

SENATE AMENDMENTS

2nd Printing

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.

ADOPTED

MAY 24 2011

Atty. Gen.
Secretary of the Senate

By: (Lucio) Rodriguez

H.B. No. 213

Substitute the following for H.B. No. 213:

By: June, 5th

C.S. H.B. No. 213

A BILL TO BE ENTITLED

1

AN ACT

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

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

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

8 CHAPTER 397. INFORMATION FURNISHED BY RESIDENTIAL MORTGAGE

9 SERVICERS

10 SUBCHAPTER A. GENERAL PROVISIONS

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

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

17 (1) a federally related mortgage loan, as defined by
18 12 U.S.C. Section 2602;

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

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

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

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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.

FLOOR AMENDMENT NO. 1

ADOPTED BY:



MAY 24 2011

1 Amend C.S.H.B. No. 213 (Senate committee printing), by
2 striking on page 3, lines 56 ^{Secretary of the Senate} thru 66, and substituting the
3 following:

4 "(c) A purchaser or borrower must bring an action to void
5 a deed executed in violation of this section not later than the
6 fourth anniversary of the date the deed was recorded. A
7 purchaser or borrower who is a prevailing party in an action to
8 void a deed under this section may recover reasonable and
9 necessary attorney's fees.

10 Sec. 21.003 ACTION BY ATTORNEY GENERAL. (a) The attorney
11 general may bring an action on behalf of the state:

12 (1) for injunctive relief to require compliance with
13 this chapter;

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

16 (3) for both injunctive relief and to recover the
17 civil penalty.

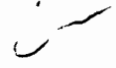
18 (b) The attorney general is entitled to recover reasonable
19 expenses incurred in obtaining injunctive relief or a civil
20 penalty, or both, under this section, including court costs and
21 reasonable attorney's fees.

22 (c) The court may make such additional orders or judgments
23 as are necessary to return to the purchaser a deed conveying
24 residential real estate that the court finds was acquired by
25 means of any violation of this chapter.

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

1 that the court award relief.

2 (e) An action by the attorney general must be brought not
3 later than the fourth anniversary of the date the deed was
4 recorded."



LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB213 by Rodriguez, Eddie (Relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property; providing civil penalties.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Finance Code relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property. The bill would require certain mortgage servicers to provide receipts to a borrower, at the borrower's request, each time a mortgage servicer accepts a payment. The bill also requires certain lenders to provide borrowers with an annual statement. The bill establishes requirements and guidelines for mortgage servicers to provide payoff statements. The bill requires that a mortgage servicer provide a written statement to a borrower in response to a borrower's written request for information regarding a dispute or error involving the borrower's account. The bill grants that the Attorney General may bring an action on behalf of the state for injunctive relief to require compliance with the provisions added by the bill, or to recover a civil penalty for each violation of this chapter. The bill prohibits the execution and delivery to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit in certain transactions.

Based on the analysis of the Attorney General and the Office of Court Administration, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The fiscal impacts of costs and revenues that may be generated in association with implementing the provisions of the bill for the Department of Savings and Mortgage Lending are not considered in this analysis because fiscal impacts for this agency would be realized outside of the Treasury due to this agency being Self-Directed and Semi-Independent.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 212 Office of Court Administration, Texas Judicial Council, 450 Department of Savings and Mortgage Lending

LBB Staff: JOB, RAN, AG, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB213 by Rodriguez, Eddie (Relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property; providing civil penalties.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Finance Code relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property. The bill would require certain mortgage servicers to provide receipts to a borrower, at the borrower's request, each time a mortgage servicer accepts a payment. The bill also requires certain lenders to provide borrowers with an annual statement. The bill establishes requirements and guidelines for mortgage servicers to provide payoff statements. The bill requires that a mortgage servicer provide a written statement to a borrower in response to a borrower's written request for information regarding a dispute or error involving the borrower's account. The bill grants that the Attorney General may bring an action on behalf of the state for injunctive relief to require compliance with the provisions added by the bill, or to recover a civil penalty for each violation of this chapter. The bill prohibits the execution and delivery to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit in certain transactions.

Based on the analysis of the Attorney General and the Office of Court Administration, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The fiscal impacts of costs and revenues that may be generated in association with implementing the provisions of the bill for the Department of Savings and Mortgage Lending are not considered in this analysis because fiscal impacts for this agency would be realized outside of the Treasury due to this agency being Self-Directed and Semi-Independent.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 450 Department of Savings and Mortgage Lending

LBB Staff: JOB, RAN, AG, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 13, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB213 by Rodriguez, Eddie (Relating to the duties of a mortgage servicer of certain residential mortgage loans.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Finance Code to require certain mortgage servicers to provide records to a debtor upon written request and imposes record keeping requirements. The bill would delineate the process by which a debtor can request records regarding a dispute or error involving the debtor's account. The bill provides for enforcement of these provisions by the Office of the Attorney General, the Department of Savings and Mortgage Lending or any party to the loan.

Based on the analysis of the Office of the Attorney General it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Costs associated with the implementation of the bill for the Department of Savings and Mortgage Lending are not considered in this analysis because fiscal impacts for this agency would be realized outside of the Treasury due to this agency being Self-Directed and Semi-Independent.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 450 Department of Savings and Mortgage Lending

LBB Staff: JOB, AG, MW, RAN

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 14, 2011

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB213 by Rodriguez, Eddie (Relating to the duties of a mortgage servicer of certain residential mortgage loans.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Finance Code to require certain mortgage servicers to provide records to a debtor upon written request and imposes record keeping requirements. The bill would delineate the process by which a debtor can request records regarding a dispute or error involving the debtor's account. The bill provides for enforcement of these provisions by the Office of the Attorney General, the Department of Savings and Mortgage Lending or any party to the loan.

Based on the analysis of the Office of the Attorney General it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Costs associated with the implementation of the bill for the Department of Savings and Mortgage Lending are not considered in this analysis because fiscal impacts for this agency would be realized outside of the Treasury due to this agency being Self-Directed and Semi-Independent.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 450 Department of Savings and Mortgage Lending

LBB Staff: JOB, AG, MW, RAN