

1-1 By: Rodriguez, et al. (Senate Sponsor - Lucio) H.B. No. 213
1-2 (In the Senate - Received from the House April 20, 2011;
1-3 April 26, 2011, read first time and referred to Committee on
1-4 Business and Commerce; May 19, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; May 19, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 213 By: Lucio

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain loans secured by a lien on residential real
1-11 property and to other transactions involving residential real
1-12 property; providing civil penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Title 5, Finance Code, is amended by adding
1-15 Chapter 397 to read as follows:

1-16 CHAPTER 397. INFORMATION FURNISHED BY RESIDENTIAL MORTGAGE
1-17 SERVICERS

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 397.001. DEFINITION. In this chapter, "mortgage
1-20 servicer" has the meaning assigned by Section 51.0001, Property
1-21 Code.

1-22 Sec. 397.002. APPLICABILITY. (a) This chapter applies
1-23 only to a loan secured by a first or subordinate lien on residential
1-24 real property that is not:

1-25 (1) a federally related mortgage loan, as defined by
1-26 12 U.S.C. Section 2602;

1-27 (2) a loan that is made by a credit union regulated by
1-28 the Credit Union Department; or

1-29 (3) a loan that is primarily for business, commercial,
1-30 or agricultural purposes, or for temporary financing, such as a
1-31 construction loan, as referred to under 12 U.S.C. Section 2602.

1-32 (b) This chapter does not apply to a loan if the mortgage
1-33 servicer is a natural person who is related to the borrower within
1-34 the second degree by consanguinity or affinity, as determined under
1-35 Subchapter B, Chapter 573, Government Code.

1-36 [Sections 397.003-397.050 reserved for expansion]

1-37 SUBCHAPTER B. BORROWER REQUESTS FOR INFORMATION

1-38 Sec. 397.051. RULES. The Finance Commission of Texas may
1-39 adopt rules necessary to implement this subchapter.

1-40 Sec. 397.052. RECEIPTS FOR PAYMENTS BY BORROWERS. At the
1-41 request of a borrower, a mortgage servicer shall provide a receipt
1-42 to the borrower each time the mortgage servicer accepts payment
1-43 from the borrower. The receipt must clearly and conspicuously
1-44 state:

1-45 (1) the amount received by the mortgage servicer as
1-46 payment toward the loan; and

1-47 (2) how the amount described by Subdivision (1) was
1-48 applied to the borrower's account.

1-49 Sec. 397.053. ANNUAL ACCOUNTING STATEMENT. A mortgage
1-50 servicer shall provide to the borrower an annual statement in
1-51 January of each year for the term of the loan. The statement must
1-52 clearly and conspicuously state the following information:

1-53 (1) the amount of each payment that was received by the
1-54 mortgage servicer as payment toward the loan during the preceding
1-55 calendar year;

1-56 (2) how each payment described by Subdivision (1) was
1-57 applied to the borrower's account, including a statement of the
1-58 amount of each payment that was applied to:

1-59 (A) the borrower's principal obligation under
1-60 the loan;

1-61 (B) the interest charged on the loan;

1-62 (C) any escrow or suspense account associated
1-63 with the loan; and

2-1 (D) any fee or other charge assessed against the
 2-2 borrower during the preceding calendar year; and
 2-3 (3) the outstanding balance of the borrower's
 2-4 principal obligation under the loan.

2-5 Sec. 397.054. PAYOFF STATEMENTS. (a) In this section,
 2-6 "payoff statement" has the meaning assigned by Section 12.017,
 2-7 Property Code.

2-8 (b) Except as provided by Subsection (c) and subject to
 2-9 Subsection (d), a mortgage servicer may not charge a fee for
 2-10 preparing or transmitting a payoff statement to a borrower or other
 2-11 person requesting a payoff statement on behalf of the borrower.

2-12 (c) A mortgage servicer may charge a reasonable processing
 2-13 fee to cover the cost of providing a payoff statement by facsimile
 2-14 transmission or by a courier service if, before charging the fee,
 2-15 the mortgage servicer discloses to the requestor that payoff
 2-16 statements are available for free if the requestor requests that
 2-17 the statement be provided in a manner that will not result in the
 2-18 charging of a processing fee.

2-19 (d) After a mortgage servicer has provided two payoff
 2-20 statements during a calendar year to or on behalf of a borrower
 2-21 under Subsection (b) without charge, other than processing fees
 2-22 authorized under Subsection (c), the mortgage servicer may charge a
 2-23 reasonable fee for providing a payoff statement to or on behalf of
 2-24 the borrower during the remainder of the calendar year.

2-25 (e) A mortgage servicer shall provide a payoff statement not
 2-26 later than the 10th day after the date the lender receives the
 2-27 request for the payoff statement from or on behalf of a borrower,
 2-28 and the statement must be valid for a reasonable time after being
 2-29 provided to the requestor.

2-30 Sec. 397.055. PROVISION OF INFORMATION REGARDING DISPUTE OR
 2-31 ERROR. (a) A mortgage servicer shall provide a written statement
 2-32 to a borrower in response to a borrower's written request for
 2-33 information regarding a dispute or error involving the borrower's
 2-34 account that includes the following information, if requested:

2-35 (1) whether the account is current and an explanation
 2-36 of any default and the date the account went into default;

2-37 (2) the current balance due on the loan, including the
 2-38 principal due, the amount of any funds held in a suspense account,
 2-39 the amount of any escrow balance known to the servicer, and whether
 2-40 there are any escrow deficiencies or shortages known to the
 2-41 servicer;

2-42 (3) the identity, address, and other relevant
 2-43 information about the current holder, owner, or assignee of the
 2-44 loan; and

2-45 (4) the telephone number and mailing address of a
 2-46 servicer representative with the information and authority to
 2-47 answer questions and resolve disputes.

2-48 (b) A mortgage servicer must provide a statement under
 2-49 Subsection (a) on or before the 10th day after the date the servicer
 2-50 receives a written request from the borrower that:

2-51 (1) includes or otherwise enables the servicer to
 2-52 identify the name and account of the borrower; and

2-53 (2) includes a statement that the account is or may be
 2-54 in error or otherwise provides sufficient detail to the servicer
 2-55 regarding information sought by the borrower.

2-56 [Sections 397.056-397.100 reserved for expansion]

2-57 SUBCHAPTER C. REMEDIES

2-58 Sec. 397.101. ENFORCEMENT GENERALLY. The Department of
 2-59 Savings and Mortgage Lending, the attorney general, or any party to
 2-60 a loan to which this chapter applies may enforce this chapter.

2-61 Sec. 397.102. ACTION BY BORROWER. In addition to any other
 2-62 legal and equitable remedy available, a borrower injured by a
 2-63 violation of this chapter may bring an action:

2-64 (1) for injunctive relief to require compliance with
 2-65 this chapter; and

2-66 (2) to recover:

2-67 (A) actual damages, including reasonable
 2-68 attorney's fees; and

2-69 (B) \$500 for each violation of this chapter.

3-1 Sec. 397.103. ACTION BY ATTORNEY GENERAL. (a) The
3-2 attorney general may bring an action on behalf of the state:

3-3 (1) for injunctive relief to require compliance with
3-4 this chapter;

3-5 (2) to recover a civil penalty of \$500 for each
3-6 violation of this chapter; or

3-7 (3) for both injunctive relief and to recover the
3-8 civil penalty.

3-9 (b) The attorney general is entitled to recover reasonable
3-10 expenses incurred in obtaining injunctive relief or a civil
3-11 penalty, or both, under this section, including court costs,
3-12 reasonable attorney's fees, and investigatory costs.

3-13 (c) The court may make such additional orders or judgments
3-14 as are necessary to compensate identifiable persons for actual
3-15 damages or to restore money or property, real or personal, that may
3-16 have been acquired by means of any violation of this chapter.
3-17 Damages may not include any damages incurred beyond a point two
3-18 years before the institution of the action by the attorney general.
3-19 Orders of the court may also include the appointment of a receiver
3-20 or a sequestration of assets if a person who has been ordered by a
3-21 court to make restitution under this section has failed to do so
3-22 within three months after the order to make restitution has become
3-23 final and nonappealable.

3-24 (d) In bringing or participating in an action under this
3-25 chapter, the attorney general acts in the name of the state and does
3-26 not establish an attorney-client relationship with another person,
3-27 including a person to whom the attorney general requests that the
3-28 court award relief.

3-29 SECTION 2. Title 2, Business & Commerce Code, is amended by
3-30 adding Chapter 21 to read as follows:

3-31 CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS INVOLVING
3-32 RESIDENTIAL REAL ESTATE

3-33 Sec. 21.001. DEFINITION. In this chapter, "residential
3-34 real estate" means real property on which a dwelling designed for
3-35 occupancy for one to four families is constructed or intended to be
3-36 constructed.

3-37 Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING
3-38 RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) A seller of
3-39 residential real estate or a person who makes an extension of credit
3-40 and takes a security interest or mortgage against residential real
3-41 estate may not, before or at the time of the conveyance of the
3-42 residential real estate to the purchaser or the extension of credit
3-43 to the borrower, request or require the purchaser or borrower to
3-44 execute and deliver to the seller or person making the extension of
3-45 credit a deed conveying the residential real estate to the seller or
3-46 person making the extension of credit.

3-47 (b) A deed executed in violation of this section is voidable
3-48 unless a subsequent purchaser of the residential real estate, for
3-49 valuable consideration, obtains an interest in the property after
3-50 the deed was recorded without notice of the violation, including
3-51 notice provided by actual possession of the property by the grantor
3-52 of the deed. The residential real estate continues to be subject to
3-53 the security interest of a creditor who, without notice of the
3-54 violation, granted an extension of credit to a borrower based on the
3-55 deed executed in violation of this section.

3-56 (c) A purchaser or borrower must bring an action to void a
3-57 deed executed in violation of this section not later than the fourth
3-58 anniversary of the date the deed was recorded.

3-59 Sec. 21.003. CIVIL ACTION FOR DAMAGES. A person who
3-60 violates Section 21.002 is liable to the purchaser or borrower for:

3-61 (1) actual damages;

3-62 (2) exemplary damages in an amount equal to or greater
3-63 than \$5,000 and not more than three times the amount of actual
3-64 damages;

3-65 (3) court costs; and

3-66 (4) reasonable attorney's fees.

3-67 SECTION 3. Section 24.004, Property Code, is amended to
3-68 read as follows:

3-69 Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as

4-1 provided by Subsection (b), a [A] justice court in the precinct in
4-2 which the real property is located has jurisdiction in eviction
4-3 suits. Eviction suits include forcible entry and detainer and
4-4 forcible detainer suits.

4-5 (b) A justice court does not have jurisdiction in a forcible
4-6 entry and detainer or forcible detainer suit and shall dismiss the
4-7 suit if the defendant files a sworn statement alleging the suit is
4-8 based on a deed executed in violation of Chapter 21, Business &
4-9 Commerce Code.

4-10 SECTION 4. This Act takes effect September 1, 2011.

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