

## **BILL ANALYSIS**

C.S.H.B. 4397  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Thousands of mortgage loans are refinanced or paid in full every year, and to be reasonably assured that the holder of the loan will release the lien upon receipt of payment for the balance, it is important for the borrower, the title company, and the new lender to obtain a payoff statement from the holder of the loan. It is equally important that the payoff statement be reliable. The borrower is interested in paying no more than what is owed, the previous lender wishes to be paid the unpaid balance of the debt, and the new lender is generally interested in obtaining a first lien position. The title company wants to assist all of the parties with their interests so the insurer may issue a policy of title insurance providing coverage to the new lender or, in the case of a sale, to a new owner. The title company must be able to rely on the veracity of the payoff statement to comply with Insurance Code provisions that prohibit a company from insuring around known, valid liens. If the title company knows a release is pending during the ordinary course of business, issuing a policy in the interim is not considered a violation against that prohibition. Lenders sometimes refuse to provide a written payoff statement and instead issue a letter with exculpatory language allowing the lenders to recant the payoff or simply find an error and refuse to issue the release until they are paid additional funds. These actions violate sound business practices and place the new lender and the title company at risk.

It is not the intent of this bill to create a windfall for a borrower whose lender makes an error, but instead to remove the lien on the property and to provide that the borrower is still liable to the lender for the remaining balance of a loan that is in excess of the amount requested. The bill also allows for a corrected statement within two business days before the closing date. This ability provides a balance whereby the party closing the new loan has an obligation to provide a reasonably secure closing date while giving the lender an opportunity to review the information provided to the party closing the transaction.

C.S.H.B. 4397 requires the Finance Commission of Texas by rule to adopt a standard form that must be used by a mortgage servicer in providing a requested payoff statement. The bill establishes that any amounts remaining owed on a properly executed payoff statement because of a mistake by the lender or mortgage servicer does not constitute a lien against the property. The bill authorizes a lender or mortgage servicer who notices a material mistake in a payoff statement to provide a corrected statement within two business days before the closing date set forth in the payoff request. The bill provides that a mortgage servicer who fails to deliver a requested payoff statement to the requestor is liable to the mortgagor for any actual damages suffered by the mortgagor as a result of the violation, reasonable attorney's fees, and court costs.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 4397 amends the Finance Code to require a mortgage servicer who receives a request

for a payoff statement relating to a home loan from a mortgagor or a person acting on behalf of the mortgagor to deliver the statement to the requestor not later than the fifth business day after the request is received. The bill requires such a request to be addressed to the mortgagee at the address provided in the most recent applicable security instrument recorded with the county clerk of the county in which the real property subject to the security instrument is located. The bill requires the Finance Commission of Texas to adopt by rule, as soon as practicable after September 1, 2009, a standard form that is required to be used by a mortgage servicer in providing a requested payoff statement and specifies the information the commission must require in the completed form.

C.S.H.B. 4397 prohibits a mortgage servicer or mortgagee, if the mortgage servicer provides a completed payoff statement form in response to a request for a payoff statement, from demanding that a mortgagor pay an amount in excess of the payoff amount specified in the payoff statement, with certain exceptions. The bill authorizes a mortgage servicer or mortgagee who notices that a material error has been made in a payoff statement to correct and deliver the statement on or before the second business day before the specified closing date. The bill requires the corrected payoff statement to be delivered to the requestor by certified mail, return receipt requested, and by electronic means if possible. The bill provides that if a mortgage servicer makes an error in a payoff amount contained in a payoff statement that results in the mortgage servicer requesting an amount that is less than the correct payoff amount, and the transaction referenced in the payoff statement is closed, the difference in the amount included in the payoff statement and the correct payoff amount becomes an unsecured liability of the former mortgagor owed to the mortgagee. The bill provides that if a mortgagor pays the unpaid balance and the interest on a per diem amount calculated through the proposed closing date specified in the payoff statement, including any corrected statement provided, the home loan and other obligations are considered paid in full, and the mortgagee is required to execute and deliver to the mortgagor, within a reasonable time after payment, a release of the lien on the real property securing the home loan and any other obligations, or a copy of an endorsement and assignment of the lien to a lender that is refinancing the home loan. The bill establishes that a mortgage servicer who fails to deliver a requested payoff statement to the requestor is liable to the mortgagor for any actual damages suffered by the mortgagor as a result of the violation, reasonable attorney's fees, and court costs. The bill establishes that a mortgage servicer is not required to comply with these provisions until the commission adopts the form.

C.S.H.B. 4397 defines "material error," "mortgagee," "mortgage servicer," "mortgagor," and "security instrument."

### **EFFECTIVE DATE**

September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 4397 adds a provision not in the original requiring a mortgage servicer who receives a request for a payoff statement to deliver the statement to the requestor not later than the fifth business day after the request is received. The substitute adds a provision not in the original to provide that, if a mortgagor pays the unpaid balance and the interest on a per diem amount calculated through the proposed closing date specified in the payoff statement, the home loan and other obligations are considered paid in full and the mortgagee is required to execute and deliver to the mortgagor a release of the lien and any other obligations or a copy of an endorsement and assignment of the lien to a lender that is refinancing the home loan. The substitute removes a provision from the original that binds the lender to the original payoff statement if no corrected payoff statement is issued by the lender or mortgage servicer. The substitute adds a provision not in the original establishing that a mortgage servicer who fails to timely deliver a requested payoff statement is liable to the mortgagor for any actual damages suffered by the mortgagor as a result of the violation, reasonable attorney's fees, and court costs. The substitute adds provisions not in the original that require the Finance Commission of Texas

by rule to adopt the standard form as soon as practicable after September 1, 2009, and exempt a mortgage servicer from requirements relating to the form until the commission adopts the form.

C.S.H.B. 4397 adds definitions not in the original for "mortgagee," "mortgage servicer," "mortgager," and "security instrument."

C.S.H.B. 4397 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.