

By: Raymond

H.B. No. 3181

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the non-judicial foreclosure of a loan for the purchase of certain residential property during a loan modification process; providing a penalty.

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

SECTION 1. Chapter 343, Finance Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. REQUIREMENTS FOR MORTGAGE SERVICERS OF HOME LOANS

Sec. 343.301. DEFINITIONS. In this subchapter:

(1) "Foreclosure prevention alternative" means a loan modification or other alternative to foreclosure offered by or through a mortgage servicer.

(2) "Mortgage servicer" has the meaning assigned by Section 51.0001, Property Code.

Sec. 343.302. DUAL-TRACKING NON-JUDICIAL FORECLOSURE PROHIBITED. (a) This section applies only to a home loan that is a federally related mortgage loan, as defined by 12 U.S.C. Section 2602, secured by a deed of trust or other contract lien on real property used as the borrower's residence.

(b) If a borrower submits a complete application for a loan modification offered by or through the borrower's mortgage servicer, the mortgage servicer or trustee may not serve a notice of default or notice of sale or exercise a power of sale under Section 51.002, Property Code, while the application is pending and before

1 the borrower has been provided with a written determination by the  
2 mortgage servicer regarding the borrower's eligibility for the  
3 requested loan modification.

4 (c) If a foreclosure prevention alternative is approved in  
5 writing before the service of a notice of default under Section  
6 51.002(d), Property Code, the mortgage servicer or trustee may not  
7 serve a notice of default if:

8 (1) the borrower is in compliance with the written  
9 terms of a trial or permanent loan modification, forbearance, or  
10 repayment plan; or

11 (2) a foreclosure prevention alternative has been  
12 approved in writing by all parties, including, for example, the  
13 holder of the note, junior lienholder, and mortgage insurer, as  
14 applicable, and proof of funds or financing has been provided to the  
15 mortgage servicer.

16 (d) If a foreclosure prevention alternative is approved in  
17 writing after the service of a notice of default under Section  
18 51.002(d), Property Code, a mortgage servicer or trustee may not  
19 serve a notice of sale or exercise a power of sale under Section  
20 51.002, Property Code, if:

21 (1) the borrower is in compliance with the written  
22 terms of a trial or permanent loan modification, forbearance, or  
23 repayment plan; or

24 (2) a foreclosure prevention alternative has been  
25 approved in writing by all parties, including, for example, the  
26 holder of the note, junior lienholder, and mortgage insurer, as  
27 applicable, and proof of funds or financing has been provided to the

1 mortgage servicer.

2 (e) For purposes of this section, an application is  
3 considered complete when a borrower has supplied the mortgage  
4 servicer with all documents required by the mortgage servicer for  
5 the application within a reasonable time specified by the mortgage  
6 servicer.

7 Sec. 343.303. FORECLOSURE PREVENTION ALTERNATIVE SURVIVES  
8 TRANSFER. If a borrower has been approved in writing for a loan  
9 modification or other foreclosure prevention alternative and the  
10 borrower's loan is transferred or sold, the subsequent mortgage  
11 servicer shall continue to honor any previously approved loan  
12 modification or other foreclosure prevention alternative and is  
13 subject to Section 343.302 to the same extent as the previous  
14 mortgage servicer.

15 Sec. 343.304. LIABILITY. (a) A person who violates Section  
16 343.302 or 343.303 is liable to the borrower for:

17 (1) any actual damages to the borrower as a result of  
18 the violation; or

19 (2) if the court finds that the violation was the  
20 result of reckless conduct or intentional or wilful misconduct, the  
21 greater of:

22 (A) three times the borrower's actual damages; or

23 (B) \$50,000.

24 (b) In addition to the amounts awarded under Subsection (a),  
25 a person who is liable under this section is liable for court costs  
26 and reasonable attorney's fees incurred in connection with the  
27 action.

1           SECTION 2. Subchapter D, Chapter 343, Finance Code, as  
2 added by this Act, applies only to a sale of residential real  
3 property for which notice of default under Section 51.002(d),  
4 Property Code, is provided on or after the effective date of this  
5 Act. A sale in which notice of default is provided before the  
6 effective date of this Act is subject to the law in effect  
7 immediately before that date, and that law is continued in effect  
8 for that purpose.

9           SECTION 3. This Act takes effect September 1, 2013.