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H.B. No. 3760

A BILL TO BE ENTITLED

1 AN ACT

2 relating to home loans that are not federally related mortgage
3 loans; providing civil penalties.

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

5 SECTION 1. Chapter 343, Finance Code, is amended by adding
6 Subchapter D to read as follows:

7 SUBCHAPTER D. NONFEDERALLY RELATED MORTGAGE LOANS

8 Sec. 343.301. DEFINITION. In this subchapter, "mortgage
9 servicer" has the meaning assigned by Section 51.0001, Property
10 Code.

11 Sec. 343.302. APPLICABILITY. This subchapter applies only
12 to a home loan that is not a federally related mortgage loan, as
13 defined by 12 U.S.C. Section 2602.

14 Sec. 343.303. RULES. The finance commission may adopt
15 rules necessary to implement this subchapter.

16 Sec. 343.304. MONTHLY STATEMENTS REQUIRED. (a) A lender
17 shall provide to the borrower a monthly statement that clearly and
18 conspicuously states:

19 (1) the amount received by the lender as payment
20 towards the home loan during the preceding month;

21 (2) how the amount described by Subdivision (1) was
22 applied to the borrower's account, including a statement of the
23 amount that was applied to:

24 (A) the borrower's principal obligation under

1 the loan;

2 (B) the interest charged on the loan;

3 (C) any escrow or suspense account associated
4 with the loan; and

5 (D) any fee or other charge assessed against the
6 borrower during the preceding month; and

7 (3) the outstanding balance of the borrower's
8 principal obligation under the loan.

9 (b) If a lender violates this section, the affected borrower
10 may file suit against the lender:

11 (1) for any appropriate injunctive relief; and

12 (2) to recover:

13 (A) the borrower's actual damages;

14 (B) \$100 for each statement the lender fails to
15 provide to the borrower as required by Subsection (a);

16 (C) \$50 for each statement provided to the
17 borrower that does not substantially comply with the requirements
18 of Subsection (a); and

19 (D) the borrower's court costs and reasonable
20 attorney's fees.

21 Sec. 343.305. ANNUAL ACCOUNTING STATEMENT. (a) A lender
22 shall provide to the borrower an annual statement in January of each
23 year for the term of the home loan. The statement must clearly and
24 conspicuously state the following information:

25 (1) the amount of each payment that was received by the
26 lender as payment towards the home loan during the preceding
27 calendar year;

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

4 (A) the borrower's principal obligation under
5 the loan;

6 (B) the interest charged on the loan;

7 (C) any escrow or suspense account associated
8 with the loan; and

9 (D) any fee or other charge assessed against the
10 borrower during the preceding calendar year; and

11 (3) the outstanding balance of the borrower's
12 principal obligation under the loan.

13 (b) If a lender violates this section, the affected borrower
14 may file suit against the lender:

15 (1) for any appropriate injunctive relief; and

16 (2) to recover:

17 (A) the borrower's actual damages;

18 (B) \$500 for each annual statement the lender
19 fails to provide to the borrower as required under Subsection (a);

20 (C) \$300 for each annual statement provided to
21 the borrower that does not substantially comply with the
22 requirements of Subsection (a); and

23 (D) the borrower's court costs and reasonable
24 attorney's fees.

25 (c) In addition to the remedies available under Subsection
26 (b), a lender that fails to provide the annual statement required
27 under Subsection (a) with respect to a given calendar year may not

1 demand payment of any amount the lender claims the borrower owes
2 with respect to that calendar year until the lender provides the
3 required statement.

4 Sec. 343.306. PAYOFF STATEMENTS. (a) In this section,
5 "payoff statement" has the meaning assigned by Section 12.017,
6 Property Code.

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

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

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

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

1 provided to the requestor.

2 (f) If a mortgage servicer violates this section, the
3 borrower may file suit against the mortgage servicer:

4 (1) for any appropriate injunctive relief; and

5 (2) to recover:

6 (A) the borrower's actual damages;

7 (B) \$100 for each payoff statement the lender
8 fails to provide to or on behalf of the borrower as required by this
9 section; and

10 (C) the borrower's court costs and reasonable
11 attorney's fees.

12 Sec. 343.307. RESTRICTIONS ON USE OF DEEDS IN LIEU OF
13 FORECLOSURE. (a) A lender may not obtain, file, or threaten to
14 file a deed that conveys or purports to convey real property
15 securing a home loan to the lender in satisfaction of a debt and is
16 signed by the borrower at a time when the borrower is not in default
17 on the loan.

18 (b) If a lender violates this section, the affected borrower
19 may file suit against the lender:

20 (1) for any appropriate injunctive relief; and

21 (2) to recover:

22 (A) the borrower's actual damages;

23 (B) a penalty in an amount equal to 10 percent of
24 the original principal amount of the home loan; and

25 (C) the borrower's court costs and reasonable
26 attorney's fees.

27 Sec. 343.308. NOTICE OF ASSIGNMENT, SALE, OR OTHER TRANSFER

1 OF LOAN SERVICING. (a) Except as provided by Subsection (f), a
2 mortgage servicer shall notify the borrower in writing of any
3 assignment, sale, or other transfer of the servicing of a home loan
4 to any other person.

5 (b) The notice required by Subsection (a) must contain:

6 (1) the effective date of the transfer;

7 (2) the name, address, and telephone number of the
8 transferee mortgage servicer;

9 (3) the name and telephone number of an individual
10 employed by, or the office or department of, the transferor
11 mortgage servicer that can be contacted by the borrower to answer
12 inquiries relating to the transfer of servicing;

13 (4) the name and telephone number of an individual
14 employed by, or the office or department of, the transferee
15 mortgage servicer that can be contacted by the borrower to answer
16 inquiries relating to the transfer of servicing;

17 (5) the date on which the transferor mortgage servicer
18 who is servicing the mortgage loan before the assignment, sale, or
19 other transfer will cease to accept payments relating to the loan
20 and the date on which the transferee mortgage servicer will begin to
21 accept the payments;

22 (6) any information concerning any effect the transfer
23 may have on the terms or the continued availability of mortgage life
24 or disability insurance or any other type of optional insurance and
25 what action, if any, the borrower must take to maintain coverage;
26 and

27 (7) a statement that the assignment, sale, or other

1 transfer of the servicing of the loan does not affect any term or
2 condition of the security instruments other than terms directly
3 related to the servicing of the loan.

4 (c) Except as provided by Subsection (e), a transferor
5 mortgage servicer shall provide the notice required under
6 Subsection (a) not later than the 15th day before the effective date
7 of the assignment, sale, or other transfer of the servicing of the
8 home loan.

9 (d) A transferee mortgage servicer to which the servicing of
10 a home loan is assigned, sold, or otherwise transferred shall
11 notify the borrower of the transfer to the same extent as a
12 transferor mortgage servicer is required to notify the borrower of
13 the transfer. Except as provided by Subsection (e), the notice must
14 be provided not later than the 15th day after the effective date of
15 the transfer.

16 (e) A mortgage servicer shall provide the notice required by
17 Subsection (a) or (d) not later than the 30th day after the
18 effective date of the assignment, sale, or other transfer of the
19 servicing of the home loan if the transfer was preceded by:

20 (1) termination of the contract for servicing the loan
21 for cause; or

22 (2) commencement of proceedings for bankruptcy of the
23 servicer or an entity by which the servicer is owned or controlled.

24 (f) A transferor mortgage servicer or transferee mortgage
25 servicer is not required to provide notice of an assignment, sale,
26 or other transfer of the servicing of a home loan as required by
27 this section if the lender provides to the borrower, at settlement

1 with respect to the property for the purchase of which the loan is
2 made, written notice of the assignment, sale, or other transfer of
3 the servicing of the loan and that notice contains the information
4 required by Subsection (b).

5 (g) A mortgage servicer may not impose a late fee on a
6 borrower with respect to, or otherwise treat as late, any payment on
7 a home loan made by the borrower during the period beginning on the
8 effective date of the assignment, sale, or other transfer of the
9 servicing of the loan and ending on the 60th day after that date if
10 the payment is received by the transferor servicer instead of the
11 transferee servicer before the applicable due date.

12 Sec. 343.309. NOTICE OF ASSIGNMENT, SALE, OR OTHER TRANSFER
13 OF HOME LOAN. (a) A lender shall notify the borrower in writing of
14 any assignment, sale, or other transfer of a home loan to any other
15 person not later than the 15th day before the effective date of the
16 transfer.

17 (b) The notice required under Subsection (a) must contain:

18 (1) the effective date of the transfer;

19 (2) the name and telephone number of an individual
20 employed by, or the office or department of, the transferor lender
21 that can be contacted by the borrower to answer inquiries relating
22 to the transfer of the loan; and

23 (3) the name and telephone number of an individual
24 employed by, or the office or department of, the transferee that can
25 be contacted by the borrower to answer inquiries relating to the
26 transfer of the loan.

27 Sec. 343.310. DUTY OF MORTGAGE SERVICER TO RESPOND TO

1 BORROWER REQUEST. (a) If a mortgage servicer receives a qualified
2 written request from the borrower or an agent of the borrower for
3 information relating to the servicing of the loan, the servicer
4 shall, not later than the fifth day after the date the request is
5 received, provide a written response acknowledging receipt of the
6 correspondence or take the requested action. For purposes of this
7 subsection, a qualified written request is a written
8 correspondence, other than notice on a payment coupon or other
9 payment medium supplied by the servicer, that:

10 (1) includes, or otherwise enables the servicer to
11 identify, the name and account of the borrower; and

12 (2) states, to the extent applicable, the reasons the
13 borrower believes that the account is in error or provides
14 sufficient detail to the servicer regarding other information
15 sought by the borrower.

16 (b) Not later than the 30th day after the date the request is
17 received, and, if applicable, before taking action with respect to
18 the request, the mortgage servicer shall:

19 (1) make appropriate corrections to the borrower's
20 account, including the crediting of any late charges or penalties,
21 and shall transmit to the borrower a written notification of the
22 correction, including the name and telephone number of a
23 representative of the servicer who can assist the borrower;

24 (2) after conducting an investigation, provide to the
25 borrower a written explanation or clarification that states:

26 (A) to the extent applicable, the reasons the
27 servicer believes the account is correct as determined by the

1 servicer; and

2 (B) the name and telephone number of an
3 individual employee of, or the office or department of, the
4 servicer who can assist the borrower; or

5 (3) after conducting an investigation, provide to the
6 borrower:

7 (A) a written explanation or clarification that
8 includes information requested by the borrower;

9 (B) a written explanation of why the information
10 requested is unavailable or cannot be obtained by the servicer; and

11 (C) the name and telephone number of an
12 individual employee of, or the office or department of, the
13 servicer who can assist the borrower.

14 (c) During the period beginning on the date a servicer
15 receives from a borrower a qualified written request relating to a
16 dispute regarding the borrower's payments and ending on the 60th
17 day after that date, a servicer may not provide to a consumer
18 reporting agency, as defined by 15 U.S.C. Section 1681a,
19 information regarding any overdue payment owed by the borrower and
20 relating to the period or qualified written request.

21 Sec. 343.311. FORCE-PLACED HAZARD INSURANCE. (a) In this
22 section, "force-placed hazard insurance" means hazard insurance
23 coverage obtained by a mortgage servicer with respect to real
24 property securing a home loan when the borrower fails to maintain or
25 renew hazard insurance on the property as required under the terms
26 of the loan.

27 (b) A mortgage servicer may not obtain force-placed hazard

1 insurance unless the servicer has a reasonable basis to believe
2 that the borrower has failed to comply with the terms of the home
3 loan requiring that the borrower maintain hazard insurance on the
4 property.

5 (c) For purposes of this section, a mortgage servicer does
6 not have a reasonable basis for obtaining force-placed hazard
7 insurance unless:

8 (1) the servicer has mailed, by first-class mail, a
9 written notice to the borrower that contains:

10 (A) a reminder of the borrower's obligation to
11 maintain hazard insurance on the property securing the home loan;

12 (B) a statement that the servicer does not have
13 evidence of the required insurance coverage of the property;

14 (C) a clear and conspicuous statement of the
15 procedures by which the borrower may demonstrate that the borrower
16 already has the required coverage; and

17 (D) a statement that the servicer may obtain the
18 required coverage at the borrower's expense if the borrower does
19 not demonstrate that the borrower has the required coverage in a
20 timely manner;

21 (2) the servicer has mailed, by first-class mail, a
22 second written notice, not later than the 30th day after the date
23 the notice under Subdivision (1) was mailed, that contains all the
24 information described by that subdivision; and

25 (3) the servicer has not received from the borrower
26 any demonstration of the required coverage for the property
27 securing the home loan by the end of the 15-day period beginning on

1 the date the notice under Subdivision (2) was mailed by the
2 servicer.

3 (d) A mortgage servicer must accept from a borrower any
4 reasonable form of written confirmation that the borrower has the
5 required coverage, including:

6 (1) the existing insurance policy number along with
7 the identity of and contact information for the insurance company
8 or agent; or

9 (2) confirmation authorized by finance commission
10 rule.

11 (e) Not later than the 15th day after the date a mortgage
12 servicer receives confirmation that a borrower has the required
13 hazard insurance coverage, the servicer shall:

14 (1) terminate any force-placed hazard insurance; and

15 (2) refund to the borrower:

16 (A) all force-placed hazard insurance premiums
17 paid by the borrower during any period in which the borrower's
18 insurance coverage and the force-placed hazard insurance coverage
19 were both in effect; and

20 (B) any related fees charged to the borrower's
21 account with respect to the force-placed hazard insurance during
22 that period.

23 (f) A charge relating to force-placed hazard insurance
24 imposed on a borrower by or through a mortgage servicer must be bona
25 fide and reasonable.

26 Sec. 343.312. LIABILITY FOR CERTAIN VIOLATIONS UNDER THIS
27 SUBCHAPTER. (a) Except as provided by Subsection (e), a mortgage

1 servicer that violates Section 343.308 or 343.310 is liable to the
2 borrower for damages as provided by this section.

3 (b) If an action is brought under this section by a single
4 borrower, the mortgage servicer is liable for:

5 (1) any actual damages to the borrower as a result of
6 the violation; and

7 (2) any additional damages the court allows, in the
8 case of a pattern or practice of violations of this section, in an
9 amount not to exceed \$2,000.

10 (c) If the action is a class action, the mortgage servicer
11 is liable for:

12 (1) any actual damages to each of the borrowers in the
13 class as a result of the violation; and

14 (2) any additional damages the court allows, in the
15 case of a pattern or practice of violations of this section, in an
16 amount not to exceed \$1,000 for each member of the class, provided
17 that the total amount of damages under this subdivision in any class
18 action may not exceed the lesser of:

19 (A) \$1,000,000; or

20 (B) one percent of the net worth of the mortgage
21 servicer.

22 (d) In addition to the amounts awarded under Subsection (b)
23 or (c), a mortgage servicer who violates this section is liable for
24 court costs and reasonable attorney's fees incurred in connection
25 with the action.

26 (e) A mortgage servicer is not liable under this section for
27 any failure to comply with a requirement of Section 343.308 or

1 343.310 if, not later than the 60th day after the date an error is
2 discovered by the servicer and before the commencement of an action
3 under this section and the receipt of written notice of the error
4 from the borrower, the servicer notifies the borrower of the error
5 and makes any adjustments necessary to the appropriate account to
6 ensure that the borrower will not be required to pay an amount in
7 excess of any amount that the borrower otherwise would have paid.

8 SECTION 2. This Act takes effect January 1, 2012.