

By: Rodriguez, Keffer, et al.

H.B. No. 213

A BILL TO BE ENTITLED

AN ACT

relating to the duties of a mortgage servicer of certain residential mortgage loans.

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

SECTION 1. Title 5, Finance Code, is amended by adding Chapter 397 to read as follows:

CHAPTER 397. RESIDENTIAL MORTGAGE SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 397.001. DEFINITION. In this chapter, "mortgagee" and "mortgage servicer" have the meanings assigned by Section 51.0001, Property Code.

Sec. 397.002. APPLICABILITY. This chapter applies only to a loan secured by a first lien on residential real property that:

(1) is not a federally related mortgage loan, as defined by 12 U.S.C. Section 2602; and

(2) is serviced by a mortgage servicer other than the mortgagee of the loan.

[Sections 397.003-397.050 reserved for expansion]

SUBCHAPTER B. DEBTOR REQUESTS FOR INFORMATION

Sec. 397.051. RECORDKEEPING. A mortgage servicer shall 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.

1 Sec. 397.052. PROVISION OF GENERAL INFORMATION ON REQUEST.

2 (a) A mortgage servicer shall provide the following to a debtor in
3 response to a debtor's written request:

4 (1) a copy of the original note or, if the original
5 note is unavailable, an affidavit of lost note; and

6 (2) a statement that:

7 (A) identifies and itemizes all fees and charges
8 assessed under the loan transaction and provides a full payment
9 history identifying in a clear and conspicuous manner all of the
10 debits, credits, application of and disbursement of all payments
11 received from or for the benefit of the debtor, and other activity
12 on the loan, including any escrow or suspense account activity; and

13 (B) covers the two years preceding the receipt of
14 the request or the period for which the servicer has serviced the
15 loan, whichever is shorter.

16 (b) If the mortgage servicer claims that delinquent or
17 outstanding sums were owed on the loan before the two-year period
18 preceding the receipt of the request under Subsection (a) or before
19 the servicer began servicing the loan, whichever is shorter, the
20 servicer shall provide an account history beginning with the
21 earliest month for which the servicer claims outstanding sums were
22 owed on the loan and ending on the date of the request for
23 information. For purposes of this subsection, the date of the
24 request for information is presumed to be not later than the 30th
25 day before the date the servicer receives the request.

26 (c) A mortgage servicer must provide a statement under
27 Subsection (a) on or before the 25th business day after the date the

1 servicer receives a written request from the debtor that:

2 (1) includes or otherwise enables the servicer to
3 identify the name and account of the debtor; and

4 (2) includes a statement that the account is or may be
5 in error or otherwise provides sufficient detail to the servicer
6 regarding information sought by the debtor.

7 Sec. 397.053. PROVISION OF INFORMATION REGARDING DISPUTE OR
8 ERROR. (a) A mortgage servicer shall provide a written statement
9 to a debtor in response to a debtor's written request for
10 information regarding a dispute or error involving the debtor's
11 account that includes the following information, if requested:

12 (1) whether the account is current and an explanation
13 of any default and the date the account went into default;

14 (2) the current balance due on the loan, including the
15 principal due, the amount of any funds held in a suspense account,
16 the amount of any escrow balance known to the servicer, and whether
17 there are any escrow deficiencies or shortages known to the
18 servicer;

19 (3) the identity, address, and other relevant
20 information about the current holder, owner, or assignee of the
21 loan; and

22 (4) the telephone number and mailing address of a
23 servicer representative with the information and authority to
24 answer questions and resolve disputes.

25 (b) A mortgage servicer must provide a statement under
26 Subsection (a) on or before the 10th day after the date the servicer
27 receives a written request from the debtor that:

1 (1) includes or otherwise enables the servicer to
2 identify the name and account of the debtor; and

3 (2) includes a statement that the account is or may be
4 in error or otherwise provides sufficient detail to the servicer
5 regarding information sought by the debtor.

6 [Sections 397.054-397.100 reserved for expansion]

7 SUBCHAPTER C. REMEDIES

8 Sec. 397.101. ENFORCEMENT GENERALLY. The Department of
9 Savings and Mortgage Lending, the attorney general, or any party to
10 a loan to which this chapter applies may enforce this chapter.

11 Sec. 397.102. ACTION BY DEBTOR. In addition to any other
12 legal and equitable remedy available, a debtor injured by a
13 violation of this chapter may bring an action for recovery of actual
14 damages, including reasonable attorney's fees.

15 SECTION 2. This Act takes effect September 1, 2011.