

By: Rodriguez

H.B. No. 2694

A BILL TO BE ENTITLED

AN ACT

relating to the duties of a residential mortgage servicer to a borrower.

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. RESIDENTIAL MORTGAGE SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 397.001. DEFINITIONS. In this chapter, "debtor's last known address," "mortgage servicer," and "mortgagee" have the meanings assigned by Section 51.0001, Property Code.

Sec. 397.002. APPLICABILITY. (a) This chapter applies only to a loan secured by a lien on residential real property.

(b) A mortgage servicer must comply with this chapter as to every loan secured by a lien on residential real property, regardless of whether the loan is considered delinquent or in default or the debtor is or has been involved in bankruptcy proceedings, except as otherwise provided by this chapter.

[Sections 397.003-397.050 reserved for expansion]

SUBCHAPTER B. SERVICING FEES

Sec. 397.051. SERVICING FEES GENERALLY. (a) A fee incurred by a mortgage servicer in connection with a residential mortgage loan and assessed on the debtor must be:

(1) assessed not later than the 45th day after the date

1 the fee:

2 (A) was incurred; or

3 (B) was charged by an attorney or trustee to the  
4 servicer, for attorney or trust fees and costs incurred as a result  
5 of a foreclosure action; and

6 (2) explained clearly and conspicuously in a statement  
7 mailed to the debtor at the debtor's last known address not later  
8 than the 30th day after the date the servicer assessed the fee,  
9 except as prohibited by the United States Bankruptcy Code.

10 (b) A fee not charged in compliance with Subsection (a) is  
11 waived.

12 Sec. 397.052. CREDIT OF FEES. (a) An amount received by a  
13 mortgage servicer at the address where the debtor has been  
14 instructed to make payments shall be accepted and credited, or  
15 treated as credited, within one business day of the date received if  
16 the debtor:

17 (1) has made the full contractual payment; and

18 (2) has provided sufficient information to credit the  
19 account.

20 (b) If a mortgage servicer uses the scheduled method of  
21 accounting, any regularly scheduled payment made before the  
22 scheduled due date must be credited not later than the due date.

23 (c) If a payment is received and not credited or treated as  
24 credited, the debtor must be notified by mail at the debtor's last  
25 known address, on or before the 10th business day after the date the  
26 payment was received, of:

27 (1) the disposition of the payment;

1           (2) the reason the payment was not credited or treated  
2 as credited to the account; and

3           (3) any actions necessary by the debtor to make the  
4 loan current.

5           Sec. 397.053. RELATIONSHIP TO OTHER LAW AND CONTRACTS. (a)  
6 A fee charged by a mortgage servicer must be otherwise authorized by  
7 applicable law and the contracts between the debtor and the  
8 mortgagee.

9           (b) This subchapter is not intended to authorize the  
10 application of payments or a method of charging interest that  
11 offers less protection to the debtor than other applicable law and  
12 the contracts between the debtor and mortgagee.

13           [Sections 397.054-397.100 reserved for expansion]

14           SUBCHAPTER C. OBLIGATION OF SERVICER TO HANDLE ESCROW FUNDS

15           Sec. 397.101. APPLICATION TO DELINQUENT LOANS. This  
16 subchapter applies to a mortgage servicer regardless of whether the  
17 loan is delinquent or in default, unless the servicer has a  
18 reasonable basis to believe that:

19           (1) recovery of amounts expended by the servicer on  
20 behalf of the borrower will not be possible; or

21           (2) the loan is more than 90 days in default.

22           Sec. 397.102. SERVICER'S DUTY TO MAKE PAYMENTS. A mortgage  
23 servicer who exercises the authority to collect escrow amounts on a  
24 loan held or to be held for the debtor for insurance, taxes, and  
25 other charges with respect to the property shall collect and make  
26 all payments from the escrow account so as to ensure that late  
27 penalties are not assessed against the debtor and other negative

1 consequences to the debtor do not result.

2 [Sections 397.103-397.150 reserved for expansion]

3 SUBCHAPTER D. DEBTOR REQUESTS FOR INFORMATION

4 Sec. 397.151. RECORDKEEPING. A mortgage servicer shall  
5 maintain written or electronic records of each written request for  
6 information regarding a dispute or error involving the debtor's  
7 account until the loan is paid in full, otherwise satisfied, or  
8 sold.

9 Sec. 397.152. REASONABLE EFFORTS REQUIRED. A mortgage  
10 servicer shall make reasonable attempts to comply with a debtor's  
11 request for information about the account and to respond to any  
12 dispute initiated by the debtor about the loan account as provided  
13 by this subchapter.

14 Sec. 397.153. PROVISION OF GENERAL INFORMATION ON REQUEST.

15 (a) A mortgage servicer shall provide the following to a debtor in  
16 response to a debtor's written request:

17 (1) a copy of the original note, or if the original  
18 note is unavailable, an affidavit of lost note; and

19 (2) a statement that:

20 (A) identifies and itemizes all fees and charges  
21 assessed under the loan transaction and provides a full payment  
22 history identifying in a clear and conspicuous manner all of the  
23 debits, credits, application of and disbursement of all payments  
24 received from or for the benefit of the debtor, and other activity  
25 on the loan including any escrow or suspense account activity; and

26 (B) covers the two years preceding the receipt of  
27 the request or period for which the servicer has serviced the loan,

1 whichever is shorter.

2 (b) If the mortgage servicer claims that delinquent or  
3 outstanding sums are owed on the loan before the two-year period  
4 preceding the receipt of the request under Subsection (a) or before  
5 the servicer began servicing the loan, the servicer shall provide  
6 an account history beginning with the earliest month for which the  
7 servicer claims outstanding sums are owed on the loan and ending on  
8 the date of the request for information. For purposes of this  
9 subsection, the date of the request for information is presumed to  
10 be not later than the 30th day before the date the servicer receives  
11 the request.

12 (c) A mortgage servicer must provide a statement under  
13 Subsection (a) on or before the 25th business day after the date the  
14 servicer receives a written request from the debtor that:

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

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

20 Sec. 397.154. PROVISION OF INFORMATION REGARDING DISPUTE OR  
21 ERROR. (a) A mortgage servicer shall provide a written statement  
22 to a debtor in response to a debtor's written request for  
23 information regarding a dispute or error involving the debtor's  
24 account that includes the following information, if requested:

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

27 (2) the current balance due on the loan, including the

1 principal due, the amount of any funds held in a suspense account,  
2 the amount of any escrow balance known to the servicer, and whether  
3 there are any escrow deficiencies or shortages known to the  
4 servicer;

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

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

11 (b) A mortgage servicer must provide a statement under  
12 Subsection (a) on or before the 10th day after the date the servicer  
13 receives a written request from the debtor that:

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

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

19 Sec. 397.155. FEE FOR PROVIDING INFORMATION. (a) A  
20 mortgage servicer shall provide information under Section 397.153  
21 or 397.154 free of charge, if the servicer has not provided to the  
22 debtor a written statement under the applicable section regarding  
23 the same account during the preceding six months.

24 (b) The mortgage servicer may charge the debtor a reasonable  
25 fee for preparing and furnishing a statement if the servicer has  
26 provided to the debtor a written statement under the same section  
27 regarding the same account during the preceding six months. A fee

1 charged for information under Section 397.153 may not exceed \$50  
2 for each written statement. A fee charged for information under  
3 Section 397.154 may not exceed \$25 for each written statement.

4 Sec. 397.156. CORRECTION OF ERRORS. A mortgage servicer  
5 shall promptly correct errors relating to the allocation of  
6 payments, the statement of account, or the payoff balance  
7 identified in any notice from the debtor provided in accordance  
8 with this subchapter or discovered through other means, including  
9 the diligence of the servicer.

10 [Sections 397.157-397.200 reserved for expansion]

11 SUBCHAPTER E. REMEDIES

12 Sec. 397.201. ENFORCEMENT GENERALLY. The Department of  
13 Savings and Mortgage Lending, the attorney general, or any party to  
14 a loan secured by a lien on residential real property may enforce  
15 this chapter.

16 Sec. 397.202. ACTION BY DEBTOR. (a) In addition to any  
17 other legal and equitable remedy available, a debtor injured by a  
18 violation of this chapter may bring an action for recovery of actual  
19 damages, including reasonable attorney's fees.

20 (b) Not later than the 30th day before a debtor or a debtor's  
21 representative institutes an action for damages against a mortgage  
22 servicer under this section, the debtor or debtor's representative  
23 shall notify the servicer in writing of any claimed errors or  
24 disputes regarding the debtor's loan that forms the basis of the  
25 action. The notice must be sent to the address as designated on any  
26 of the servicer's bills, statements, invoices, or other written  
27 communication, and must enable the servicer to identify the name

1 and loan account of the debtor.

2 (c) This section does not limit the rights of a debtor to  
3 enjoin an action, make a counterclaim or cross-claim, or plead a  
4 defense in a civil action.

5 Sec. 397.203. SERVICER DEFENSE. A mortgage servicer will  
6 not be in violation of this chapter if the servicer shows by a  
7 preponderance of evidence that:

8 (1) the violation was not intentional or the result of  
9 bad faith; and

10 (2) not later than the 30th day after the date the  
11 servicer discovers or is notified of an error and before the debtor  
12 institutes an action against the servicer under this subchapter,  
13 the servicer corrects the error and compensates the debtor for any  
14 fees or charges incurred by the debtor as a result of the violation.

15 SECTION 2. This Act takes effect September 1, 2009.