

1-1 By: Lucio S.B. No. 1319
1-2 (In the Senate - Filed March 8, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1319 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; or

1-27 (2) a loan that is primarily for business, commercial,
1-28 or agricultural purposes, or for temporary financing, such as a
1-29 construction loan, as referred to under 12 U.S.C. Section 2602.

1-30 (b) This chapter does not apply to a loan if the mortgage
1-31 servicer is a natural person who is related to the borrower within
1-32 the second degree by consanguinity or affinity, as determined under
1-33 Subchapter B, Chapter 573, Government Code.

1-34 [Sections 397.003-397.050 reserved for expansion]

1-35 SUBCHAPTER B. BORROWER REQUESTS FOR INFORMATION

1-36 Sec. 397.051. RULES. The Finance Commission of Texas may
1-37 adopt rules necessary to implement this subchapter.

1-38 Sec. 397.052. RECEIPTS FOR PAYMENTS REQUIRED. Each time a
1-39 mortgage servicer accepts payment from a borrower, the mortgage
1-40 servicer shall provide a receipt to the borrower that clearly and
1-41 conspicuously states:

1-42 (1) the amount received by the mortgage servicer as
1-43 payment toward the loan; and

1-44 (2) how the amount described by Subdivision (1) was
1-45 applied to the borrower's account.

1-46 Sec. 397.053. ANNUAL ACCOUNTING STATEMENT. A mortgage
1-47 servicer shall provide to the borrower an annual statement in
1-48 January of each year for the term of the loan. The statement must
1-49 clearly and conspicuously state the following information:

1-50 (1) the amount of each payment that was received by the
1-51 mortgage servicer as payment toward the loan during the preceding
1-52 calendar year;

1-53 (2) how each payment described by Subdivision (1) was
1-54 applied to the borrower's account, including a statement of the
1-55 amount of each payment that was applied to:

1-56 (A) the borrower's principal obligation under
1-57 the loan;

1-58 (B) the interest charged on the loan;

1-59 (C) any escrow or suspense account associated
1-60 with the loan; and

1-61 (D) any fee or other charge assessed against the
1-62 borrower during the preceding calendar year; and

1-63 (3) the outstanding balance of the borrower's

2-1 principal obligation under the loan.
2-2 Sec. 397.054. PAYOFF STATEMENTS. (a) In this section,
2-3 "payoff statement" has the meaning assigned by Section 12.017,
2-4 Property Code.

2-5 (b) Except as provided by Subsection (c) and subject to
2-6 Subsection (d), a mortgage servicer may not charge a fee for
2-7 preparing or transmitting a payoff statement to a borrower or other
2-8 person requesting a payoff statement on behalf of the borrower.

2-9 (c) A mortgage servicer may charge a reasonable processing
2-10 fee to cover the cost of providing a payoff statement by facsimile
2-11 transmission or by a courier service if, before charging the fee,
2-12 the mortgage servicer discloses to the requestor that payoff
2-13 statements are available for free if the requestor requests that
2-14 the statement be provided in a manner that will not result in the
2-15 charging of a processing fee.

2-16 (d) After a mortgage servicer has provided two payoff
2-17 statements during a calendar year to or on behalf of a borrower
2-18 under Subsection (b) without charge, other than processing fees
2-19 authorized under Subsection (c), the mortgage servicer may charge a
2-20 reasonable fee for providing a payoff statement to or on behalf of
2-21 the borrower during the remainder of the calendar year.

2-22 (e) A mortgage servicer shall provide a payoff statement not
2-23 later than the 10th day after the date the lender receives the
2-24 request for the payoff statement from or on behalf of a borrower,
2-25 and the statement must be valid for a reasonable time after being
2-26 provided to the requestor.

2-27 Sec. 397.055. PROVISION OF INFORMATION REGARDING DISPUTE OR
2-28 ERROR. (a) A mortgage servicer shall provide a written statement
2-29 to a borrower in response to a borrower's written request for
2-30 information regarding a dispute or error involving the borrower's
2-31 account that includes the following information, if requested:

2-32 (1) whether the account is current and an explanation
2-33 of any default and the date the account went into default;

2-34 (2) the current balance due on the loan, including the
2-35 principal due, the amount of any funds held in a suspense account,
2-36 the amount of any escrow balance known to the servicer, and whether
2-37 there are any escrow deficiencies or shortages known to the
2-38 servicer;

2-39 (3) the identity, address, and other relevant
2-40 information about the current holder, owner, or assignee of the
2-41 loan; and

2-42 (4) the telephone number and mailing address of a
2-43 servicer representative with the information and authority to
2-44 answer questions and resolve disputes.

2-45 (b) A mortgage servicer must provide a statement under
2-46 Subsection (a) on or before the 10th day after the date the servicer
2-47 receives a written request from the borrower that:

2-48 (1) includes or otherwise enables the servicer to
2-49 identify the name and account of the borrower; and

2-50 (2) includes a statement that the account is or may be
2-51 in error or otherwise provides sufficient detail to the servicer
2-52 regarding information sought by the borrower.

2-53 [Sections 397.056-397.100 reserved for expansion]

2-54 SUBCHAPTER C. REMEDIES

2-55 Sec. 397.101. ENFORCEMENT GENERALLY. The Department of
2-56 Savings and Mortgage Lending, the attorney general, or any party to
2-57 a loan to which this chapter applies may enforce this chapter.

2-58 Sec. 397.102. ACTION BY BORROWER. In addition to any other
2-59 legal and equitable remedy available, a borrower injured by a
2-60 violation of this chapter may bring an action:

2-61 (1) for injunctive relief to require compliance with
2-62 this chapter; and

2-63 (2) to recover:

2-64 (A) actual damages, including reasonable
2-65 attorney's fees; and

2-66 (B) \$500 for each violation of this chapter.

2-67 Sec. 397.103. ACTION BY ATTORNEY GENERAL. (a) The
2-68 attorney general may bring an action on behalf of the state:

2-69 (1) for injunctive relief to require compliance with

3-1 this chapter;
3-2 (2) to recover a civil penalty of \$500 for each
3-3 violation of this chapter; or
3-4 (3) for both injunctive relief and to recover the
3-5 civil penalty.

3-6 (b) The attorney general is entitled to recover reasonable
3-7 expenses incurred in obtaining injunctive relief or a civil
3-8 penalty, or both, under this section, including court costs,
3-9 reasonable attorney's fees, and investigatory costs.

3-10 (c) The court may make such additional orders or judgments
3-11 as are necessary to compensate identifiable persons for actual
3-12 damages or to restore money or property, real or personal, that may
3-13 have been acquired by means of any violation of this chapter.
3-14 Damages may not include any damages incurred beyond a point two
3-15 years before the institution of the action by the attorney general.
3-16 Orders of the court may also include the appointment of a receiver
3-17 or a sequestration of assets if a person who has been ordered by a
3-18 court to make restitution under this section has failed to do so
3-19 within three months after the order to make restitution has become
3-20 final and nonappealable.

3-21 (d) In bringing or participating in an action under this
3-22 chapter, the attorney general acts in the name of the state and does
3-23 not establish an attorney-client relationship with another person,
3-24 including a person to whom the attorney general requests that the
3-25 court award relief.

3-26 SECTION 2. Title 2, Business & Commerce Code, is amended by
3-27 adding Chapter 21 to read as follows:

3-28 CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS INVOLVING
3-29 RESIDENTIAL REAL ESTATE

3-30 Sec. 21.001. DEFINITION. In this chapter, "residential
3-31 real estate" means real property on which a dwelling designed for
3-32 occupancy for one to four families is constructed or intended to be
3-33 constructed.

3-34 Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING
3-35 RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) A seller of
3-36 residential real estate or a person who makes an extension of credit
3-37 and takes a security interest or mortgage against residential real
3-38 estate may not, before or at the time of the conveyance of the
3-39 residential real estate to the purchaser or the extension of credit
3-40 to the borrower, request or require the purchaser or borrower to
3-41 execute and deliver to the seller or person making the extension of
3-42 credit a deed conveying the residential real estate to the seller or
3-43 person making the extension of credit.

3-44 (b) A deed executed in violation of this section is voidable
3-45 unless a subsequent purchaser of the residential real estate, for
3-46 valuable consideration, obtains an interest in the property after
3-47 the deed was recorded without notice of the violation, including
3-48 notice provided by actual possession of the property by the grantor
3-49 of the deed. The residential real estate continues to be subject to
3-50 the security interest of a creditor who, without notice of the
3-51 violation, granted an extension of credit to a borrower based on the
3-52 deed executed in violation of this section.

3-53 (c) A purchaser or borrower must bring an action to void a
3-54 deed executed in violation of this section not later than the fourth
3-55 anniversary of the date the deed was recorded.

3-56 Sec. 21.003. CIVIL ACTION FOR DAMAGES. A person who
3-57 violates Section 21.002 is liable to the purchaser or borrower for:

- 3-58 (1) actual damages;
- 3-59 (2) exemplary damages in an amount equal to or greater
3-60 than \$5,000 and not more than three times the amount of actual
3-61 damages;
- 3-62 (3) court costs; and
- 3-63 (4) reasonable attorney's fees.

3-64 SECTION 3. Section 24.004, Property Code, is amended to
3-65 read as follows:

3-66 Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as
3-67 provided by Subsection (b), a [A] justice court in the precinct in
3-68 which the real property is located has jurisdiction in eviction
3-69 suits. Eviction suits include forcible entry and detainer and

4-1 forcible detainer suits.

4-2 (b) A justice court does not have jurisdiction in a forcible
4-3 entry and detainer or forcible detainer suit and shall dismiss the
4-4 suit if the defendant files a sworn statement alleging the suit is
4-5 based on a deed executed in violation of Chapter 21, Business &
4-6 Commerce Code.

4-7 SECTION 4. This Act takes effect September 1, 2011.

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