

1-1 By: Zaffirini S.B. No. 43
1-2 (In the Senate - Filed November 9, 2020; March 3, 2021, read
1-3 first time and referred to Committee on Natural Resources &
1-4 Economic Development; March 26, 2021, reported favorably by the
1-5 following vote: Yeas 9, Nays 0; March 26, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Birdwell	X		
1-9	Zaffirini	X		
1-10	Alvarado	X		
1-11	Hancock	X		
1-12	Hinojosa	X		
1-13	Hughes	X		
1-14	Kolkhorst	X		
1-15	Lucio	X		
1-16	Seliger	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to residential mortgage loans, including the financing of
1-20 residential real estate purchases by means of a wrap mortgage loan;
1-21 providing licensing and registration requirements; authorizing an
1-22 administrative penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section [156.202](#), Finance Code, is amended by
1-25 amending Subsection (a-1) and adding Subsection (b) to read as
1-26 follows:

1-27 (a-1) The following entities are exempt from this chapter:

1-28 (1) a nonprofit organization:

1-29 (A) providing self-help housing that originates
1-30 zero interest residential mortgage loans for borrowers who have
1-31 provided part of the labor to construct the dwelling securing the
1-32 loan; or

1-33 (B) that has designation as a Section 501(c)(3)
1-34 organization by the Internal Revenue Service and originates
1-35 residential mortgage loans for borrowers who, through a self-help
1-36 program, have provided at least 200 labor hours or 65 percent of the
1-37 labor to construct the dwelling securing the loan;

1-38 (2) a mortgage banker registered under Chapter [157](#);

1-39 (3) subject to Subsection (b), any owner of
1-40 residential real estate who in any 12-consecutive-month period
1-41 makes no more than five residential mortgage loans to purchasers of
1-42 the property for all or part of the purchase price of the
1-43 residential real estate against which the mortgage is secured; and

1-44 (4) an entity that is:

1-45 (A) a depository institution;

1-46 (B) a subsidiary of a depository institution that
1-47 is:

1-48 (i) owned and controlled by the depository
1-49 institution; and

1-50 (ii) regulated by a federal banking agency;

1-51 or

1-52 (C) an institution regulated by the Farm Credit
1-53 Administration.

1-54 (b) In determining eligibility for an exemption under
1-55 Subsection (a-1)(3), two or more owners of residential real estate
1-56 are considered a single owner for the purpose of computing the
1-57 number of mortgage loans made within the period specified by that
1-58 subdivision if any of the owners are affiliates, as defined by
1-59 Section [1.002](#), Business Organizations Code, or if any of the owners
1-60 have substantially common ownership, as determined by the
1-61 commissioner.

SECTION 2. Section [157.0121](#), Finance Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) Employees of the following entities, when acting for the benefit of those entities, are exempt from the licensing and other requirements of this chapter applicable to residential mortgage loan originators:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) subject to Subsection (f), any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(3) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

(f) In determining eligibility for an exemption under Subsection (c)(2), two or more owners of residential real estate are considered a single owner for the purpose of computing the number of mortgage loans made within the period specified by that subdivision if any of the owners are affiliates, as defined by Section [1.002](#), Business Organizations Code, or if any of the owners have substantially common ownership, as determined by the commissioner.

SECTION 3. Subtitle E, Title 3, Finance Code, is amended by adding Chapter 159 to read as follows:

CHAPTER 159. WRAP MORTGAGE LOAN FINANCING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 159.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the savings and mortgage lending commissioner.

(2) "Finance commission" means the Finance Commission of Texas.

(3) "Residential mortgage loan" has the meaning assigned by Section [180.002](#).

(4) "Residential real estate" has the meaning assigned by Section [180.002](#).

(5) "Wrap borrower" means a person obligated to pay a wrap mortgage loan.

(6) "Wrap lender" means:

(A) a person who makes a wrap mortgage loan; or

(B) an owner of residential real estate who contracts with another person to make a wrap mortgage loan to a wrap borrower on the owner's behalf to finance the purchase of the owner's residential real estate.

(7) "Wrap mortgage loan" means a residential mortgage loan:

(A) made to finance the purchase of residential real estate that will continue to be subject to an unreleased lien that:

(i) attached to the residential real estate before the loan was made; and

(ii) secures a debt incurred by a person

other than the wrap borrower that was not paid off at the time the loan was made; and

(B) obligating the wrap borrower to the wrap lender for payment of a debt the principal amount of which includes: (i) the outstanding balance of the debt described by Paragraph (A)(ii); and (ii) any remaining amount of the purchase price financed by the wrap lender.

Sec. 159.002. INAPPLICABILITY OF CHAPTER. (a) In this section, "unimproved residential real estate" means residential real estate on which a dwelling has not been constructed.

(b) Notwithstanding any other provision of this chapter, this chapter does not apply to a wrap mortgage loan:

(1) made by or on behalf of an owner of unimproved residential real estate to a purchaser of that residential real estate if:

(A) the residential real estate purchased will not continue to be subject to any unreleased lien described by Section 159.001(7)(A) that secures a debt that is subject to a due-on-sale clause in connection with which the lienholder may foreclose the lien; or

(B) the residential real estate purchased will continue to be subject to an unreleased lien described by Paragraph (A) and the holder of that unreleased lien has consented to the sale of the residential real estate; or

(2) for a sale of residential real estate that is the wrap lender's homestead.

Sec. 159.003. EXEMPTIONS. (a) The following persons are exempt from this chapter:

(1) a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union;

(2) a subsidiary of a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union;

(3) the state or a governmental agency, political subdivision, or other instrumentality of the state, or an employee of the state or a governmental agency, political subdivision, or instrumentality of the state who is acting within the scope of the person's employment; or

(4) subject to Subsection (b), an owner of residential real estate if the owner does not in any 12-consecutive-month period make, or contract with another person to make, more than five wrap mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured.

(b) In determining eligibility for an exemption under Subsection (a)(4), two or more owners of residential real estate are considered a single owner for the purpose of computing the number of wrap mortgage loans made within the period specified by that subdivision if any of the owners are affiliates, as defined by Section 1.002, Business Organizations Code, or if any of the owners have substantially common ownership, as determined by the commissioner.

SUBCHAPTER B. LICENSING OR REGISTRATION

Sec. 159.051. LICENSE OR REGISTRATION REQUIRED. A person may not originate or make a wrap mortgage loan unless the person is licensed or registered to originate or make residential mortgage loans under Chapter 156, 157, or 342 or is exempt from licensing or registration as provided under an applicable provision of those chapters.

SUBCHAPTER C. TRANSACTION REQUIREMENTS; REMEDIES

Sec. 159.101. DISCLOSURE STATEMENT; OPTION TO RESCIND. (a) A wrap lender must, on or before the seventh day before the wrap mortgage loan agreement is entered into, provide to the wrap borrower a separate written disclosure statement in at least 12-point type that:

(1) contains the information required for a written disclosure statement under Section 5.016, Property Code; and

(2) includes a statement in a form substantially similar to the following:

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

(b) The disclosure statement required under Subsection (a) must be dated and signed by the wrap borrower when the wrap borrower receives the statement.

(c) The finance commission by rule shall adopt a model disclosure statement that satisfies the requirements of Subsection (a).

(d) If the disclosure statement required under Subsection (a) and any disclosure required by Section 159.102 are received by the wrap borrower on or before the closing date of the wrap mortgage loan, the wrap borrower may rescind the wrap mortgage loan agreement and any related purchase agreement or other agreement relating to the loan transaction not later than the seventh day after the date of receipt of the disclosure statement, regardless of whether the disclosure is timely made. On rescission under this subsection, the wrap borrower is entitled to a return of any earnest money, escrow amounts, down payment, or other fees or charges paid in connection with the wrap mortgage loan, the related purchase transaction, and any other related transaction.

Sec. 159.102. FOREIGN LANGUAGE REQUIREMENT. If the negotiations that precede the execution of the wrap mortgage loan agreement are conducted primarily in a language other than English, the wrap lender shall provide a copy of a written disclosure statement required under Section 159.101 of this code or Section 5.016, Property Code, in that language to the wrap borrower.

Sec. 159.103. FAILURE TO PROVIDE DISCLOSURE: TOLLING OF LIMITATIONS. If a wrap lender fails to provide the disclosure statement as required by Section 159.101 or fails to provide the disclosure statement in the language required by Section 159.102, the limitations period applicable to any cause of action of the wrap borrower against the wrap lender arising out of the wrap lender's violation of a law of this state in connection with the wrap mortgage loan transaction is tolled until the 120th day after the date the required disclosure statement is provided.

Sec. 159.104. FAILURE TO PROVIDE DISCLOSURE BEFORE CLOSING; RIGHT OF RESCISSION. (a) Subject to Subsection (b), if a wrap mortgage loan is closed without the wrap lender providing the disclosure statement required by Section 159.101 or any disclosure required by Section 159.102, the wrap borrower may rescind the wrap mortgage loan agreement and the related purchase agreement at any time by providing the wrap lender notice of rescission in writing.

(b) If the wrap borrower receives a required disclosure statement under Section 159.101 or 159.102 after the date the wrap mortgage loan is closed but before the wrap borrower provides notice of rescission, the wrap borrower may rescind the wrap mortgage loan agreement and the related purchase agreement in writing on or before the 21st day after the date of receipt of the disclosure statement.

(c) Not later than the 30th day after the date the wrap borrower provides notice of rescission under this section, the wrap lender shall return to the wrap borrower:

(1) all principal and interest payments made by the wrap borrower on the wrap mortgage loan;

(2) any money or property given as earnest money, a down payment, or otherwise in connection with the wrap mortgage loan or related purchase transaction; and

(3) any escrow amounts for the wrap mortgage loan or related purchase transaction.

(d) On the date on which all of the returned money or property described by Subsection (c) is received by the wrap

borrower, the wrap borrower shall convey to the wrap lender or the wrap lender's designee the residential real estate described by Section 159.001(7)(A). The wrap borrower shall surrender possession of the residential real estate not later than the 30th day after the date of the wrap borrower's receipt of the money or property returned as described by this subsection.

(e) Notwithstanding Subsection (a) or (b), the wrap lender may avoid rescission if not later than the 30th day after the date of receipt of notice of rescission under Subsection (a), the wrap lender:

(1) pays the outstanding balance due on any debt described by Section 159.001(7)(A)(ii);

(2) pays any due and unpaid taxes or other government assessment on the residential real estate described by Section 159.001(7)(A);

(3) pays to the wrap borrower as damages for noncompliance the sum of \$1,000 and any reasonable attorney's fees incurred by the wrap borrower; and

(4) provides to the wrap borrower evidence of compliance with Subdivisions (1) and (2).

Sec. 159.105. ENFORCEABILITY OF WRAP LIEN. A lien securing a wrap mortgage loan is void unless the wrap mortgage loan and the conveyance of the residential real estate securing the loan are closed by an attorney or a title company.

Sec. 159.106. BORROWER'S RIGHT OF ACTION. (a) A wrap borrower may bring an action to:

(1) obtain declaratory or injunctive relief to enforce this subchapter;

(2) recover any actual damages suffered by the wrap borrower as a result of a violation of this subchapter; or

(3) obtain other remedies available under this subchapter or in an action under Section 17.50, Business & Commerce Code, as otherwise authorized under this subchapter.

(b) A wrap borrower who prevails in an action under this section may recover court costs and reasonable attorney's fees.

Sec. 159.107. WAIVER OR AVOIDANCE PROHIBITED. (a) Any purported waiver of a right of a wrap borrower under this subchapter or purported exemption of a person from liability for a violation of this subchapter is void.

(b) A person who is a party to a residential real estate transaction may not evade the application of this subchapter by any device, subterfuge, or pretense, and any attempt to do so is void and a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

Sec. 159.108. RULEMAKING AUTHORITY. The finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with this subchapter.

SUBCHAPTER D. DUTIES OWED TO WRAP BORROWER

Sec. 159.151. MONEY HELD IN TRUST. A person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan holds the money in trust for the benefit of the borrower.

Sec. 159.152. FIDUCIARY DUTY. A person who collects or receives a payment from a wrap borrower under the terms of or in connection with a wrap mortgage loan owes a fiduciary duty to the wrap borrower to use the payment to satisfy the obligations of the obligee under each debt described by Section 159.001(7)(A)(ii) and the payment of taxes and insurance for which the wrap lender has received any payments from the wrap borrower.

SUBCHAPTER E. WRAP BORROWER'S RIGHTS

Sec. 159.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a wrap mortgage loan for a purchase of residential real estate to be used as the wrap borrower's residence.

Sec. 159.202. WRAP BORROWER'S RIGHT TO DEDUCT. The wrap borrower, without taking judicial action, may deduct from any amount owed to the wrap lender under the terms of the wrap mortgage loan:

(1) the amount of any payment made by the wrap borrower to an obligee of a debt described by Section 159.001(7)(A)(ii) to

cure a default by the wrap lender caused by the lender's failure to make payments for which the lender is responsible under the terms of the wrap mortgage loan; or

(2) any other amount for which the wrap lender is liable to the wrap borrower under the terms of the wrap mortgage loan.

SUBCHAPTER F. ENFORCEMENT OF CERTAIN REGISTRATION REQUIREMENTS

Sec. 159.251. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a wrap lender who is required to register as a residential mortgage loan servicer under Chapter 158.

Sec. 159.252. INSPECTION; INVESTIGATION. (a) The commissioner may conduct an inspection of a wrap lender registered under Chapter 158 as the commissioner determines necessary to determine whether the wrap lender is complying with that chapter and applicable rules. The inspection may include an inspection of the books, records, documents, operations, and facilities of the wrap lender. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) For reasonable cause, the commissioner at any time may investigate a wrap lender registered under Chapter 158 to determine whether the lender is complying with that chapter and applicable rules.

(c) The commissioner may conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Chapter 158.

(d) The finance commission by rule shall provide guidelines to govern an inspection or investigation under this section, including rules to:

(1) determine the information and records of the wrap lender to which the commissioner may demand access during an inspection or investigation; and

(2) establish what constitutes reasonable cause for an investigation.

(e) Information obtained by the commissioner during an inspection or investigation under this section is confidential unless disclosure of the information is permitted or required by other law.

(f) The commissioner may share information gathered during an investigation under this section with a state or federal agency. The commissioner may share information gathered during an inspection with a state or federal agency only if the commissioner determines there is a valid reason for the sharing.

(g) The commissioner may require reimbursement of expenses for each examiner for an on-site examination or inspection of a registered wrap lender under this section if records are located out of state and are not made available for examination or inspection by the examiner in this state. The finance commission by rule shall set the maximum amount for the reimbursement of expenses authorized under this subsection.

Sec. 159.253. ISSUANCE AND ENFORCEMENT OF SUBPOENA.

(a) During an investigation conducted under this subchapter, the commissioner may issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. The subpoena may require a person to give a deposition, produce documents, or both.

(b) If a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, the commissioner may petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The court shall promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served on the person to whom the subpoena is directed.

SUBCHAPTER G. ENFORCEMENT OF CHAPTER

Sec. 159.301. CEASE AND DESIST ORDER. (a) The

commissioner, if the commissioner has reasonable cause to believe that a wrap lender or wrap mortgage loan originator to whom this chapter applies has violated or is about to violate this chapter, may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(b) An order issued under Subsection (a) must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner by order may find a violation has occurred or not occurred.

(c) If a hearing is not requested under Subsection (b) on or before the 30th day after the date on which an order is made, the order is considered final and not appealable.

(d) The commissioner, after giving notice and an opportunity for hearing, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

SECTION 4. Section 180.003, Finance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The following persons are exempt from this chapter:

(1) a registered mortgage loan originator when acting for an entity described by Section 180.002(16)(A)(i), (ii), or (iii);

(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney:

(A) takes a residential mortgage loan application; and

(B) offers or negotiates the terms of a residential mortgage loan;

(4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(5) subject to Subsection (d), an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(6) subject to Subsection (d), an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured.

(d) In determining eligibility for an exemption under Subsection (a)(5) or (6), two or more owners of residential real estate or a dwelling, as applicable, are considered a single owner for the purpose of computing the number of mortgage loans made within the period specified by those subdivisions if any of the owners are affiliates, as defined by Section 1.002, Business Organizations Code, or if any of the owners have substantially common ownership, as determined by the savings and mortgage lending commissioner.

SECTION 5. This Act takes effect January 1, 2022.

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