

By: Lucio, et al.
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S.B. No. 1319

Substitute the following for S.B. No. 1319:

By: Truitt

C.S.S.B. No. 1319

A BILL TO BE ENTITLED

AN ACT

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

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. INFORMATION FURNISHED BY RESIDENTIAL MORTGAGE

SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

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

(b) This chapter does not apply to a loan if the mortgage

1 servicer is a natural person who is related to the borrower within
2 the second degree by consanguinity or affinity, as determined under
3 Subchapter B, Chapter 573, Government Code.

4 [Sections 397.003-397.050 reserved for expansion]

5 SUBCHAPTER B. BORROWER REQUESTS FOR INFORMATION

6 Sec. 397.051. RULES. The Finance Commission of Texas may
7 adopt rules necessary to implement this subchapter.

8 Sec. 397.052. RECEIPTS FOR PAYMENTS BY BORROWERS. At the
9 request of a borrower, a mortgage servicer shall provide a receipt
10 to the borrower each time the mortgage servicer accepts payment
11 from the borrower. The receipt must clearly and conspicuously
12 state:

13 (1) the amount received by the mortgage servicer as
14 payment toward the loan; and

15 (2) how the amount described by Subdivision (1) was
16 applied to the borrower's account.

17 Sec. 397.053. ANNUAL ACCOUNTING STATEMENT. A mortgage
18 servicer shall provide to the borrower an annual statement in
19 January of each year for the term of the loan. The statement must
20 clearly and conspicuously state the following information:

21 (1) the amount of each payment that was received by the
22 mortgage servicer as payment toward the loan during the preceding
23 calendar year;

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

27 (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 calendar year; and

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

9 Sec. 397.054. PAYOFF STATEMENTS. (a) In this section,
10 "payoff statement" has the meaning assigned by Section 12.017,
11 Property Code.

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

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

23 (d) After a mortgage servicer has provided two payoff
24 statements during a calendar year to or on behalf of a borrower
25 under Subsection (b) without charge, other than processing fees
26 authorized under Subsection (c), the mortgage servicer may charge a
27 reasonable fee for providing a payoff statement to or on behalf of

1 the borrower during the remainder of the calendar year.

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

7 Sec. 397.055. PROVISION OF INFORMATION REGARDING DISPUTE OR
8 ERROR. (a) A mortgage servicer shall provide a written statement
9 to a borrower in response to a borrower's written request for
10 information regarding a dispute or error involving the borrower'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 borrower that:

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

6 [Sections 397.056-397.100 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 BORROWER. In addition to any other
12 legal and equitable remedy available, a borrower injured by a
13 violation of this chapter may bring an action:

14 (1) for injunctive relief to require compliance with
15 this chapter; and

16 (2) to recover:

17 (A) actual damages, including reasonable
18 attorney's fees; and

19 (B) \$500 for each violation of this chapter.

20 Sec. 397.103. ACTION BY ATTORNEY GENERAL. (a) The
21 attorney general may bring an action on behalf of the state:

22 (1) for injunctive relief to require compliance with
23 this chapter;

24 (2) to recover a civil penalty of \$500 for each
25 violation of this chapter; or

26 (3) for both injunctive relief and to recover the
27 civil penalty.

1 constructed.

2 Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING
3 RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) A seller of
4 residential real estate or a person who makes an extension of credit
5 and takes a security interest or mortgage against residential real
6 estate may not, before or at the time of the conveyance of the
7 residential real estate to the purchaser or the extension of credit
8 to the borrower, request or require the purchaser or borrower to
9 execute and deliver to the seller or person making the extension of
10 credit a deed conveying the residential real estate to the seller or
11 person making the extension of credit.

12 (b) A deed executed in violation of this section is voidable
13 unless a subsequent purchaser of the residential real estate, for
14 valuable consideration, obtains an interest in the property after
15 the deed was recorded without notice of the violation, including
16 notice provided by actual possession of the property by the grantor
17 of the deed. The residential real estate continues to be subject to
18 the security interest of a creditor who, without notice of the
19 violation, granted an extension of credit to a borrower based on the
20 deed executed in violation of this section.

21 (c) A purchaser or borrower must bring an action to void a
22 deed executed in violation of this section not later than the fourth
23 anniversary of the date the deed was recorded.

24 Sec. 21.003. CIVIL ACTION FOR DAMAGES. A person who
25 violates Section 21.002 is liable to the purchaser or borrower for:

26 (1) actual damages;

27 (2) exemplary damages in an amount equal to or greater

1 than \$5,000 and not more than three times the amount of actual
2 damages;

3 (3) court costs; and

4 (4) reasonable attorney's fees.

5 SECTION 3. Section 24.004, Property Code, is amended to
6 read as follows:

7 Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as
8 provided by Subsection (b), a [A] justice court in the precinct in
9 which the real property is located has jurisdiction in eviction
10 suits. Eviction suits include forcible entry and detainer and
11 forcible detainer suits.

12 (b) A justice court does not have jurisdiction in a forcible
13 entry and detainer or forcible detainer suit and shall dismiss the
14 suit if the defendant files a sworn statement alleging the suit is
15 based on a deed executed in violation of Chapter 21, Business &
16 Commerce Code.

17 SECTION 4. This Act takes effect September 1, 2011.