

BILL ANALYSIS

C.S.H.B. 558
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 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. C.S.H.B. 558 attempts to remedy the situation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 558 amends the Finance Code to require the Finance Commission of Texas to adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide those payoff statements. The bill requires the finance commission, in adopting those rules, 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. The bill requires the standard payoff statement form prescribed by the finance commission to require that a completed form 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 provide a payoff amount that is valid through that date. The bill prohibits the mortgage servicer or mortgagee, on or before the proposed closing date, from demanding that a mortgagor pay an amount in excess of the payoff amount specified in the payoff statement if the mortgage servicer provides a completed payoff statement form that meets the requirements of the bill's provisions and rules adopted under the bill's provisions in response to a request for a payoff statement. The bill 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. The bill requires the corrected payoff statement to be delivered to the requestor by certified mail with return receipt requested and by electronic means, if the requestor provides the mortgage servicer with a means to deliver the corrected statement electronically.

C.S.H.B. 558 establishes 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, 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 remains a liability of the former mortgagor owed to the mortgagee, and if the payoff statement is in connection with the sale of real property, the deed of trust or other contract lien securing an interest in the property is released; the mortgagee or mortgage servicer, as applicable, is required to deliver to the title company a release of the deed of trust or other contract lien securing an interest in the property within a reasonable time after receipt of payment by the mortgagee or mortgage servicer; 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 if the payoff statement is made in connection with 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 underpayment.

C.S.H.B. 558 requires the finance commission to adopt the rules, including the standard form for a mortgage servicer's payoff statement as soon as practicable after the bill's effective date and exempts a mortgage servicer from complying with the bill's provisions before the 90th day after the date the finance commission adopts the rules required for the standard payoff statement form. The bill provides for the meanings of "mortgagee," "mortgage servicer," and "mortgagor" by reference to the Property Code.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 558 differs from the original by requiring the finance commission, in adopting rules governing requests by title insurance companies for payoff information from mortgage servicers and the provision of that information, to require a mortgage servicer who receives a request for a payoff statement 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, whereas the original requires the finance commission to require such a mortgage servicer to deliver the requested payoff statement within a time prescribed by finance commission rule, which must allow the mortgage servicer at least three business days after the date of the request is received to deliver the payoff statement.

C.S.H.B. 558 differs from the original by establishing that, if a mortgage servicer submits an incorrect payoff statement to a title insurance company or does not deliver a corrected payoff statement, the difference between the amount included in the payoff statement and the correct payoff amount remains a liability of the former mortgagor owed to the mortgagee and setting out the subsequent effects if the payoff statement is in connection with the sale of real property or if the payoff statement is made in connection with a refinance by the mortgagor of the existing home loan, respectively, whereas the original specifies that the difference between the amount

included in the payoff statement becomes an unsecured liability of the former mortgagor owed to the mortgagee.

C.S.H.B. 558 omits a provision included in the original establishing that, if the mortgage servicer receives payment in the amount specified in the payoff statement, the home loan covered by the payoff statement is considered paid in full, and requiring the mortgagee to execute and deliver to the mortgagor a release of the lien on the real property securing the loan or a copy of an endorsement and assignment of the lien to a lender refinancing the loan.

C.S.H.B. 558 contains provisions not included in the original requiring the finance commission to adopt the rules, including the standard form for a mortgage servicer's payoff statement as soon as practicable after the bill's effective date and exempting a mortgage servicer from complying with the bill's provisions before the 90th day after the date the finance commission adopts the rules required for the standard payoff statement form.

C.S.H.B. 558 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.