

SUBJECT: Requiring payoff statements for home loans

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons
0 nays
2 absent — S. Miller, Workman

WITNESSES: For — Timothy Redding, First American Title Insurance Company and Texas Land Title Association; (*Registered, but did not testify*, Mike Barnett, Texas Association of Realtors; Robert Doggett, Texas Housing Justice League)

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

BACKGROUND: Finance Code, ch. 343, subch. B addresses home loans, including refinancing, restrictions on single premium credit insurance, and notice of penalties for making false or misleading written statements.

DIGEST: CSHB 558 would amend Finance Code, ch. 343, subch. B by requiring a payoff statement from a mortgage servicer, outlining required elements for the payoff statement, and detailing provisions for correcting errors in a payoff statement.

Payoff statement for a home loan. The bill would require the Finance Commission of Texas to adopt rules governing requests from title insurance companies for payoff statements from mortgage servicers for home loans, including rules for a standard payoff statement form. The completed payoff statement form would have to state the proposed closing date and the payoff amount that would be valid through that date.

The finance commission would be required to set a time— at least seven days after the date the request was received— by which the payoff statement would have to be delivered to the requestor.

Actions from an error in a payoff statement. Once a mortgage servicer provided a completed payoff statement, the mortgage servicer or mortgagee could not, on or before the closing date, demand that a mortgagor pay more than the amount noted on the payoff statement unless a corrected payoff statement were delivered on or before the second business day before the closing date. A corrected statement would have to be sent to the title company by certified mail with a return receipt requested and electronically if the requestor had provided the means to do so.

If a payoff statement listed an amount less than the correct payoff amount, a corrected payoff statement was not properly delivered to the title company, and the mortgage servicer received the amount listed on the payoff statement, the difference between the correct and stated payoff amounts would remain the liability of the former mortgagor.

If the payoff statement were provided in connection with the sale of real property, the deed of trust or contract lien would be released, and within a reasonable time after receipt of payment the mortgagee or mortgage servicer would have to deliver to the title company a release of the deed of trust or other contract lien securing an interest in the property. Any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, would be subject to a constructive trust to pay the difference in the correct and listed payoff amounts.

If the payoff statement were provided during a refinancing of an existing home loan, the lien securing the existing home loan would become subordinate to the lien securing the new home loan. Any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, would be subject to a constructive trust to pay the difference in the correct and listed payoff amounts.

Effective date. A mortgage servicer would not be required to comply with these provisions until 90 days after the finance commission adopted the rules.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 558 would solve a long-standing problem with mortgage lenders failing to release liens and demanding higher amounts than listed on payoff statements. Mortgage lenders now can refuse to provide a written payoff statement and instead issue a letter with language allowing them to recant the payoff or simply find an error and refuse to issue the release until they are paid additional funds. Such actions place the new lender and the title company at risk.

This bill would provide balance, ensuring that the borrower still was liable for the balance owed to the lender but requiring the removal of the lien on the property. The bill would allow for a corrected statement within two business days before the closing date, providing a balance whereby the party closing the new loan had an obligation to provide a reasonably secure closing date while the lender had an opportunity to review the information provided to the party closing the transaction.

**OPPONENTS
SAY:**

CSHB 558 is unnecessary and inappropriate. The bill could cause a mortgage lender to lose significant sums of money due to an inadvertent administrative error.

NOTES:

The committee substitute differs from the bill as filed by requiring the payoff statement to be delivered at least seven days after the request instead of three days.

Under the committee substitute, in the event of an incorrect payoff statement, the difference between the amount in the statement and the correct amount would remain a liability of the former mortgagor owed to the mortgagee, and it provides for what would occur if the payoff statement were in connection with the sale of real property or with a refinance of an existing home loan. The filed bill stated that the difference between the correct and incorrect payoff amount would become an unsecured liability of the former mortgager owed to the mortgagee.

The committee substitute also added provisions exempting compliance until 90 days after the rules have been adopted by the commission.