



# TEXAS DEPARTMENT OF BANKING

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## REGULATORY GUIDANCE – 3008

May 1, 2018 (rev.)

**TO:** Chief Executive Officers of State-Chartered Banks  
**FROM:** Charles G. Cooper, Banking Commissioner  
**RE:** Residential Mortgage Loan Fraud

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### BACKGROUND

The Texas Legislature has recognized the need for legislation to help combat mortgage fraud problems and during the 80<sup>th</sup> Legislative Session passed the Residential Mortgage Fraud Act (Act), House Bill 716. Subsequently, this Regulatory Guidance was issued in January 2008.

Effective September 1, 2017, the 85<sup>th</sup> Legislature abolished the Residential Mortgage Task Force (SB 526). This revision removes references to the Task Force. The importance of the Regulatory Guidance continues.

### OVERVIEW

Texas Finance Code §343.105, titled “**Notice of Penalties for Making False or Misleading Written Statement**”, requires a lender, mortgage banker, or licensed mortgage broker to provide each applicant for a home loan a written notice at closing indicating that intentionally or knowingly making a materially false or misleading written statement to obtain property or credit is a violation of Section 32.32, Texas Penal Code. The criminal penalties for making false or misleading written statements are listed in the disclosure. This section of the Texas Finance Code also provides suggested language for the required notice and stipulates that the applicant shall verify the information and execute the notice. All residential mortgage loans closed on or after September 1, 2007 shall have an executed notice by each applicant. A copy of this section of the statute and a sample of the notice are found in Exhibits A and B, respectively.

Texas Government Code §402.033 requires a person who determines or reasonably suspects that fraudulent activity has been committed or is about to be committed to report the information to an authorized governmental agency. Authorized governmental agencies include the attorney general; a local, state or federal law enforcement agency; a U.S., county, or district prosecuting attorney; or one of the following state agencies:

- Department of Public Safety;

- Texas Department of Insurance;
- Office of Consumer Credit Commissioner;
- Texas Department of Banking;
- Texas Credit Union Department;
- Department of Savings and Mortgage Lending;
- Texas Real Estate Commission;
- Texas Appraiser Licensing and Certification Board; or
- Texas Department of Housing and Community Affairs.

If a person reports the information to the attorney general, the attorney general shall notify an appropriate law enforcement agency with jurisdiction to investigate the fraudulent activity. If a financial institution or person voluntarily reports fraudulent activity, neither the reporting party nor the notified agency can disclose to anyone involved in the fraudulent activity that the act has been reported. Any party voluntarily reporting possible fraudulent activity will not be liable to any person under any state or federal law or regulation for the report. This will not eliminate or diminish any common law or statutory privilege or immunity. It should be noted that an authorized governmental agency may share confidential information or information to which access is otherwise restricted by law with one or more other authorized governmental agencies.

#### **GUIDELINES**

The required “**Notice of Penalties for Making False or Misleading Written Statement**” is a separate document which should be provided to each applicant of a one to four family home loan at the time of closing. It is recommended that if a revision or renewal is made to an existing home loan which requires an underwriting decision, then the Notice of Penalties for Making False or Misleading Written Statement should be executed.

If a financial institution suspects mortgage fraud, the financial institution shall first submit a Suspicious Activity Report to FinCEN as required by 31 CFR Chapter X, and then contact one of the authorized governmental agencies. To contact the Department of suspected mortgage fraud, the financial institution should utilize the fraud report form found under the Consumer Assistance section of the Department’s website, [www.dob.texas.gov](http://www.dob.texas.gov), and mail or fax it to:

Texas Department of Banking  
Attention: Consumer Assistance Activities  
2601 North Lamar Boulevard  
Austin, TX 78705  
Fax 512-475-1313

You may direct your questions about this regulatory guidance or §343.105 of the Texas Finance Code to the Director of Strategic Support at 512-475-1300.

## **EXHIBIT A**

### **§343.105. NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING WRITTEN STATEMENT.**

(a) A lender, mortgage banker, or licensed mortgage broker shall provide to each applicant for a home loan a written notice at closing.

(b) The notice must:

- (1) be provided on a separate document;
- (2) be in at least 14-point type; and
- (3) have the following or substantially similar language:

"Warning: home loan, are true and correct as of the date of loan closing." Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.

"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

"I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing."

(c) On receipt of the notice, the loan applicant shall verify the information and execute the notice.

(d) The failure of a lender, mortgage banker, or licensed mortgage broker to provide a notice complying with this section to each applicant for a home loan does not affect the validity or enforceability of the home loan by any holder of the loan.

*Added by Acts 2007, 80th Leg., R.S., Ch. 285, § 1, eff. September 1, 2007.*

EXHIBIT B

NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING STATEMENT

WARNING:

Intentionally or knowingly making a materially false or misleading statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, of the Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.00.

I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our **identity, employment, annual income, and intent to occupy the residential real property** secured by the home loan, are true and correct as of the date of loan closing.

Applicant \_\_\_\_\_ Date \_\_\_\_\_
Co-Applicant(s) \_\_\_\_\_ Date \_\_\_\_\_

STATE OF TEXAS
COUNTY OF \_\_\_\_\_

Before me, the undersigned notary, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ personally appeared \_\_\_\_\_, and \_\_\_\_\_, a person(s) whose identity is known to me. After I administered an oath to him/her/them, he/she/they said he/she/they read the above notice and that the fact stated therein are within his/her/their personal knowledge and are true and correct.

Notary Public in and for the State of Texas