

## **BILL ANALYSIS**

Senate Research Center  
82R1028 KFF-D

S.B. 1319  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1319 would provide greater protections to Texans by leveling the playing field and providing some fundamental safeguards in the servicing of certain home loans.

Specifically, S.B. 1319 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 related mortgages are basically unregulated and, consequently, abusive servicing practices occur.

S.B. 1319 would require certain lenders that do not work with federally related mortgage loans to provide monthly statements, expand refinancing options, respond quickly to borrowers' request for information, maintain reasonable late charge policies, and prohibit the use of deed-in-lieu of foreclosure to be obtained at closing.

As proposed, S.B. 1319 amends current law relating to home loans that are not federally related mortgage loans and provides civil penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 343.303, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 343, Finance Code, by adding Subchapter D, as follows:

#### **SUBCHAPTER D. NONFEDERALLY RELATED MORTGAGE LOANS**

Sec. 343.301. DEFINITION. Defines "mortgage servicer."

Sec. 343.302. APPLICABILITY. Provides that this subchapter applies only to a home loan that is not a federally related mortgage loan, as defined by 12 U.S.C. Section 2602.

Sec. 343.303. RULES. Authorizes the Finance Commission of Texas (finance commission) to adopt rules necessary to implement this subchapter.

Sec. 343.304. MONTHLY STATEMENTS REQUIRED. (a) Requires a lender to provide to the borrower a monthly statement that clearly and conspicuously states:

(1) the amount received by the lender as payment towards the home loan during the preceding month;

(2) how the amount described by Subdivision (1) was applied to the borrower's account, including a statement of the amount 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 month; and

(3) the outstanding balance of the borrower's principal obligation under the loan.

(b) Authorizes the affected borrower, if a lender violates this section, to file suit against the lender:

(1) for any appropriate injunctive relief; and

(2) to recover the borrower's actual damages, \$100 for each statement the lender fails to provide to the borrower as required by Subsection (a), \$50 for each statement provided to the borrower that does not substantially comply with the requirements of Subsection (a), and the borrower's court costs and reasonable attorney's fees.

Sec. 343.305. ANNUAL ACCOUNTING STATEMENT. (a) Requires a lender to provide to the borrower an annual statement in January of each year for the term of the home loan. Requires that the statement clearly and conspicuously state the following information:

(1) the amount of each payment that was received by the lender as payment towards the home 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.

(b) Authorizes the affected borrower, if a lender violates this section, to file suit against the lender:

(1) for any appropriate injunctive relief; and

(2) to recover the borrower's actual damages, \$500 for each annual statement the lender fails to provide to the borrower as required under Subsection (a), \$300 for each annual statement provided to the borrower that does not substantially comply with the requirements of Subsection (a), and the borrower's court costs and reasonable attorney's fees.

(c) Prohibits a lender that fails to provide the annual statement required under Subsection (a) with respect to a given calendar year, in addition to the remedies available under Subsection (b), from demanding payment of any amount the lender claims the borrower owes with respect to that calendar year until the lender provides the required statement.

Sec. 343.306. PAYOFF STATEMENTS. (a) Defines "payoff statements."

(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 four 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.

(f) Authorizes the borrower, if a mortgage servicer violates this section, to file suit against the mortgage servicer:

(1) for any appropriate injunctive relief; and

(2) to recover the borrower's actual damages, \$100 for each payoff statement the lender fails to provide to or on behalf of the borrower as required by this section, and the borrower's court costs and reasonable attorney's fees.

**Sec. 343.307. RESTRICTIONS ON USE OF DEEDS IN LIEU OF FORECLOSURE.**

(a) Prohibits a lender from obtaining, filing, or threatening to file a deed that conveys or purports to convey real property securing a home loan to the lender in satisfaction of a debt and is signed by the borrower at a time when the borrower is not in default on the loan.

(b) Authorizes the affected borrower, if a lender violates this section, to file suit against the lender:

(1) for any appropriate injunctive relief; and

(2) to recover the borrower's actual damages, a penalty in an amount equal to 10 percent of the original principal amount of the home loan, and the borrower's court costs and reasonable attorney's fees.

**Sec. 343.308. NOTICE OF ASSIGNMENT, SALE, OR OTHER TRANSFER OF LOAN SERVICING.** (a) Requires a mortgage servicer, except as provided by Subsection (f), to notify the borrower in writing of any assignment, sale, or other transfer of the servicing of a home loan to any other person.

(b) Requires that the notice required by Subsection (a) contain:

(1) the effective date of the transfer;

(2) the name, address, and telephone number of the transferee mortgage servicer;

(3) the name and telephone number of an individual employed by, or the office or department of, the transferor mortgage servicer that can be contacted by the borrower to answer inquiries relating to the transfer of servicing;

(4) the name and telephone number of an individual employed by, or the office or department of, the transferee mortgage servicer that can be contacted by the borrower to answer inquiries relating to the transfer of servicing;

(5) the date on which the transferor mortgage servicer who is servicing the mortgage loan before the assignment, sale, or other transfer will cease to accept payments relating to the loan and the date on which the transferee mortgage servicer will begin to accept the payments;

(6) any information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage; and

(7) a statement that the assignment, sale, or other transfer of the servicing of the loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of the loan.

(c) Requires a transferor mortgage servicer, except as provided by Subsection (e), to provide the notice required under Subsection (a) not later than the 15th day before the effective date of the assignment, sale, or other transfer of the servicing of the home loan.

(d) Requires a transferee mortgage servicer to which the servicing of a home loan is assigned, sold, or otherwise transferred to notify the borrower of the transfer to the same extent as a transferor mortgage servicer is required to notify the borrower of the transfer. Requires that the notice, except as provided by Subsection (e), be provided not later than the 15th day after the effective date of the transfer.

(e) Requires a mortgage servicer to provide the notice required by Subsection (a) or (d) not later than the 30th day after the effective date of the assignment, sale, or other transfer of the servicing of the home loan if the transfer was preceded by:

(1) termination of the contract for servicing the loan for cause; or

(2) commencement of proceedings for bankruptcy of the servicer or an entity by which the servicer is owned or controlled.

(f) Provides that a transferor mortgage servicer or transferee mortgage servicer is not required to provide notice of an assignment, sale, or other transfer of the servicing of a home loan as required by this section if the lender provides to the borrower, at settlement with respect to the property for the purchase of which the loan is made, written notice of the assignment, sale, or other transfer of the servicing of the loan and that notice contains the information required by Subsection (b).

(g) Prohibits a mortgage servicer from imposing a late fee on a borrower with respect to, or otherwise treat as late, any payment on a home loan made by the borrower during the period beginning on the effective date of the assignment, sale, or other transfer of the servicing of the loan and ending on the 60th day after that date if the payment is received by the transferor servicer instead of the transferee servicer before the applicable due date.

Sec. 343.309. NOTICE OF ASSIGNMENT, SALE, OR OTHER TRANSFER OF HOME LOAN. (a) Requires a lender to notify the borrower in writing of any assignment, sale, or other transfer of a home loan to any other person not later than the 15th day before the effective date of the transfer.

(b) Requires that the notice required under Subsection (a) contain:

- (1) the effective date of the transfer;
- (2) the name and telephone number of an individual employed by, or the office or department of, the transferor lender that can be contacted by the borrower to answer inquiries relating to the transfer of the loan; and
- (3) the name and telephone number of an individual employed by, or the office or department of, the transferee that can be contacted by the borrower to answer inquiries relating to the transfer of the loan.

Sec. 343.310. DUTY OF MORTGAGE SERVICER TO RESPOND TO BORROWER REQUEST. (a) Requires the servicer, if a mortgage servicer receives a qualified written request from the borrower or an agent of the borrower for information relating to the servicing of the loan, not later than the fifth day after the date the request is received, to provide a written response acknowledging receipt of the correspondence or take the requested action. Provides that for purposes of this subsection, a qualified written request is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that:

- (1) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (2) states, to the extent applicable, the reasons the borrower believes that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(b) Requires the mortgage servicer, not later than the 30th day after the date the request is received, and, if applicable, before taking action with respect to the request, to:

- (1) make appropriate corrections to the borrower's account, including the crediting of any late charges or penalties, and shall transmit to the borrower a written notification of the correction, including the name and telephone number of a representative of the servicer who can assist the borrower;
- (2) after conducting an investigation, provide to the borrower a written explanation or clarification that states to the extent applicable, the reasons the servicer believes the account is correct as determined by the servicer, and the name and telephone number of an individual employee of, or the office or department of, the servicer who can assist the borrower; or
- (3) after conducting an investigation, provide to the borrower a written explanation or clarification that includes information requested by the borrower, a written explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an individual employee of, or the office or department of, the servicer who can assist the borrower.

(c) Prohibits a servicer, during the period beginning on the date a servicer receives from a borrower a qualified written request relating to a dispute regarding the borrower's payments and ending on the 60th day after that date, from providing to a consumer reporting agency, as defined by 15 U.S.C. Section 1681a, information regarding any overdue payment owed by the borrower and relating to the period or qualified written request.

Sec. 343.311. FORCE-PLACED HAZARD INSURANCE. (a) Defines "force-placed hazard insurance."

(b) Prohibits a mortgage servicer from obtaining force-placed hazard insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the terms of the home loan requiring that the borrower maintain hazard insurance on the property.

(c) Provides that for purposes of this section, a mortgage servicer does not have a reasonable basis for obtaining force-placed hazard insurance unless:

(1) the servicer has mailed, by first-class mail, a written notice to the borrower that contains a reminder of the borrower's obligation to maintain hazard insurance on the property securing the home loan, a statement that the servicer does not have evidence of the required insurance coverage of the property, a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has the required coverage, and a statement that the servicer may obtain the required coverage at the borrower's expense if the borrower does not demonstrate that the borrower has the required coverage in a timely manner;

(2) the servicer has mailed, by first-class mail, a second written notice, not later than the 30th day after the date the notice under Subdivision (1) was mailed, that contains all the information described by that subdivision; and

(3) the servicer has not received from the borrower any demonstration of the required coverage for the property securing the home loan by the end of the 15-day period beginning on the date the notice under Subdivision (2) was mailed by the servicer.

(d) Requires a mortgage servicer to accept from a borrower any reasonable form of written confirmation that the borrower has the required coverage, including:

(1) the existing insurance policy number along with the identity of and contact information for the insurance company or agent; or

(2) confirmation authorized by finance commission rule.

(e) Requires the servicer, not later than the 15th day after the date a mortgage servicer receives confirmation that a borrower has the required hazard insurance coverage, to:

(1) terminate any force-placed hazard insurance; and

(2) refund to the borrower all force-placed hazard insurance premiums paid by the borrower during any period in which the borrower's insurance coverage and the force-placed hazard insurance coverage were both in effect, and any related fees charged to the borrower's account with respect to the force-placed hazard insurance during that period.

(f) Requires that a charge relating to force-placed hazard insurance imposed on a borrower by or through a mortgage servicer be bona fide and reasonable.

Sec. 343.312. LIABILITY FOR CERTAIN VIOLATIONS UNDER THIS SUBCHAPTER. (a) Provides that except as provided by Subsection (e), a mortgage servicer that violates Section 343.308 or 343.310 is liable to the borrower for damages as provided by this section.

(b) Provides that if an action is brought under this section by a single borrower, the mortgage servicer is liable for:

(1) any actual damages to the borrower as a result of the violation; and

(2) any additional damages the court allows, in the case of a pattern or practice of violations of this section, in an amount not to exceed \$2,000.

(c) Provides that if the action is a class action, the mortgage servicer is liable for:

(1) any actual damages to each of the borrowers in the class as a result of the violation; and

(2) any additional damages the court allows, in the case of a pattern or practice of violations of this section, in an amount not to exceed \$1,000 for each member of the class, provided that the total amount of damages under this subdivision in any class action may not exceed the lesser of \$1,000,000, or one percent of the net worth of the mortgage servicer.

(d) Provides that in addition to the amounts awarded under Subsection (b) or (c), a mortgage servicer who violates this section is liable for court costs and reasonable attorney's fees incurred in connection with the action.

(e) Provides that a mortgage servicer is not liable under this section for any failure to comply with a requirement of Section 343.308 or 343.310 if, not later than the 60th day after the date an error is discovered by the servicer and before the commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the borrower of the error and makes any adjustments necessary to the appropriate account to ensure that the borrower will not be required to pay an amount in excess of any amount that the borrower otherwise would have paid.

SECTION 2. Effective date: January 1, 2012.