

SUBJECT: Regulating duties of a residential mortgage servicer to a borrower

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 5 ayes — Truitt, Flynn, Hernandez, Hopson, Parker
0 nays
4 absent — Anchia, Anderson, Veasey, Woolley

WITNESSES: (*On original version:*)
For — Robert Doggett, Texas Low Income Housing Information Service;
(*Registered, but did not testify:* Catherine Blue, Kenneth Clebourn,
Edward Jones, Anita Robinson, Debra Walker, Association of Community
Organizations for Reform Now (ACORN))

Against — Larry Temple, Texas Mortgage Bankers Association;
(*Registered, but did not testify:* John Heasley, Texas Bankers Association)

DIGEST: CSHB 2694 would amend Finance Code, title 5 to add ch. 397 to regulate residential mortgage servicers regarding information provided to debtors. The bill's provisions would not apply to a loan secured by a first lien on residential real property that is a federally related mortgage loan.

The bill would define mortgage servicer as the last person to whom a mortgagor has been instructed by the current mortgagee, including a mortgage servicer, to send payments for the debt secured by a security instrument as provided in Property Code, sec. 51.0001.

Required response to mortgage information request. A mortgage servicer would maintain written or electronic records of each written request for information regarding a dispute or error with a debtor's account until the loan was paid in full, otherwise satisfied, or sold. Additionally, the mortgage servicer would have to provide a copy of the original note or an affidavit of a lost note in response to a debtor's written request. The mortgage servicer also would have to provide, upon written request, a statement that:

- identified and itemized all fees and charges assessed under the loan transaction and provided a full payment history clearly identifying all 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
- covered the two years preceding the receipt of the request or the period for which the servicer has serviced the loan, whichever was shorter.

If the mortgage servicer claimed that delinquent or outstanding sums were owed on the loan before the two-year information request period or before the servicer began serving the loan, the servicer would provide an account history beginning with the earliest month for which the servicer claimed outstanding sums were owed on the loan and ending on the date of the request for information. The servicer would provide the statement within 25 days of receiving the information request from the debtor that included:

- the name and account of the debtor; and
- a statement that the account was or could be in error, or otherwise provided sufficient detail to the servicer regarding the information sought.

Information in dispute or error. A mortgage servicer would provide a written statement to a debtor in response to his or her written information request regarding a dispute or error with the debtor's account that, if requested, would include:

- whether the account was current and an explanation of any default and the date the account went into default;
- 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 known escrow balance, and whether there were any known escrow deficiencies or shortages;
- the identity, address, and other relevant information about the current holder, owner, or assignee of the loan; and
- the telephone number and mailing address of a servicer representative with the information and authority to answer questions and revolve disputes.

The mortgage servicer would provide a statement regarding a dispute or error with the debtor's account within 10 days if the debtor's request was clear and direct.

Enforcement action. The bill would provide enforcement authority to the Department of Savings and Mortgage Lending, attorney general, or other applicable party to the loan. A debtor injured by a violation of these provisions could bring an action for recovery of actual damages, including reasonable attorney's fees, in addition to any other available legal and equitable remedy.

The bill would take effect September 1, 2009.

SUPPORTERS
SAY:

CSHB 2694 would represent a proactive approach to provide homeowners with appropriate protection by outlining responsibilities of mortgage servicers. As mortgage servicers play an important role in administering a home loan, including collecting monthly loan payments for account credit, holding the homeowner's account information, and having the ability to assess fees and other charges, it is important to ensure that their relationship to consumers is transparent and responsive. CSHB 2694 would establish that transparency and provide consumer protections to ensure that consumers could access their account information and dispute any error with the loan holder. While many of these protections are outlined in the federal Real Estate Settlement Procedures Act (RESPA), the bill would codify in state law and extend these protections to those mortgage servicers that are outside the scope of federal regulation.

OPPONENTS
SAY:

While no one is disputing the need for consumer protections that CSHB 2694 would provide, as there are existing federal regulations covering mortgage servicers provided by RESPA, the bill would be unnecessary and duplicative.

NOTES:

The committee substitute provided that the bill's provisions would not apply to federally related mortgage loans.