

# POLUNSKY BEITEL GREEN

ATTORNEYS AT LAW

To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: May 29, 2018

Subject: The Texas Department of Savings & Mortgage Lending in Sunset Review:  
Update from the Hearing held May 24, 2018

As you may be aware, the Texas Department of Savings and Mortgage Lending (“SML”) is the subject of Sunset Review this year, which all state agencies are required to undergo periodically, to evaluate the necessity of their continued viability as a separate state department or agency. As we have previously reported, the Sunset Review staff issued a report earlier this year, recommending the abolishment of SML and its consolidation within the Texas Department of Banking. During the last Sunset Review of the SML in 2000, the Sunset staff made a similar recommendation, which was ultimately NOT followed by the Sunset Commission and legislature. It is important to note that the staff recommendation is just the initial step in the Sunset Review process. The second step in that process was the receipt of feedback from the various constituencies on the staff recommendation. Also, the Texas Mortgage Bankers Association, along with other principal trade groups, have all opposed the recommended consolidation and have instead indicated a strong preference for maintaining the status quo. The Texas Sunset Commission conducted their first hearing on the staff report on May 24 and Doug Foster, the former Commissioner of the SML and the Director of Regulatory Affairs for Polunsky Beitel Green, among others, testified before the Commission, which is comprised of five state senators, five house representatives and two public members. The primary recommendation of contention is number 1.1 which calls for the abolishment of the Texas Department of Savings and Mortgage Lending (SML) and the transfer of all its regulatory functions to the Texas Department of Banking (summary statement below).

The Mortgage industry was extremely well represented through the testimony of Stacy London, Chair of the Texas Finance Commission, the oversight board for both impacted agencies. Stacy provided reasons for maintaining the status quo from both her position as Chair, where the board is on record twice voting first unanimously and then 8-1 to keep SML as an independent agency. She also discussed the potential disruption and uncertainty from her personal mortgage industry position.

Doug Foster’s testimony focused on his experience auditing seven separate state banking departments around the country and having the unique experience to judge the effectiveness of SML as a standalone regulator. He also focused on there not being any constituent groups that would benefit from consolidation including Texas taxpayers, consumers, or the industries under supervision. Approximately, 20 others representing the Texas Mortgage Bankers Association (Larry Temple, John Fleming, Paulina McGrath, Jim Clapp) and state saving bank executives provided further testimony supporting SML as their primary regulator. Additional industry participants dropped cards supporting status quo but did not give verbal testimony.

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A vote by the Texas Sunset Committee to accept or reject this recommendation is scheduled to occur during the committee's next meeting on August 29<sup>th</sup> and 30<sup>th</sup>.

Information on how to participate in this process should be available prior to that meeting from the three major trade associations (TMBA, TBA, IBAT) supporting continuation of the SML department. In the meantime, should you have any questions on this or other regulatory issues please contact Doug Foster or any one of our attorneys with Polunsky Beitel Green.

Here is the provision from the Sunset staff report that was the principal subject of the May 24, 2018 Sunset Commission hearing:

Recommendation 1.1 While Regulation of the Finance Industry Is Necessary, Texas Does Not Need Two Agencies Regulating Banks. DOB regulates 240 state-chartered banks with more than \$250 billion in assets, in addition to trust companies, money services business, and other financial service providers. SML regulates 26 state savings banks with approximately \$15 billion in assets, mortgage companies, and licensed residential mortgage loan originators. Differences between the banks regulated at each agency have diminished over time, and no other state regulates banks in two separate state agencies like Texas. Sunset staff concluded SML unnecessarily duplicates functions of DOB and is not needed to maintain Texas' healthy banking and mortgage lending industries. DOB examines banks ranging in size and business practice, including some of the largest mortgage lenders in the state, but retains a responsive and expert staff. Abolishing SML and transferring its functions to DOB would maintain and centralize expertise in mortgage lending regulation, develop economies of scale for banking regulation throughout the state, reduce bureaucratic duplication, and save the finance agencies at least \$6.9 million over the next five fiscal years. Given its distinct nonbank regulatory scope and responsibilities, maintaining OCCC as a separate agency under the Finance Commission continues to make sense to promote a healthy, fair credit environment for Texas consumers.

Key Recommendations: Abolish the Department of Savings and Mortgage Lending as a separate state agency and transfer regulation of state savings banks and the mortgage industry to the Texas Department of Banking.