

House Bill 213
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

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

[Sections 397.003-397.050 reserved for expansion]

SUBCHAPTER B. BORROWER REQUESTS FOR INFORMATION

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Sec. 397.052. PROVISION OF GENERAL INFORMATION ON REQUEST. (a) A mortgage servicer shall provide the following to a debtor in response to a debtor's written request:

(1) a copy of the original note or, if the original note is unavailable, an affidavit of lost note; and

(2) a statement that:

(A) identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the debtor, and other activity on the loan, including any escrow or suspense account activity; and

(B) covers the two years preceding the receipt of the request or the period for which the servicer has serviced the loan, whichever is shorter.

(b) If the mortgage servicer claims that delinquent or outstanding sums were owed on the loan before the two-year period preceding the receipt of the request under Subsection (a) or before the servicer began servicing the loan, whichever is shorter, the servicer shall provide an account history beginning with the earliest month for which the servicer claims outstanding sums were owed on the loan and ending on the date of the request for information. For purposes of this subsection, the date of the request for information is presumed to be not later than the 30th day before the date the servicer receives the request.

(c) A mortgage servicer must provide a statement under Subsection (a) on or before the 25th business day after the date the servicer receives a written request from the debtor

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

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

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

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

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that:

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

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

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

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

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

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

(B) the interest charged on the loan;

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

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

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

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

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

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borrower.

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

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

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

Sec. 397.053. PROVISION OF INFORMATION REGARDING DISPUTE OR ERROR. (a) A mortgage servicer shall provide a written statement to a debtor in response to a debtor's written request for information regarding a dispute or error involving the debtor's account that includes the following information, if requested:

- (1) whether the account is current and an explanation of any default and the date the account went into default;
- (2) the current balance due on the loan, including the principal due, the amount of any funds held in a suspense account, the amount of any escrow balance known to the servicer, and whether there are any escrow deficiencies or

Sec. 397.055. PROVISION OF INFORMATION REGARDING DISPUTE OR ERROR. (a) A mortgage servicer shall 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 that includes the following information, if requested:

- (1) whether the account is current and an explanation of any default and the date the account went into default;
- (2) the current balance due on the loan, including the principal due, the amount of any funds held in a suspense account, the amount of any escrow balance known to the servicer, and whether there are any escrow deficiencies or

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shortages known to the servicer;

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

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

(b) A mortgage servicer must provide a statement under Subsection (a) on or before the 10th day after the date the servicer receives a written request from the **debtor** that:

(1) includes or otherwise enables the servicer to identify the name and account of the **debtor**; and

(2) includes a statement that the account is or may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the **debtor**.

[Sections **397.054**-397.100 reserved for expansion]

SUBCHAPTER C. REMEDIES

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

Sec. 397.102. ACTION BY **DEBTOR**. In addition to any other legal and equitable remedy available, a **debtor** injured by a violation of this chapter may bring an action for recovery of **actual damages, including reasonable attorney's fees.**

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shortages known to the servicer;

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

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

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

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

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

[Sections **397.056**-397.100 reserved for expansion]

SUBCHAPTER C. REMEDIES

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

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

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

(2) to recover:

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

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

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

(1) for injunctive relief to require compliance with this

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chapter;

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

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

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

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

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

No equivalent provision.

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

CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS INVOLVING RESIDENTIAL REAL ESTATE

Sec. 21.001. DEFINITION. In this chapter, "residential real

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estate" means real property on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) A seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate may not, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, request or require the purchaser or borrower to execute and deliver 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.

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

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

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

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

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

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

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

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

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

(e) An action by the attorney general must be brought not later than the fourth anniversary of the date the deed was recorded. [FA1]

No equivalent provision.

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

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

(b) A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss

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the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21, Business & Commerce Code.

SECTION 2. This Act takes effect September 1, 2011.

SECTION 4. Same as House version.