

BILL ANALYSIS

Senate Research Center
83R4625 DDT-F

S.B. 1334
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Business & Commerce
4/12/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

An increasing number of Texas families rely on owner-seller financing to purchase their homes. These privately negotiated agreements can vary greatly from one transaction to another. Some sellers may include features such as escrow accounts for taxes and insurance while others may not. Borrowers also encounter a wide range of consequences of late or missed payments that make their account status confusing and potentially unlike any past experiences with other lenders.

The Real Estate Settlement Procedures Act (Act) is the main federal law covering escrow accounts and is enforced by the United States Department of Housing and Urban Development (HUD). The Act only applies to mortgage servicers whose loans are for the purchase of residential property and whose loans are made by banks whose deposits are federally insured, are insured or supplemented by a HUD program, are sold to federally insured mortgage loan pools, and total more than \$1 million.

When the Act does not apply, buyers have no enforceable right to information about their account status with their mortgage lender. As a result, many Texas homebuyers may not know whether taxes and insurance are being paid, how late payments affect their principal balance, or whether an issue with the account has put them at risk of foreclosure. Sellers often refuse to give buyers any information, and some continue to insist that buyers pay them long after the debt has been satisfied.

S.B. 1334 addresses this problem by requiring non-federally regulated entities that sell real estate to provide the buyer with at least one account statement each year.

As proposed, S.B. 1334 amends current law relating to accounting and payoff statements for certain seller-financed residential loans and provides a penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 343, Finance Code, by adding Subchapter D, as follows:

SUBCHAPTER D. SELLER-FINANCED RESIDENTIAL LOANS

Sec. 343.301. APPLICATION. Provides that this subchapter applies only to a seller-financed loan secured by a purchase money lien on residential real property that is not a federally related mortgage loan, as defined by 12 U.S.C. Section 2602.

Sec. 343.302. ANNUAL ACCOUNTING STATEMENT REQUIRED. (a) Requires the lender to provide to the borrower an accounting statement in January of each year for the term of the loan. Requires that the statement, if the lender mails the statement to the borrower, be postmarked not later than January 31.

(b) Requires the accounting statement to include the following information:

- (1) the amount paid toward the outstanding balance of the loan during the preceding calendar year, including separate amounts showing the total amount applied to interest and the total amount applied to principal;
- (2) the remaining principal balance owed on the loan;
- (3) the number of payments remaining on the loan;
- (4) the amounts paid to taxing authorities on the borrower's behalf if collected by the lender; and
- (5) the amounts paid to insure the property on the borrower's behalf if collected by the lender.

(c) Provides that, except as provided by Section 343.304, in addition to any other legal and equitable remedy available, a lender under this section who fails to comply with this section is liable to a borrower who is injured by the violation for:

- (1) a penalty in the amount of \$500;
- (2) actual damages;
- (3) court costs; and
- (4) reasonable attorney's fees.

Sec. 343.303. PAYMENT CONSIDERED TIMELY. Provides that, in a proceeding related to a loan to which this subchapter applies, including an action brought under Section 343.302(c), a loan payment is considered to have been paid on the due date by the borrower if the payment came due during a calendar year for which the lender did not provide a required accounting statement to the borrower under Section 343.302.

Sec. 343.304. OTHER PENALTIES AND LIABILITIES NOT APPLICABLE. Provides that Chapter 349 (Penalties and Liabilities) does not apply to a violation of this subchapter.

SECTION 2. Amends Section 343.106, Finance Code, by adding Subsection (h), as follows:

(h) Provides that for purposes of providing a payoff statement required under this section for a seller-financed loan to which Subchapter D applies, a loan payment made to the lender is considered to have been paid on the due date by the borrower if the payment came due during a calendar year for which the lender did not provide a required accounting statement to the borrower under Section 343.302.

SECTION 3. Provides that a lender is not required to provide an accounting statement required by Section 343.302, Finance Code, as added by this Act, before January 1, 2014.

SECTION 4. Effective date: September 1, 2013.