HOUSE
RESEARCH
ORGANIZATION bill analysis

HB 213

4/18/2011

Rodriguez

SUBJECT: Regulating information provision duties of a residential mortgage servicer

COMMITTEE: Pensions, Investments, and Financial Services — favorable, without amendment

VOTE: 8 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr

             0 nays

             1 absent — Veasey

WITNESSES: For — Robert Doggett, Texas Housing Justice League; (*Registered, but did not testify*: Celeste Embrey, Texas Bankers Association; Steve Scurlock, Independent Bankers Association of Texas)

             Against — None

             On — Doug Foster, Texas Department of Savings and Mortgage Lending

DIGEST: HB 213 would outline responsibilities for residential mortgage servicers regarding information that they must provide to debtors. The bill would apply only to a loan secured by a first lien on residential real property that was not a federally related mortgage loan. It also would define mortgage servicer as the person to whom the borrower sent mortgage payments.

             Required recordkeeping of information requests. A mortgage servicer would have to maintain written or electronic records of each written request for information regarding a dispute or error with a debtor's account until the loan was paid in full, otherwise satisfied, or sold.

             Required response to a general information request. Within 25 days of receiving an information request from the debtor that included sufficient detail to identify the debtor's name and account and the information sought, a mortgage servicer would have to provide a copy of the original note or an affidavit of the lost note. The mortgage servicer also would have to provide a statement that:

- identified and itemized all fees and charges assessed under the loan;
- provided a full payment history clearly identifying all debits, credits, application of and disbursement of all payments received from or for the benefit of the debtor, and other activity on the loan, including any escrow or suspense account activity; and
- covered the two years preceding the request or the period for which the servicer had serviced the loan, whichever was shorter.

If the mortgage servicer claimed that delinquent or outstanding sums were owed on the loan before the period covered by the statement, the servicer would have to provide an account history beginning with the earliest month for which outstanding sums were allegedly owed on the loan and ending on the date of the information request.

Required response to a dispute or alleged error. Within 10 days of receiving a written information request from the debtor regarding a dispute or error with his or her account that included sufficient detail to identify the debtor's name and account and the information sought, a mortgage servicer would have to provide the following information, if requested:

- whether the account was current, an explanation of any default, and the date of the default;
- the current balance due on the loan, including the principal, the amount of any funds held in a suspense account, the amount of any known escrow balance, and whether there were any known escrow deficiencies or shortages;
- the identity, address, and other relevant information about the current holder, owner, or assignee of the loan; and
- the telephone number and mailing address of a mortgage servicer representative with the information and authority to answer questions and resolve disputes.

Enforcement action. The bill would provide enforcement authority to the Department of Savings and Mortgage Lending, the attorney general, or any other applicable party to the loan. A debtor injured by a violation of these provisions could bring an action for recovery of actual damages, including reasonable attorney's fees, in addition to any other available legal and equitable remedy.

The bill would take effect on September 1, 2011.

SUPPORTERS SAY:

HB 213 would fill a small regulatory gap to ensure all mortgage holders have access to critical account information and the ability to address disputes or errors. Most homeowners have federally related mortgage loans and therefore benefit from the consumer protections provided by the federal Real Estate Settlement Procedures Act (RESPA). HB 213 would extend similar basic consumer protections to borrowers with mortgages that were not federally related. There is currently no regulatory oversight of the servicers of these nontraditional mortgages, nor any consumer relief process. HB 213 would close this loophole.

As mortgage servicers play an important role in administering a home loan, including collecting monthly loan payments for account credit, holding the borrower's account information, and having the ability to assess fees and charges, it is important to ensure that their relationship to consumers is transparent and responsive. HB 213 would guarantee that transparency if a borrower sought account information from the mortgage servicer.

The bill would not apply to federally related mortgage loans, would put no unusual or undue burden on the servicers of nonfederally related mortgage loans, and would provide no civil penalties. Both the Texas Bankers Association and the Independent Bankers Association of Texas support the bill.

The Texas Department of Savings and Mortgage Lending has extensive experience with loan consumer complaint resolution and could absorb the additional authority granted by the bill within its existing resources. There would be no significant fiscal impact to the state.

OPPONENTS SAY:

No apparent opposition.

NOTES:

SB 1319 by Lucio and HB 3760 by Oliveira also would address the information provision duties of nonfederally related mortgage servicers. The Senate Business and Commerce Committee heard testimony on SB 1319 on April 12, and HB 3760 was referred to the House Pensions, Investments, and Financial Services Committee on March 23.

During the 2009 regular session, HB 2694 by Rodriguez, a similar bill, died on the General State Calendar when it was not considered by the House.