

BILL ANALYSIS

Senate Research Center
82R17515 KFF-F

H.B. 558
By: Deshotel (Carona)
Business & Commerce
4/25/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Thousands of mortgage loans are refinanced or paid in full every year. 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 reliable payoff statement from the holder of the loan. 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 that 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 lender to recant the payoff or simply find an error and refuse to issue the release until they are paid additional funds. Those actions violate sound business practices and place the new lender and title company at risk.

H.B. 558 amends current law relating to payoff statements provided in connection with certain home loans.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 343.106, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 343, Finance Code, by adding Section 343.105, as follows:

Sec. 343.106. PAYOFF STATEMENTS. (a) Defines, in this section, "mortgagee," "mortgage servicer," and "mortgagor."

(b) Requires the Finance Commission of Texas (finance commission) to adopt rules governing requests by title insurance companies for payoff information from mortgage services related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage services to provide those payoff statements.

(c) Requires the finance commission, in adopting rules under Subsection (b), to require a mortgage servicer who receives a request for a payoff statement with respect to a home loan from a title insurance company to deliver the requested payoff statement on the prescribed form within a time specified by finance commission rule, which must allow the mortgage servicer at least seven business days after the date the request is received to deliver the payoff statement.

(d) Requires that the standard payoff statement form prescribed by the finance commission under Subsection (b) require that a completed form:

(1) state the proposed closing date for the sale and conveyance of the real property securing the home loan or for any other transaction that would involve the payoff of the home loan, as specified by the title insurance company's request; and

(2) provide a payoff amount that is valid through that date.

(e) Prohibits the mortgage servicer or mortgagee, except as provided by Subsection (f) or (g), if the mortgage servicer provides a completed payoff statement form that meets the requirements of this section and rules adopted under this section 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.

(f) Authorizes a mortgage servicer or mortgagee, if the mortgage servicer or mortgagee discovers that a payoff statement is incorrect, to correct and deliver the statement on or before the second business day before the specified proposed closing date. Requires that the corrected payoff statement be delivered to the requestor by:

(1) certified mail with return receipt requested; and

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

(g) Provides that if a mortgage servicer submits an incorrect payoff statement to a title insurance company that results in the mortgage servicer requesting an amount that is less than the correct payoff amount, the mortgage servicer or mortgagee does not deliver a corrected payoff statement in accordance with Subsection (f), and the mortgage servicer receives payment in the amount specified in the payoff statement, the difference between the amount included in the payoff statement and the correct payoff amount:

(1) remains a liability of the former mortgagor owed to the mortgagee; and

(2) if the payoff statement is in connection with the sale of the real property: the deed of trust or other contract lien securing an interest in the property is released; within a reasonable time after receipt of payment by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer, as applicable, shall deliver to the title company a release of the deed of trust or other contract lien securing an interest in the property; and any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment; or a refinance by the mortgagor of the existing home loan: the lien securing the existing home loan becomes subordinate to the lien securing the new home loan; and any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment.

SECTION 2. (a) Requires the finance commission, as soon as practicable after the effective date of this Act, to adopt the rules, including the standard payoff statement form, required by Section 343.106, Finance Code, as added by this Act.

(b) Provides that, notwithstanding Section 343.106, Finance Code, as added by this Act, a mortgage servicer is not required to comply with that section before the 90th day after the date the finance commission adopts the rules required by that section.

SECTION 3. Effective date: September 1, 2011.