

BILL ANALYSIS

H.B. 213
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Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas State Affordable Housing Corporation estimates regarding the recent rate of foreclosure on Texas homes raise concerns about the causes for the foreclosures. While there are a variety of causes for the foreclosure rate, there is little question that fees, penalties, and associated charges by mortgage servicers are contributing factors. Almost every major mortgage loan holder, including trusts containing hundreds of securitized mortgage loans, uses a mortgage servicer to administer the loan whose duties include collecting monthly loan payments and crediting accounts. A mortgage servicer also handles escrow accounts, which are funds held by the servicer into which the borrower pays money to cover expenses such as property taxes and homeowner's insurance. Escrow payments typically are 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.

Escrow accounts are covered under the Real Estate Settlement Procedures Act (RESPA), the primary federal law covering escrow accounts, and RESPA is enforced by the Department of Housing and Urban Development. However, there is concern about the extent and adequacy of the regulation of the practices of mortgage servicers in Texas when the loan is outside of the scope of federal regulation and exempt from RESPA provisions. H.B. 213 adopts provisions applicable only to a loan that is not a federally related mortgage loan and that is secured by a first lien on residential real property.

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

H.B. 213 amends the Finance Code to require 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, in response to a debtor's written request, a copy of the original note or, if the original note is unavailable, an affidavit of lost note and 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. The bill requires 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 debtor's written request for 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. The bill establishes 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 a statement, in response to a debtor's written request for general information, 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 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.

H.B. 213 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 that includes certain specified information about the account, if requested. The bill requires a mortgage servicer, in response to a debtor's written request for information regarding a dispute or error, to provide a statement 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.

H.B. 213 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 the bill's provisions. The bill authorizes a debtor injured by a violation of the bill's provisions to bring an action for recovery of actual damages, including reasonable attorney's fees, in addition to any other legal and equitable remedy available.

H.B. 213 makes the bill's 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 law.

H.B. 213 provides for the meaning of "mortgage servicer" by reference to the Property Code.

EFFECTIVE DATE

September 1, 2011.