

BILL ANALYSIS

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C.S.H.B. 213
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, mortgage lenders in Texas are not required to provide any kind of accounting to borrowers if the lender does not meet the threshold to be a federally-regulated lender. Because of this lack of accounting requirement, many small and owner financed mortgage lenders have not given borrowers any sense of whether they are nearing their pay-off date, have reached it, or are over paying. In some cases, borrowers have even stopped making payments on their mortgages, believing they had paid off their loans, only to find out that they still owed the lender thousands of dollars plus all related interest and late fees.

C.S.H.B. 213 would provide greater protections to Texans by leveling the playing field and providing some fundamental safeguards in the servicing of certain home loans. Specifically, it addresses abusive loan servicing practices by non-federally related mortgage loans. Loan servicers are the companies that directly interact with the borrower. Unfortunately, some servicers do not perform the functions ethically and misapply payments, ignore requests for information, and foreclose on homes rather than work to resolve the problem. Non-federally regulated mortgages are basically unregulated and, consequently, abusive servicing practices occur.

C.S.H.B. 213 would require certain lenders that do not work with federally regulated mortgage loans to, among other matters: provide, at the request of borrowers, receipts of payments made; provide annual accounting statements; establish guidelines relating to providing payoff statements; and guidelines to responding to a borrower's request for information and prohibit the use of deed-in-lieu of foreclosure at closing.

C.S.H.B. 213 amends current law relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property, and provides civil penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 397.051, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5, Finance Code, by adding Chapter 397, as follows:

CHAPTER 397. INFORMATION FURNISHED BY RESIDENTIAL MORTGAGE SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 397.001. DEFINITION. Defines, in this chapter, "mortgage servicer."

Sec. 397.002. APPLICABILITY. (a) Provides that this chapter applies only to a loan secured by a first or subordinate lien on residential real property that is not:

- (1) a federally related mortgage loan, as defined by 12 U.S.C. Section 2602;
- (2) a loan that is made by a credit union regulated by the Credit Union Department; or
- (3) a loan that is primarily for business, commercial, or agricultural purposes, or for temporary financing, such as a construction loan, as referred to under 12 U.S.C. Section 2602.

(b) Provides that this chapter does not apply to a loan if the mortgage servicer is a natural person who is related to the borrower within the second degree by consanguinity or affinity, as determined under Subchapter B (Relationships by Consanguinity or by Affinity), Chapter 573, Government Code.

[Reserves Sections 397.003-397.050 for expansion.]

SUBCHAPTER B. BORROWER REQUESTS FOR INFORMATION

Sec. 397.051. RULES. Authorizes the Finance Commission of Texas (finance commission) to adopt rules necessary to implement this subchapter.

Sec. 397.052. RECEIPTS FOR PAYMENTS BY BORROWERS. Requires a mortgage servicer, at the request of a borrower, to provide a receipt to the borrower each time the mortgage servicer accepts payment from the borrower. Requires that the receipt clearly and conspicuously state:

- (1) the amount received by the mortgage servicer as payment toward the loan; and
- (2) how the amount described by Subdivision (1) was applied to the borrower's account.

Sec. 397.053. ANNUAL ACCOUNTING STATEMENT. Requires a mortgage servicer to provide to the borrower an annual statement in January of each year for the term of the loan. Requires that the statement clearly and conspicuously state the following information:

- (1) the amount of each payment that was received by the mortgage servicer as payment toward the loan during the preceding calendar year;
- (2) how each payment described by Subdivision (1) was applied to the borrower's account, including a statement of the amount of each payment that was applied to the borrower's principal obligation under the loan, the interest charged on the loan, any escrow or suspense account associated with the loan, and any fee or other charge assessed against the borrower during the preceding calendar year; and
- (3) the outstanding balance of the borrower's principal obligation under the loan.

Sec. 397.054. PAYOFF STATEMENTS. (a) Defines, in this section, "payoff statement."

(b) Prohibits a mortgage servicer, except as provided by Subsection (c) and subject to Subsection (d), from charging a fee for preparing or transmitting a payoff statement to a borrower or other person requesting a payoff statement on behalf of the borrower.

(c) Authorizes a mortgage servicer to charge a reasonable processing fee to cover the cost of providing a payoff statement by facsimile transmission or by a courier

service if, before charging the fee, the mortgage servicer discloses to the requestor that payoff statements are available for free if the requestor requests that the statement be provided in a manner that will not result in the charging of a processing fee.

(d) Authorizes a mortgage servicer, after the mortgage servicer has provided two payoff statements during a calendar year to or on behalf of a borrower under Subsection (b) without charge, other than processing fees authorized under Subsection (c), to charge a reasonable fee for providing a payoff statement to or on behalf of the borrower during the remainder of the calendar year.

(e) Requires a mortgage servicer to provide a payoff statement not later than the 10th day after the date the lender receives the request for the payoff statement from or on behalf of a borrower, and requires that the statement be valid for a reasonable time after being provided to the requestor.

Sec. 397.055. PROVISION OF INFORMATION REGARDING DISPUTE OR ERROR. (a) Requires a mortgage servicer to provide a written statement to a borrower in response to a borrower's written request for information regarding a dispute or error involving the borrower's account that includes the following information, if requested:

(1) whether the account is current and an explanation of any default and the date the account went into default;

(2) the current balance due on the loan, including the principal due, the amount of any funds held in a suspense account, the amount of any escrow balance known to the servicer, and whether there are any escrow deficiencies or shortages known to the servicer;

(3) the identity, address, and other relevant information about the current holder, owner, or assignee of the loan; and

(4) the telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes.

(b) Requires a mortgage servicer to provide a statement under Subsection (a) on or before the 10th day after the date the servicer receives a written request from the borrower that:

(1) includes or otherwise enables the servicer to identify the name and account of the borrower; and

(2) includes a statement that the account is or may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the borrower.

[Reserves Sections 397.056-397.100 for expansion.]

SUBCHAPTER C. REMEDIES

Sec. 397.101. ENFORCEMENT GENERALLY. Authorizes the Department of Savings and Mortgage Lending, the attorney general, or any party to a loan to which this chapter applies to enforce this chapter.

Sec. 397.102. ACTION BY BORROWER. Authorizes a borrower injured by a violation of this chapter, in addition to any other legal and equitable remedy available, to bring an action:

(1) for injunctive relief to require compliance with this chapter; and

(2) to recover actual damages, including reasonable attorney's fees, and \$500 for each violation of this chapter.

Sec. 397.103. ACTION BY ATTORNEY GENERAL. (a) Authorizes the attorney general to bring an action on behalf of the state:

- (1) for injunctive relief to require compliance with this chapter;
- (2) to recover a civil penalty of \$500 for each violation of this chapter; or
- (3) for both injunctive relief and to recover the civil penalty.

(b) Entitles the attorney general to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this section, including court costs, reasonable attorney's fees, and investigatory costs.

(c) Authorizes the court to make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, that may have been acquired by means of any violation of this chapter. Prohibits damages from including any damages incurred beyond a point two years before the institution of the action by the attorney general. Authorizes orders of the court to also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

(d) Provides that in bringing or participating in an action under this chapter, the attorney general acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the attorney general requests that the court award relief.

SECTION 2. Amends Title 2, Business & Commerce Code, by adding Chapter 21, as follows:

CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS INVOLVING RESIDENTIAL REAL ESTATE

Sec. 21.001. DEFINITION. Defines, in this chapter, "residential real estate."

Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) Prohibits a seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, from requesting or requiring the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit.

(b) Provides that a deed executed in violation of this section is voidable unless a subsequent purchaser of the residential real estate, for valuable consideration, obtains an interest in the property after the deed was recorded without notice of the violation, including notice provided by actual possession of the property by the grantor of the deed. Provides that the residential real estate continues to be subject to the security interest of a creditor who, without notice of the violation, granted an extension of credit to a borrower based on the deed executed in violation of this section.

(c) Requires a purchaser or borrower to bring an action to void a deed executed in violation of this section not later than the fourth anniversary of the date the deed was recorded.

Sec. 21.003. CIVIL ACTION FOR DAMAGES. Provides that a person who violates Section 21.002 is liable to the purchaser or borrower for actual damages, exemplary damages in an amount equal to or greater than \$5,000 and not more than three times the amount of actual damages, court costs, and reasonable attorney's fees.

SECTION 3. Amends Section 24.004, Property Code, as follows:

Sec. 24.004. New heading: JURISDICTION; DISMISSAL. (a) Creates this subsection from existing text. Creates an exception to this subsection under Subsection (b).

(b) Provides that a justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and is required to dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21, Business & Commerce Code.

SECTION 4. Effective date: September 1, 2011.