

By: Solomons

H.B. No. 902

A BILL TO BE ENTITLED

AN ACT

relating to servicing of a mortgage loan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 5, Finance Code, is amended by adding Chapter 397 to read as follows:

CHAPTER 397. SERVICING OF MORTGAGE LOAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 397.001. DEFINITIONS. In this chapter:

(1) "Effective date of transfer" means the date on which a mortgage payment is first due to a transferee servicer.

(2) "Mortgage loan" means an original or refinanced loan secured by a first or subordinate lien on residential real property, including an individual unit of a condominium or cooperative, designed principally for occupancy by one to four families.

(3) "Servicer" means a person responsible for servicing a loan, including a maker or holder of a loan who services the loan. The term does not include:

(A) the Federal Deposit Insurance Corporation in connection with assets acquired, assigned, sold, or transferred under 12 U.S.C. Section 1823(c) or as receiver or conservator of an insured depository institution; or

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the

1 Federal Home Loan Mortgage Corporation, or the Federal Deposit  
2 Insurance Corporation if the transfer of the servicing is preceded  
3 by:

4 (i) termination of the contract for  
5 servicing for cause;

6 (ii) commencement of proceedings for  
7 bankruptcy of the servicer; or

8 (iii) commencement of proceedings by the  
9 Federal Deposit Insurance Corporation for conservatorship or  
10 receivership of the servicer or an entity that owns or controls the  
11 servicer.

12 (4) "Servicing" means receiving scheduled periodic  
13 payments from a borrower under a loan, including amounts for an  
14 escrow account maintained in connection with the loan, and making  
15 payments of principal and interest and other payments with respect  
16 to amounts received from the borrower as required under the loan.

17 [Sections 397.002-397.050 reserved for expansion]

18 SUBCHAPTER B. TRANSFER OF SERVICING

19 Sec. 397.051. DISCLOSURE TO APPLICANT. A person who makes a  
20 mortgage loan shall disclose to each applicant for the loan at  
21 settlement whether the servicing of the loan may be transferred to  
22 another person at any time while the loan is outstanding.

23 Sec. 397.052. NOTICE BY TRANSFEROR. Except as provided by  
24 Section 397.054, a servicer of a mortgage loan who transfers the  
25 servicing of the loan to another person shall notify the borrower in  
26 writing of the transfer not later than the 16th day before the  
27 effective date of transfer.

1       Sec. 397.053. NOTICE BY TRANSFEREE. Except as provided by  
2 Section 397.054, a transferee servicer of a mortgage loan shall  
3 notify the borrower of the transfer not later than the 15th day  
4 after the effective date of transfer.

5       Sec. 397.054. NOTICE EXCEPTIONS. (a) Sections 397.052 and  
6 397.053 do not apply to a transfer of servicing if the person who  
7 makes the loan provides the borrower at settlement notice of the  
8 transfer in the form required by Section 397.055.

9       (b) A notice required under Section 397.052 or 397.053 must  
10 be given not later than the 30th day after the effective date of  
11 transfer if the transfer of the servicing is preceded by:

12           (1) termination of the contract for servicing for  
13 cause;

14           (2) commencement of proceedings for bankruptcy of the  
15 servicer; or

16           (3) commencement of proceedings by the Federal Deposit  
17 Insurance Corporation for conservatorship or receivership of the  
18 servicer.

19       Sec. 397.055. CONTENT OF NOTICE. A notice required under  
20 this subchapter must include:

21           (1) the effective date of transfer of the servicing;

22           (2) the name, address, and toll-free or collect call  
23 telephone number of the transferee servicer;

24           (3) a toll-free or collect call telephone number for  
25 an individual employed by the transferor servicer, or the  
26 department of the transferor servicer, that can be contacted by the  
27 borrower to answer inquiries relating to the transfer of servicing;

1           (4) the name and toll-free or collect call telephone  
2 number for an individual employed by the transferee servicer, or  
3 the department of the transferee servicer, that can be contacted by  
4 the borrower to answer inquiries relating to the transfer of  
5 servicing;

6           (5) the date on which the transferor servicer will  
7 cease to accept payments relating to the loan and the date on which  
8 the transferee servicer will begin to accept the payments;

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

14           (7) a statement that the transfer of the servicing of  
15 the mortgage loan does not affect any term or condition of the  
16 security instruments other than terms directly related to the  
17 servicing of the loan.

18           Sec. 397.056. TREATMENT OF PAYMENTS DURING TRANSFER.  
19 During the 60-day period beginning on the effective date of  
20 transfer of servicing of a mortgage loan a late fee may not be  
21 imposed on the borrower with respect to a payment on the loan and a  
22 payment may not be treated as late for any other purposes if the  
23 payment is received by the transferor servicer before the due date  
24 of the payment.

25           [Sections 397.057-397.100 reserved for expansion]

26                   SUBCHAPTER C. BORROWER INQUIRIES

27           Sec. 397.101. QUALIFIED REQUEST. For the purposes of this

1 subchapter, a request by a borrower is a qualified request if the  
2 request:

3 (1) is a written correspondence, other than notice on  
4 a payment coupon or other payment medium provided by the servicer;

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

7 (3) includes a statement of the reasons for the  
8 borrower's belief, to the extent applicable, that the account is in  
9 error or provides sufficient detail to the servicer regarding other  
10 information the borrower seeks.

11 Sec. 397.102. SERVICER ACTION ON RECEIPT OF QUALIFIED  
12 REQUEST. (a) Not later than the 20th working day after the date a  
13 servicer of a mortgage loan receives a qualified request, the  
14 servicer shall:

15 (1) provide the borrower a written response  
16 acknowledging receipt of the request; or

17 (2) take the action requested.

18 (b) Not later than the 60th working day after the date a  
19 servicer of a mortgage loan receives a qualified request and, if  
20 applicable, before taking action on the request, the servicer  
21 shall:

22 (1) make appropriate corrections in the borrower's  
23 account, including crediting any late charges or penalties, and  
24 send the borrower a written notification of the correction; or

25 (2) after conducting an investigation, send the  
26 borrower a written explanation or clarification that includes:

27 (A) to the extent applicable, a statement of the

1 reasons for which the servicer believes the borrower's account is  
2 correct as determined by the servicer; or

3 (B) information requested by the borrower or a  
4 statement of why the information is unavailable or cannot be  
5 obtained by the borrower.

6 (c) A notification, explanation, or clarification provided  
7 under Subsection (b) must include the name and telephone number of  
8 an individual employed by, or the office or department of, the  
9 servicer that can provide assistance to the borrower.

10 Sec. 397.103. PROTECTION OF CREDIT RATING. During the  
11 60-day period beginning on the date a servicer receives a qualified  
12 request relating to a dispute regarding a payment of the borrower,  
13 the servicer may not provide information to a consumer reporting  
14 agency, as defined by Section 20.01, Business & Commerce Code,  
15 about an overdue payment owed by the borrower and relating to that  
16 period or the request.

17 [Sections 397.104-397.150 reserved for expansion]

18 SUBCHAPTER D. ESCROW ACCOUNTS

19 Sec. 397.151. TIMELY PAYMENT. If the terms of a mortgage  
20 loan require the borrower to make payment to the servicer of the  
21 loan for deposit into an escrow account to assure payment of taxes,  
22 insurance premiums, or other charges with respect to the property,  
23 the servicer shall make payment from the escrow account for the  
24 taxes, premiums, and other charges in a timely manner as the  
25 payments become due.

26 [Sections 397.152-397.200 reserved for expansion]

27 SUBCHAPTER E. REMEDIES

1       Sec. 397.201. (a) A borrower damaged by a violation of this  
2 chapter may bring an action for damages.

3       (b) A plaintiff who prevails in an action under this section  
4 is entitled to:

5           (1) the plaintiff's actual damages arising from the  
6 violation;

7           (2) if the court determines that the defendant in bad  
8 faith has engaged in a pattern or practice of violations of this  
9 chapter, additional damages in an amount not to exceed \$1,000; and

10           (3) court costs and reasonable attorney's fees.

11       Sec. 397.202. CORRECTION OF VIOLATION. A servicer is not  
12 liable for a violation of this chapter if, not later than the 60th  
13 day after the date the servicer discovers the violation and before  
14 the borrower brings an action under this subchapter or provides the  
15 servicer written notice of the violation, the servicer notifies the  
16 borrower of the violation and makes any necessary adjustments to  
17 ensure that the borrower will not be required to pay an amount  
18 greater than the borrower would have paid if the violation had not  
19 occurred.

20       SECTION 2. This Act takes effect September 1, 2003.