

By: Deshotel

H.B. No. 4397

Substitute the following for H.B. No. 4397:

By: Elkins

C.S.H.B. No. 4397

A BILL TO BE ENTITLED

AN ACT

relating to payoff statements provided in connection with certain home loans.

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

SECTION 1. Subchapter B, Chapter 343, Finance Code, is amended by adding Section 343.106 to read as follows:

Sec. 343.106. PAYOFF STATEMENTS. (a) In this section:

(1) "Mortgagee," "mortgage servicer," "mortgagor," and "security instrument" have the meanings assigned by Section 51.0001, Property Code.

(2) "Material error" means an error in the payoff amount contained in a payoff statement in which the correct payoff amount minus the amount included in the payoff statement is greater than one-half of one percent of the original amount of the home loan and the amount of any other debts owed by the mortgagor to the mortgagee that are secured by the real property securing the home loan.

(b) Not later than the fifth business day after the date a mortgage servicer receives a request for a payoff statement with respect to a home loan from a mortgagor or a person acting on behalf of the mortgagor, the mortgage servicer shall deliver to the requestor the requested payoff statement as prescribed by this section.

(c) A request for a payoff statement must be addressed to

1 the mortgagee at the address provided in the most recent applicable
2 security instrument recorded with the county clerk of the county in
3 which the real property subject to the security instrument is
4 located.

5 (d) The finance commission by rule shall adopt a standard
6 form that must be used by a mortgage servicer in providing a payoff
7 statement requested under this section. In adopting rules under
8 this subsection, the commission shall require that a completed
9 form:

10 (1) include:

11 (A) the legal description of the real property
12 securing the home loan as the description appears in the applicable
13 security instrument;

14 (B) the names of each mortgagor, trustee, and
15 mortgagee named in the applicable security instrument; and

16 (C) a statement of the original amount of the
17 home loan;

18 (2) state the amount of:

19 (A) the unpaid balance of the original home loan
20 and any other debts owed by the mortgagor to the mortgagee that are
21 secured by the real property securing the home loan, including
22 principal, interest, and other charges properly assessed under the
23 documentation for the home loan and other debts;

24 (B) the interest on a per diem basis for the
25 unpaid balance of the home loan from the date the payoff statement
26 is prepared until the closing date specified in Subdivision (3);
27 and

1 (C) if applicable, the unpaid balance and the
2 interest on a per diem basis for the unpaid balance of any other
3 debts owed by the mortgagor to the mortgagee with respect to the
4 real property that is security for the home loan for the period
5 prescribed by Paragraph (B);

6 (3) state the proposed closing date for the sale and
7 purchase of the real property securing the home loan or for any
8 other transaction that would involve the payoff of the home loan and
9 any other debts described by Subsection (d)(2)(A);

10 (4) be signed by an authorized officer or agent of the
11 mortgagee; and

12 (5) include any additional information the finance
13 commission determines necessary.

14 (e) Except as provided by Subsection (f) or (g), if the
15 mortgage servicer provides a completed payoff statement form that
16 meets the requirements of this section in response to a request for
17 a payoff statement made in accordance with this section, the
18 mortgage servicer or mortgagee may not demand that a mortgagor pay
19 an amount in excess of the payoff amount specified in the payoff
20 statement.

21 (f) If a mortgage servicer or mortgagee notices that a
22 material error has been made in a payoff statement, the mortgage
23 servicer or mortgagee may correct and deliver the statement on or
24 before the second business day before the specified closing date.
25 The corrected payoff statement must be delivered to the requestor
26 by:

27 (1) certified mail with return receipt requested; and

1 (2) electronic means, if the requestor provides the
2 mortgage servicer with a means to deliver the corrected statement
3 electronically.

4 (g) If a mortgage servicer makes an error in a payoff amount
5 contained in a payoff statement that results in the mortgage
6 servicer requesting an amount that is less than the correct payoff
7 amount and the transaction referenced in the payoff statement is
8 closed, the difference in the amount included in the payoff
9 statement and the correct payoff amount becomes an unsecured
10 liability of the former mortgagor owed to the mortgagee.

11 (h) If a mortgagor pays the unpaid balance and the interest
12 on a per diem amount calculated through the proposed closing date
13 specified in the payoff statement received under this section,
14 including any corrected statement provided in accordance with
15 Subsection (f):

16 (1) the home loan and other obligations are considered
17 paid in full; and

18 (2) the mortgagee shall execute and deliver to the
19 mortgagor, within a reasonable time after payment, a release of the
20 lien on the real property securing the home loan and any other
21 obligations, or a copy of an endorsement and assignment of the lien
22 to a lender that is refinancing the home loan.

23 (i) A mortgage servicer who violates Subsection (b) is
24 liable to the mortgagor for:

25 (1) any actual damages suffered by the mortgagor as a
26 result of the violation;

27 (2) reasonable attorney's fees; and

1 (3) court costs.

2 SECTION 2. (a) As soon as practicable after the effective
3 date of this Act, the Finance Commission of Texas shall adopt the
4 form required by Section 343.106, Finance Code, as added by this
5 Act.

6 (b) Notwithstanding Section 343.106, Finance Code, as added
7 by this Act, a mortgage servicer is not required to comply with that
8 section until the Finance Commission of Texas adopts the form
9 required by that section.

10 SECTION 3. This Act takes effect September 1, 2009.