas Tax Code, §32.06(a)(2) [~~§32.06(2)~~]. Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

§89.503. *Format.*

(a) (No change.)

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Calibri, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Calibri [~~Times New Roman~~] typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must be at least as large as 11 point in the Calibri [~~Times New Roman~~] typeface. The typeface for the headings must be in boldface type and at least as large as 12 point in the Calibri [~~Times New Roman~~] typeface. A point is generally viewed as 1/72nd of an inch.

§89.504. *Requirements for Disclosure Statement to Property Owner.*

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer

must contain the following required elements:

(1) the title "Property Tax Loan Pre-Closing Disclosure" at the top of each page;

(2) the property owner's name and the address of the property;

(3) [~~4~~] the property tax lender's name, principal business address, and OCCC license number;

(4) for a residential property loan, the name and NMLS unique identifier of the individual residential mortgage loan originator;

(5) the closing date;

(6) a section labeled "Loan Terms" containing the following:

(A) the funds advanced under Texas Tax Code, §32.06(e), which are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, reasonable closing costs, and any amount to pay off an existing property tax loan in the case of a refinance, and may not include any prepaid interest, labeled "Loan Amount (funds advanced on your behalf)";

(B) the contract interest rate described on the promissory note or loan agreement, labeled "Interest Rate (loan contract rate)";

(C) the term of the property tax loan in months, labeled "Loan Term";

(D) the monthly payment amount, labeled "Monthly Payment";

(E) the number, amounts, and timing of payments scheduled to repay the property tax loan, labeled "Payment Schedule"; and

(F) one of the following statements, labeled "Prepayment":

(i) for any residential property tax loan, or for a commercial property tax loan that does not have a prepayment penalty, the following statement: "You can pay off the loan at any time without a penalty."

(ii) for a commercial property tax loan that has a prepayment penalty, an explanation of the amount of the prepayment penalty such as: "If you prepay the loan within two years, you will pay a prepayment penalty as high as \$ _____.";

(7) for a residential property tax loan, a section labeled "Loan Calculations" containing the following:

(A) the annual percentage rate, labeled "APR (cost of loan as a yearly rate)";

(B) the amount financed, labeled "Amount Financed (amount of loan used for APR)";

(C) the finance charge, labeled "Finance Charge (loan cost used for APR)"; and

(D) the total of payments, labeled "Total of Payments";

(8) a section labeled "Loan Amount Itemization" containing the following:

(A) a subsection labeled "Amounts paid to taxing units" listing:

(i) the total amount that the property tax lender will pay to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs as shown on the tax receipt;

(ii) the name of each taxing unit or governmental entity to which the property tax lender will disburse an amount shown on the tax receipt; and

(iii) the amount to be disbursed to each taxing unit or governmental entity;

(B) a subsection labeled "Closing costs" listing:

(i) the total amount of closing costs;

(ii) the total amount of closing costs paid to or retained by the property tax lender, labeled "Costs to lender"; and

(iii) for each portion of the closing costs paid to a third party, a description of the cost, the name of the third party, and the amount of the cost;

(C) a subsection labeled "Recording costs" listing:

(i) the total amount of expenses to record the lien or liens;

(ii) the name of each governmental unit to which the property tax lender will pay an expense to record a lien; and

(iii) the amount to be paid to each governmental unit for recording expenses;

(D) in the case of a refinance of an existing property tax loan, a subsection labeled "Refinance of current property tax loan" listing:

(i) the total of amounts to pay off any existing property tax loan or loans;

(ii) the name of each property tax lender to which an amount will be paid to pay off an existing property tax loan; and

(iii) the amount to be paid to each property tax lender to pay off an existing property tax loan;

(9) for any property tax loan in which the lender will charge prepaid interest, including per diem interest or discount points, a section labeled "Prepaid Interest" containing the following:

(A) the total amount of prepaid interest that the property tax lender will charge, expressed as a dollar amount, labeled "Total prepaid interest (not included in loan amount)";

(B) if the property tax lender will charge per diem interest, the total amount of per diem interest expressed as a dollar amount, with a statement of the per diem interest rate and number of days, labeled "Per diem interest (___ % per day, ___ days)";

(C) if the property tax lender will charge discount points, the total amount

of discount points expressed as a dollar amount, labeled "Discount points";

(10) the following notice in boldface type, labeled "Tax Office Notice": "Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office."

(11) [~~2~~] a statement that the property owner currently has a lien against the owner's property for unpaid property taxes;

(12) [~~3~~] a statement that the property owner can pay the taxing unit(s) directly;

(13) [~~4~~] a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;

(14) [~~5~~] a statement that unless the property owner agrees in writing, the property tax lender may not make the property tax loan;

(15) [~~6~~] a statement that the property tax loan may include unpaid property taxes, penalties, interest, and collection costs paid as shown on the tax receipt;

(16) [~~7~~] a statement that the property tax lender may also assess closing costs and interest not to exceed 18% per year;

(17) [~~8~~] a statement that the property tax loan is superior to any other preexisting lien on the property;

(18) [~~9~~] a statement that if the property is a homestead, disabled persons are entitled to tax deferral under Texas Tax Code, §33.06;

(19) [~~10~~] a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g., entering into a payment installment agreement with the taxing unit(s), financing options through an existing mortgage lender or other private lenders, borrowing from savings or family members);

(20) [~~11~~] a statement that if the property owner does not pay, the property owner may lose the property;

(21) [~~12~~] a statement that the tax lien may be considered a default by any mortgage holder with a lien on the same property, and the only way to correct the default is to pay off the taxes and have the lien released;

(22) [~~13~~] a statement that any secured loan may be foreclosed if the loan is in default, and the cost of a foreclosure, either tax lien or mortgage, may be added to the amount owed by the property owner;

(23) the following statement: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:" and the OCCC's address, consumer helpline, website, and consumer complaint email address as follows: 2601 N. Lamar Blvd., Austin, TX 78705, (800) 538-1579, occc.texas.gov, consumer.complaints@occc.texas.gov [~~14~~

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~~a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.oecc.state.tx.us];~~

(24) ~~[(15)]~~ a statement that the property owner may seek the advice of an attorney or another third party before signing a property tax loan; and

(25) ~~[(16)]~~ a statement that the property owner should ask about the terms of any loan and should read any document before signing it.

(b) Page requirement. ~~[Single page required.]~~ The disclosure statement ~~[required by §89.506(a) of this title (regarding Disclosures)]~~ must fit on one standard-size sheet of paper (8 1/2 by 11 inches) printed on both sides, or on two standard sheets of paper printed only on the front sides of each page. A property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, additional governmental units receiving recording expenses, or additional information regarding amounts to pay off one or more existing property tax loans. The disclosure statement must be delivered in a manner that does not minimize its significance.

(c) Accuracy. All information and amounts on the disclosure statement must be accurate and must correctly reflect the terms of the property tax loan at closing.

(1) Annual percentage rate. For a residential property tax loan, the annual

percentage rate will be considered accurate if it is not more than 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with §89.502(2) of this title (relating to Definitions).

(2) Dollar amounts. For purposes of this subsection, a dollar amount on the disclosure will be considered accurate if it is not more than \$10 above or below the actual amount charged under the terms of the property tax loan.

(3) Amended disclosure statement. At any time after delivering the disclosure statement, if the property tax lender learns that any information on the disclosure statement was inaccurate or did not correctly reflect the terms of the loan at closing, then the property tax lender must notify the property owner of the inaccuracy, and must send an amended, accurate disclosure statement to the property owner in a manner described by subsection (d) of this section. The amended disclosure statement must list the date on which it was revised.

(A) General timing requirement. The property tax lender must provide any amended disclosure statement to the property owner before the property owner executes any promissory note, loan agreement, deed of trust, contract, security deed, or other security instrument.

(B) Prompt disclosure for certain increased amounts. In addition to complying with subparagraph (A) of this paragraph, the property tax lender must provide the amended disclosure to the property owner promptly after discovering the inaccuracy if the inaccuracy results in:

(i) an increase of more than \$10 to the total of payments, the closing costs, or the amount of any periodic payment, compared to the amount originally disclosed to the property owner; or

(ii) an increase of more than 1/8 of 1 percentage point to the annual percentage rate, compared to the amount originally disclosed to the property owner for a residential property tax loan.

(d) [(e)] Delivery.

(1) Face-to-face interview before closing. In the case of a face-to-face interview, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section [~~as prescribed by Figure: 7 TAC §89.506(a) of this title,~~] to the property owner at the time of the interview. A property owner present at the interview may sign an acknowledgment verifying receipt of the disclosure statement at that time.

(2) No face-to-face interview. If there is no face-to-face interview, a licensee must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section [~~as prescribed by Figure: 7 TAC §89.506(a) of this title,~~] to the owner of the property.

(A) - (C) (No change.)

(e) [(d)] Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner

as prescribed in subsection (d)(2) [(e)(2)] of this section.

(A) - (E) (No change.)

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with [~~§101(e) of~~] the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001(c), will constitute a rebuttable presumption for sufficient delivery.

(f) [(e)] Acknowledgment at time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement [~~prescribed by Figure: 7 TAC §89.506(a) of this title,~~] but is not required to do so. The property tax lender must obtain a dated acknowledgment signed by the property owner stating that the property owner received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the disclosure form as provided in §89.507(a)(11) [§89.507(a)(4)] of this title (relating to Permissible Changes).

(1) - (2) (No change.)

(g) [(f)] Disclosure of affiliated businesses. If a property tax lender regularly contracts with one or more affiliated businesses for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender, then the disclosure statement must include a statement substantially similar to the

following: "The property tax lender can impose certain additional charges after closing. Some of these charges may be paid to (INSERT NAME OF AFFILIATED BUSINESS OR BUSINESSES), which is affiliated with the property tax lender. The costs paid to the affiliated business cannot be for services performed by employees of the property tax lender."

§89.506. Disclosures.

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figures: [~~figure~~]

(1) the following figure is for residential property tax loans:

Figure: 7 TAC §89.506(a)(1)

(2) the following figure is for commercial property tax loans:

Figure: 7 TAC §89.506(a)(2)

[~~Figure: 7 TAC §89.506(a)~~]

(b) (No change.)

§89.507. Permissible Changes.

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by Figure: 7 TAC §89.506(a)(1) or Figure: 7 TAC §89.506(a)(2) [~~Figure: 7 TAC §89.506(a)~~] of this title, but may consider making only limited technical changes, as provided by the following exclusive list:

(1) - (2) (No change.)

(3) Substituting "tax lien transfer" for "property tax loan"; [~~ø~~]

(4) Omitting the loan identification number;

(5) Replacing "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to governmental entities other than taxing units and these amounts are shown on the tax receipt;

(6) Adding or omitting lines in the "Loan Amount Itemization" section as necessary to disclose all amounts paid to third parties and any amounts to refinance an existing property tax loan;

(7) Adding the following statement to the "APR" line of the "Loan Calculations" section: "This is not your interest rate.";

(8) Omitting the "Prepaid Interest" section if there is no prepaid interest charged, omitting the "per diem interest" line if there is no per diem interest charged, and omitting the "discount points" line if there are no discount points charged;

(9) Adding any required disclosure of affiliated businesses under §89.504(g) of this title (relating to Requirements for Disclosure Statement to Property Owner);

(10) Attaching additional pages described by §89.504(b) of this title; or

(11) [~~4~~] Adding an optional, dated signature block at the very bottom of the second page of the disclosure form, which must include the following statement directly above the signature line of the property owner(s): "ACKNOWLEDGMENT OF

RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to closing, this ___ day of ____, 20__."

(A) Adding an optional affirmation statement to the optional signature block for married property owners: "I affirm that I am married to _____ (insert name of spouse)."

(B) Adding an optional affirmation statement to the optional signature block for persons signing on behalf of a legal entity: "I affirm that I am authorized to sign this document on behalf of _____ (insert name of legal entity property owner)."

(C) Adding the property owner's address to the optional signature block.

(b) (No change.)

§89.601. Fees for Closing Costs.

(a) Applicability. The fee limitations contained in this section are applicable to a residential property tax loan described by §89.102(10) of this title (relating to Definitions) [~~property tax loans secured by property designated as "Category A (Real Property: Single Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts~~].

(b) (No change.)

(c) Total maximum fees for closing costs.

(1) - (3) (No change.)

(4) Cost for additional parcels of real property. If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge up to \$100 for each additional parcel of ~~[described by subsection (a)]~~ [residential] property, in addition to the general maximum fee limit described in paragraph (3) of this subsection.

(5) - (6) (No change.)

(d) Discount points. Legitimate discount points are prepaid interest and are not subject to the general maximum fee limit described by subsection (c) of this section.

(1) Discount points are legitimate if:

(A) - (B) (No change.)

(C) before closing, the property tax lender provides the property owner with a written proposal describing the options offered to the property owner, including all of the following:

(i) an offer of a property tax loan that includes a contract rate without discount points and a corresponding annual percentage rate, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title (relating to Definitions);

(ii) an offer of a property tax loan that includes a lower contract rate based on discount points and a corresponding annual percentage rate, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title;

(iii) - (vi) (No change.)

(2) - (5) (No change.)

§89.702. Certified Statement of Transfer of Tax Lien.

(a) - (c) (No change.)

(d) Permissible changes.

(1) - (2) (No change.)

(3) Citation to Tax Code. The phrase "Texas Tax Code, §32.06" may be replaced with "Texas Tax Code, §33.445" if the transfer occurs in connection with the joinder of a tax lien transferee under Texas Tax Code, §33.445(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 October 20, 2017.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

Property Tax Loan Pre-Closing Disclosure

Borrower [borrower name]
Property Address [borrower address 1]
 [borrower address 2]

Lender [lender name]
Address [lender address 1]
 [lender address 2]

Closing Date [closing date]
Loan ID# [loan ID]

OCCC License # [lender license #]
Loan Originator [RMLO name]
NMLS ID# [RMLO NMLS ID]

Loan Terms	
Loan Amount <small>(funds advanced on your behalf)</small>	\$0.00
Interest Rate <small>(loan contract rate)</small>	0.00%
Loan Term	0 months
Monthly Payment	\$0.00
Payment Schedule	
Prepayment	You can pay off the loan at any time without a penalty.

Loan Calculations	
APR <small>(cost of loan as a yearly rate)</small>	0.00%
Amount Financed <small>(amount of loan used for APR)</small>	\$0.00
Finance Charge <small>(loan cost used for APR)</small>	\$0.00
Total of Payments	\$0.00

Loan Amount Itemization		
Amounts paid to taxing units		\$0.00
to [taxing unit name]		\$0.00
to [taxing unit name]		\$0.00
Closing costs		\$0.00
Costs to lender		\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
Recording costs		\$0.00
to [governmental unit name]		\$0.00
to [governmental unit name]		\$0.00

Prepaid Interest	
Total prepaid interest <small>(not included in loan amount)</small>	\$0.00
Per diem interest <small>(0.00% per day, 0 days)</small>	\$0.00
Discount points	\$0.00

Tax Office Notice

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.

Property Tax Loan

Pre-Closing Disclosure *(continued)*

What is a property tax loan?

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. Unless you agree in writing, the property tax lender may not make the property tax loan. The property tax loan may include unpaid property taxes, penalties, and interest. The property tax lender may also assess closing costs and interest not to exceed 18% per year. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

The property tax loan is the superior lien.

If you default on any lien against your property, this property tax loan will be superior, or “first in line” to be paid, over any other preexisting lien on your property (for example, first or secondary mortgage).

You may have alternatives to this property tax loan.

If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

Foreclosure is possible.

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

You can contact the OCCC, a state agency that regulates the property tax lender.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:

Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

(800) 538-1579 — Consumer Helpline
occc.texas.gov
consumer.complaints@occc.texas.gov

Before you sign a property tax loan, be sure that you understand this document.

You may seek advice from an attorney or any third party before you enter into a property tax loan. You should ask about the terms of any loan you are considering and you should read any document before signing it.

Property Tax Loan Pre-Closing Disclosure

Borrower	[borrower name]	Lender	[lender name]
Property Address	[borrower address 1] [borrower address 2]	Address	[lender address 1] [lender address 2]
Closing Date	[closing date]	OCCC License #	[lender license #]
Loan ID#	[loan ID]		

Loan Terms	
Loan Amount <small>(funds advanced on your behalf)</small>	\$0.00
Interest Rate <small>(loan contract rate)</small>	0.00%
Loan Term	0 months
Monthly Payment	\$0.00
Payment Schedule	
Prepayment	If you prepay the loan within two years, you will pay a prepayment penalty as high as \$_____.

Loan Amount Itemization		
Amounts paid to taxing units		\$0.00
to [taxing unit name]		\$0.00
to [taxing unit name]		\$0.00
Closing costs		\$0.00
Costs to lender		\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
[fee description]	to [third party name]	\$0.00
Recording costs		\$0.00
to [governmental unit name]		\$0.00
to [governmental unit name]		\$0.00

Prepaid Interest	
Total prepaid interest <small>(not included in loan amount)</small>	\$0.00
Per diem interest <small>(0.00% per day, 0 days)</small>	\$0.00
Discount points	\$0.00

Tax Office Notice

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.

Property Tax Loan

Pre-Closing Disclosure *(continued)*

What is a property tax loan?

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. Unless you agree in writing, the property tax lender may not make the property tax loan. The property tax loan may include unpaid property taxes, penalties, and interest. The property tax lender may also assess closing costs and interest not to exceed 18% per year. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

The property tax loan is the superior lien.

If you default on any lien against your property, this property tax loan will be superior, or “first in line” to be paid, over any other preexisting lien on your property (for example, first or secondary mortgage).

You may have alternatives to this property tax loan.

If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

Foreclosure is possible.

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

You can contact the OCCC, a state agency that regulates the property tax lender.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:

Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

(800) 538-1579 — Consumer Helpline
occc.texas.gov
consumer.complaints@occc.texas.gov

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