

- SUBJECT:** Requiring payoff statements for home loans
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Deshotel, Elkins, Christian, England, Gattis, Keffer, S. Miller, Orr, Quintanilla
- 0 nays
- 2 absent — Giddings, S. Turner
- WITNESSES:** For — None
- Against — Karen Neeley, Independent Bankers Association of Texas; Larry Temple, Texas Mortgage Bankers Association; (*Registered, but did not testify*: Frank Bradshaw; Sandee Bradshaw, Self; Nancy Hentschel)
- BACKGROUND:** Finance Code, ch. 343, subch. B addresses home loans, including:
- refinancing, under sec. 343.101;
  - restrictions on single premium credit insurance, under sec. 343.104; and
  - notice of penalties for making false or misleading written statements, under sec. 343.105.
- DIGEST:** CSHB 4397 would amend Finance Code, ch. 343, subch. B by requiring a payoff statement from a mortgage servicer, outlining required elements for the payoff statement, detailing provisions for correcting errors in a payoff statement, and imposing penalties for non-compliance.
- Payoff statement for a home loan.*** Within five business days of receiving a request for a payoff statement for a home loan from a mortgagor or person acting on the mortgagor's behalf, a mortgage servicer would have to deliver a payoff statement to the requestor. A request for a payoff statement would have to be addressed to the mortgagee at the address provided in the most recent applicable security instrument on the property recorded with the county clerk of the county in which the property was located.

The Finance Commission would adopt by rule a standard form to be used by a mortgage servicer to provide a requested payoff statement. The completed form for a payoff statement would have to include:

- the legal description of the real property securing the home loan as the description appeared in the mortgage or other security instrument;
- the names of each mortgagor, trustee, and mortgagee named in the mortgage, or other security instrument;
- a statement of the original amount of the home loan;
- the unpaid balance of the original home loan and any other debts owed by the mortgagor to the mortgagee that are secured by the real property securing the home loan, including principal, interest, and other charges properly assessed under the documentation for the home loan and other debts;
- the interest on a per diem basis for the unpaid balance of the home loan from the date the payoff statement was prepared until the closing date;
- the unpaid balance and the interest on a per diem basis for the unpaid balance of any other debts owed by the mortgagor to the mortgagee with respect to the real property that was security for the home loan, if applicable;
- the proposed closing date for the sale and purchase of the real property securing the home loan or for any other transaction that would involve the payoff of the home loan and any other debts;
- the signature of an authorized officer or agent of the mortgagee; and
- any additional information the Finance Commission deemed necessary.

A mortgage servicer or mortgagee could not demand that a mortgagor pay a payoff amount in excess of the amount listed in the payoff statement if the mortgage servicer provided a requested completed payoff statement form meeting the requirements.

***Actions from an error in a payoff statement.*** If a mortgage servicer or mortgagee noticed a material error in a payoff statement, either party could correct and deliver the statement on or before the second business day before the specified closing date. The corrected payoff statement would have to be delivered to the requestor via certified mail with return receipt requested by electronic means, if such means were provided to the

mortgage servicer. A material error would be an error in the payoff amount contained in a payoff statement when the correct payoff amount, minus the amount included in the payoff statement, was more than one-half of 1 percent of the original amount of the home loan and the amount of any other debts owed by the mortgagor to the mortgagee secured by the real property securing the home loan.

If a mortgage servicer made an error in a payoff amount in the payoff statement that resulted in the mortgage servicer requesting an amount that was less than the correct payoff amount and the affected transaction was closed, the difference between the amount in the payoff statement and the correct payoff amount would become an unsecured liability of the former mortgagor owed to the mortgagee.

A home loan and other obligations would be considered paid in full if a mortgagor paid the unpaid balance and interest on a per diem amount calculated through the proposed closing date in the payoff statement, including any corrected statement. Additionally, if the mortgagor paid these amounts, the mortgagee would have to provide to the mortgagor, within a reasonable time after payment, a release of the lien on the real property securing the home loan and any other obligations, or a copy of an endorsement and assignment of the lien to a lender that was refinancing the home loan.

***Penalties.*** A mortgage servicer who did not provide a payoff statement for a home loan upon request from a mortgagor within five business days would be liable for any actual damages suffered by the mortgagor as a result of the violation, reasonable attorney's fees, and court costs.

***Effective date.*** The Finance Commission would adopt a form for the payoff statement as soon as practicable after the effective date. Until the Finance Commission adopted a form for the payoff statement, a mortgage servicer would not be required to comply with the bill.

The bill would take effect September 1, 2009.

SUPPORTERS  
SAY:

CSHB 4397 would provide transparency to the payoff of mortgages by authorizing the Finance Commission to establish a standard form of payoff statement to be used in Texas. It also would make the properly requested and completed payoff reliable. Thousands of mortgage loans are refinanced or paid in full every year. In order to have reasonable

assurance that the holder of the loan will release the lien upon receipt of the payoff of the balance, it is important for the borrower, the title company and the new lender to obtain a payoff statement from the holder of the loan. To ensure that all parties of the transaction are treated fairly, it is crucial that the payoff statement be reliable.

Sometimes lenders refuse to provide a written payoff statement or find an error in the statement and refuse to release the lien on the property unless they are paid additional money. These actions violate sound business practices and place the new lender and the title companies at risk. CSHB 4397 would address this by allowing material errors to be addressed within two business days before the closing date, providing a balance where the party closing the new loan has an obligation to provide a reasonably secure closing date, while giving the lender a chance to review the information provided to the party closing the transaction and providing a last opportunity to make corrections.

**OPPONENTS  
SAY:**

This bill would mandate potentially burdensome requirements for mortgage servicers to include a litany of information on the payoff statement. Instead of codifying this through statute, information required in the payoff statement should be left to the Finance Commission to establish via rule with the input of all major stakeholders to ensure flexibility and reasonableness.

The bill also would be strengthened if it provided that any significant errors found in a payoff statement, not just a material one, be corrected. This could easily be done within the two-day correction period.