

BILL ANALYSIS

C.S.H.B. 2694
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2008, 96,000 foreclosures were filed in Texas and a similar number, at least, is expected in 2009. The Texas State Affordable Housing Corporation has stated that by 2010 about one of every 35 houses in Texas will have been through foreclosure. While there are a variety of causes for foreclosure, there is little question that one such cause is fees, penalties, and associated charges by mortgage servicers. Almost every major mortgage loan holder, including trusts containing hundreds of securitized mortgage loans, has a servicer administering the loan whose duties include collecting monthly loan payments and crediting accounts.

A servicer also handles escrow accounts. An escrow account is a fund held by the servicer into which the borrower pays money to cover expenses like property taxes and homeowner's insurance. Escrow payments are typically combined with monthly mortgage payments, with the understanding that the servicer will pay the taxes and insurance as they become due during the year. If a borrower does not have an escrow account, the borrower is responsible for paying the taxes and insurance and budgeting accordingly.

The Real Estate Settlement Procedures Act (RESPA) is the main federal law covering escrow accounts and is enforced by the Department of Housing and Urban Development. If a mortgage servicer administers an escrow account for a borrower, the servicer is required to make escrow payments for taxes, insurance, and any other charges in a timely manner. Within 45 days of establishing an escrow account, the servicer must give the borrower a statement clearly itemizing the estimated taxes, insurance premiums, and other anticipated charges to be paid over the following 12 months, and the expected dates and totals of those payments. Under RESPA, a mortgage servicer is also required to give a borrower a free annual statement that details the activity of the borrower's escrow account. Such a statement shows the account balance and reflects payments of property taxes, homeowner's insurance, and other charges. RESPA sets forth other requirements of servicers including for transfer of servicing, posting payments, force placed insurance, and inquiries and disputes. However, there is little if any regulation of the practices of mortgage servicers in Texas. This bill seeks to increase accountability requirements for mortgage servicers and to provide homeowners with information so that problems can be solved before a foreclosure occurs.

C.S.H.B. 2694 authorizes homeowners to request and receive statements regarding an escrow account history to review payments made.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2694 amends the Finance Code to adopt provisions applicable only to a loan secured by a first lien on residential real property that is not a federally related mortgage loan, as defined

by federal provisions.

C.S.H.B. 2694 requires a mortgage servicer to maintain written or electronic records of each written request for information regarding a dispute or error involving the debtor's account until the loan is paid in full, otherwise satisfied, or sold. The bill requires a mortgage servicer to provide to a debtor a copy of the original note or, if the original note is unavailable, an affidavit of the lost note in response to the debtor's written request. The bill also requires a mortgage servicer to provide to a debtor a statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the 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 that covers the two years preceding the receipt of the request or the period for which the servicer has serviced the loan, whichever is shorter, in response to the debtor's written request. The bill requires the servicer, if the mortgage servicer claims that delinquent or outstanding sums were owed on the loan before the two-year period preceding the receipt of the request or before the servicer began servicing the loan, whichever is shorter, to provide an account history beginning with the earliest month for which the servicer claims outstanding sums were owed on the loan and ending on the date of the request for information. The bill establishes that the date of the request for information is presumed to be not later than the 30th day before the date the servicer receives the request. The bill requires a mortgage servicer to provide the statement described above on or before the 25th business day after the date the servicer receives a written request from the debtor that includes or otherwise enables the servicer to identify the name and account of the debtor and that 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 debtor.

C.S.H.B. 2694 requires a mortgage servicer to provide a written statement to a debtor in response to a debtor's written request for information regarding a dispute or error involving the debtor's account. The bill specifies that the written statement includes, if requested, information regarding whether the account is current and an explanation of any default and the date the account went into default; 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; 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 servicer representative with the information and authority to answer questions and resolve disputes. The bill requires a mortgage servicer to provide the written statement described above on or before the 10th day after the date the servicer receives a written request from the debtor that includes or otherwise enables the servicer to identify the name and account of the debtor and 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 debtor.

C.S.H.B. 2694 authorizes the Department of Savings and Mortgage Lending, the attorney general, or any party to a loan to which the bill's provisions apply to enforce such provisions. The bill authorizes a debtor injured by a violation of the bill's provisions, in addition to any other legal and equitable remedy available, to bring an action for recovery of actual damages, including reasonable attorney's fees.

C.S.H.B. 2694 defines "mortgage servicer."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2694 omits provisions in the original defining "debtor's last known address" and "mortgagee." The substitute differs from the original by making its provisions applicable only to a loan secured by a first lien on residential real property that is not a federally related mortgage loan, rather than applicable only to a loan secured by a lien on residential real property.

C.S.H.B. 2694 omits a provision in the original requiring a mortgage servicer to comply with the bill's provisions as to every loan secured by a lien on residential real property.

C.S.H.B. 2694 omits provisions in the original relating to servicing fees, credit of such fees, and relationship to other law and contracts with respect to such fees. The substitute omits provisions in the original relating to the obligation of a mortgage servicer to handle escrow funds and to make reasonable attempts to comply with a debtor's request for information.

C.S.H.B. 2694 differs from the original by requiring a mortgage servicer, if the mortgage servicer claims that delinquent or outstanding sums were owed on the loan before the two-year period preceding the receipt of the request for a copy of the original note and certain payment history information or before the servicer began servicing the loan, whichever is shorter, to provide an account history beginning with the earliest month for which the servicer claims outstanding sums were owed on the loan and ending on the date of the request for information, whereas the original does not specify that the servicer is required to provide the information for whichever time period is shorter.

C.S.H.B. 2694 omits provisions in the original relating to fees for providing information and correcting errors relating to the allocation of payments, the statement of account, or the payoff balance identified in any notice from the debtor.

C.S.H.B. 2694 differs from the original by authorizing any party to a loan to which the bill's provisions apply, rather than any party to a loan secured by a lien on residential real property as in the original, to enforce the bill's provisions.

C.S.H.B. 2694 omits a provision in the original requiring a debtor or a debtor's representative to notify the servicer in writing of any claimed errors or disputes regarding the debtor's loan that forms the basis of the action not later than the 30th day before the debtor or the debtor's representative institutes an action for damages against a mortgage servicer. The substitute omits a provision in the original requiring the notice to be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication and to enable the servicer to identify the name and loan account of the debtor. The substitute omits a provision in the original establishing that provisions relating to an action by a debtor do not limit the rights of a debtor to enjoin an action, make a counterclaim or cross-claim, or plead a defense in a civil action. The substitute omits a provision in the original establishing that a mortgage servicer will not be in violation of the bill's provisions if the servicer shows by a preponderance of evidence that the violation was not intentional or the result of bad faith and not later than the 30th day after the date the servicer discovers or is notified of an error and before the debtor institutes an action against the servicer, the servicer corrects the error and compensates the debtor for any fees or charges incurred by the debtor as a result of the violation.