

BILL ANALYSIS

C.S.S.B. 1319

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report concerns that a mortgage lender in Texas that is not a federally regulated lender does not have to provide any kind of accounting to borrowers. The parties contend that, in the absence of any requirement, many small and owner finance mortgage lenders are not giving borrowers any sense of whether such borrowers are nearing their payoff date, have yet to reach it, or are overpaying. Interested parties contend further that, in some cases, borrowers may have stopped making payments on their mortgages, believing they had paid off their loans, only to find out that they still owe the lender thousands of dollars plus all related interest and late fees.

C.S.S.B. 1319 seeks to address matters relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property, including the provision of civil penalties.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.S.B. 1319 amends the Finance Code to enact provisions regarding the furnishing of information by residential mortgage servicers applicable only to a loan secured by a first or subordinate lien on residential real property that is not a federally related mortgage loan, as defined by federal law, a loan that is made by a credit union regulated by the Credit Union Department, or a loan that is primarily for business, commercial, or agricultural purposes, or for temporary financing, such as a construction loan, as referred to under that federal law. The bill exempts a loan from its provisions if the mortgage servicer is a natural person who is related to the borrower within the second degree by consanguinity or affinity.

C.S.S.B. 1319 authorizes the Finance Commission of Texas to adopt rules necessary to implement the bill's provisions relating to borrower requests for information. The bill requires a mortgage servicer, at the request of a borrower, to provide a receipt to the borrower each time the servicer accepts payment from the borrower and requires the receipt to clearly and conspicuously state the amount received by the mortgage servicer as payment toward the loan and how that amount was applied to the borrower's account.

C.S.S.B. 1319 requires a mortgage servicer to provide to the borrower an annual statement in January of each year for the term of the loan. The bill requires the statement to clearly and conspicuously state the following information: the amount of each payment that was received by the mortgage servicer as payment toward the loan during the preceding calendar year; how each payment was applied to the borrower's account, including a statement of the amount of each payment that was applied to the borrower's principal obligation under the loan, the interest charged on the loan, any escrow or suspense account associated with the loan, and any fee or other charge assessed against the borrower during the preceding calendar year; and the

outstanding balance of the borrower's principal obligation under the loan.

C.S.S.B. 1319 prohibits a mortgage servicer, except as provided by and subject to the bill's provisions, from charging a fee for preparing or transmitting a payoff statement to a borrower or other person requesting a payoff statement on behalf of the borrower. The bill authorizes a mortgage servicer to charge a reasonable processing fee to cover the cost of providing a payoff statement by facsimile transmission or by a courier service if, before charging the fee, the mortgage servicer discloses to the requestor that payoff statements are available for free if the requestor requests that the statement be provided in a manner that will not result in the charging of a processing fee. The bill authorizes a mortgage servicer to charge a reasonable fee for providing a payoff statement to or on behalf of the borrower during the remainder of the calendar year after the servicer has provided two payoff statements during a calendar year to or on behalf of a borrower without charge other than processing fees authorized. The bill requires a mortgage servicer to provide a payoff statement not later than the 10th day after the date the lender receives the request for the payoff statement from or on behalf of a borrower and requires the statement to be valid for a reasonable time after being provided to the requestor.

C.S.S.B. 1319 requires a mortgage servicer to provide a written statement to a borrower in response to a borrower's written request for information regarding a dispute or error involving the borrower's account that includes the following information, if requested: whether the account is current and an explanation of any default and the date the account went into default; the current balance due on the loan, including the principal due, the amount of any funds held in a suspense account, the amount of any escrow balance known to the servicer, and whether there are any escrow deficiencies or shortages known to the servicer; the identity, address, and other relevant information about the current holder, owner, or assignee of the loan; and the telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes. The bill requires a mortgage servicer to provide the statement on or before the 10th day after the date the servicer receives a written request from the borrower that includes or otherwise enables the servicer to identify the name and account of the borrower 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 borrower.

C.S.S.B. 1319 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 relating to information furnished by residential mortgage servicers.

C.S.S.B. 1319 authorizes a borrower injured by a violation of the bill's provisions relating to information furnished by residential mortgage servicers, in addition to any other legal and equitable remedy available, to bring an action for injunctive relief to require compliance with those provisions and to recover actual damages, including reasonable attorney's fees and \$500 for each violation.

C.S.S.B. 1319 authorizes the attorney general to bring an action on behalf of the state for injunctive relief to require compliance with the bill's provisions relating to information furnished by residential mortgage servicers, to recover a civil penalty of \$500 for each violation, or for both injunctive relief and to recover the civil penalty. The bill entitles the attorney general to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, including court costs, reasonable attorney's fees, and investigatory costs. The bill authorizes the court to make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, that may have been acquired by means of any violation. The bill prohibits damages from including any damages incurred beyond a point two years before the institution of the action by the attorney general. The bill authorizes orders of the court to also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution has failed to do so within three months after the order to make restitution has become final and nonappealable. The bill specifies that, in bringing or participating in an action, the attorney

general acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the attorney general requests that the court award relief.

C.S.S.B. 1319 provides for the definitions of "mortgage servicer" and "payoff statement" by reference to the Property Code.

C.S.S.B. 1319 amends the Business & Commerce Code to prohibit a seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, from requesting or requiring the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit. The bill makes a deed executed in violation of this prohibition voidable unless a subsequent purchaser of the residential real estate, for valuable consideration, obtains an interest in the property after the deed was recorded without notice of the violation, including notice provided by actual possession of the property by the grantor of the deed. The bill specifies that the residential real estate continues to be subject to the security interest of a creditor who, without notice of the violation, granted an extension of credit to a borrower based on the deed executed in violation of the prohibition. The bill requires a purchaser or borrower to bring an action to void a deed executed in violation of the prohibition not later than the fourth anniversary of the date the deed was recorded.

C.S.S.B. 1319 makes a person who violates the prohibition against the execution of a deed conveying residential real estate to the seller of that real estate or to a person who makes an extension of credit and takes a security interest or mortgage against that real estate liable to the purchaser or borrower for actual damages, exemplary damages in an amount equal to or greater than \$5,000 and not more than three times the amount of actual damages, court costs, and reasonable attorney's fees. The bill defines "residential real estate."

C.S.S.B. 1319 amends the Property Code to specify that a justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and requires such a court to dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of the bill's prohibition against the execution of deeds in certain transactions involving residential real estate. The bill makes a conforming change.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1319 contains a provision not included in the original making the substitute's provisions regarding the furnishing of information by residential mortgage servicers inapplicable to a loan that is made by a credit union regulated by the Credit Union Department.

C.S.S.B. 1319 differs from the original by requiring a mortgage servicer to provide a receipt to a borrower, at the borrower's request, each time the mortgage servicer accepts payment from the borrower, whereas the original requires the mortgage servicer to provide such receipt each time the mortgage servicer accepts payment from the borrower regardless of whether the borrower makes the request.