HB 1936
Oliveira, Flynn

SUBJECT: Notice for mortgage servicer of contract with owner, property tax lender

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — Josue Lopez, ARISE and LUPE; Thomas Tallent, Cendera Funding, Inc.; Ford Sasser, Independent Bankers Association of Texas, Texas Bankers Association; Richard Ruppert, Texas Land Developers; John Fleming, Texas Mortgage Bankers Association; (*Registered, but did not testify*: Melodie Durst, Credit Union Coalition of Texas; Stephen Scurlock, Independent Bankers Association of Texas; Brian Yarbrough, JPMorgan Chase; Doug Foster, Polunsky Beitel Green; Paulina McGrath, Republic State Mortgage Co.; Kristin Clardy, Security National Mortgage Company; Tom Rhodes, Sente Mortgage; Scott Gillen, Stewart Title; Daniel Gonzalez, Texas Association of Realtors; John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Nate Walker, Texas Family Council; Chuck Rice, Texas Land Developers Association; Will Livesley-O'Neill, Texas Low Income Housing Information Service; Pam Jenkins, Dayna McElreath, Suzanne Mayer Burke, Suzanne Smith, Pam McCollum, Angela Watson, Fred Worley III, Troy Garris, Julie Gross, Cari McCue, Mary Pirrello, Mark Raskin, Mike Schmuelgen, Kristin Willoughby, Amy Coke, Jim Clapp, Winifred Hrncir, Michael Lee, Paul Pritchett, and Kathie Thomas, Texas Mortgage Bankers Association; Tracy Maynard Cole; David Rembert; Ruth Ruhl)

Against — Paul Halstead, Ovation Financial Services; Charles Brown, Matt Longhofer, and Jack Nelson, Texas Property Tax Lienholders Association; Kathleen Hunker, Texas Public Policy Foundation; (*Registered, but did not testify*: Jim Arnold, Protect My Texas Property; Bill Hammond, Texas Association of Business; Corey Allen, Cissy Larkin, and Kristin Willoughby, Texas Mortgage Bankers Association; Doug Ruby, TPTLA)

On — Vicki Truitt, Mackie, Wolf, Zeintz and Mann; Leslie Pettijohn, Office of Consumer Credit Commissioner

BACKGROUND: Tax Code, sec. 32.06 allows a property owner to authorize another person (a transferee) to pay the taxes imposed on the owner's real property. The owner must file with the tax collector certain information about the transferee and a sworn document stating:

- the authorization for payment of the taxes;
- the name and address of the transferee authorized to pay the taxes of the property owner;
- a description of the property by street address and legal description; and
- that notice has been given to the property owner that if the owner is disabled they may be eligible for a tax deferral.

DIGEST: HB 1936 would require property owners to send a notice to any applicable mortgage servicer before they could enter into a contract with a transferee to pay delinquent taxes on their property. The notice would indicate that the owner intended to enter into the contract with the transferee. The bill would require the notice to be sent at least 10 days before the execution date of the contract.

Under current law, a property owner may authorize another person to pay the taxes on the owner's real property by filing with the collector for the taxing unit a statement swearing to certain facts. The bill would add to that statement the fact that the notice described above was sent by certified mail to any applicable mortgage servicer.

The bill would take effect September 1, 2015, and would apply only to a contract between a property owner and a transferee authorizing the transferee to pay the delinquent taxes on the property that was entered into on or after that date.

SUPPORTERS SAY: HB 1936 would provide mortgage servicers the opportunity to protect their liens and collateral by requiring property owners to send notice before they entered into a contract with a property tax lender. It also would benefit property owners who were struggling to pay their property taxes by giving them more options.

The bill would protect the sanctity of contracts and the property interests of mortgage servicers. The mortgage servicer would have 10 days to work out an agreement with the property owner to pay the taxes on the property without involving a third party. Currently, mortgage servicers usually do not learn that their customers have entered into these contracts until after the deal has closed. This bill would give them notice before the contract was signed.

When a property owner becomes delinquent on property taxes, the government has a superior lien on the property to the mortgage servicer in the amount of the taxes owed. When a property tax lender pays those taxes, it steps into the shoes of the government, giving it a superior lien to the mortgage servicer. Property tax lenders do not have to verify a borrower's ability to repay, which results in frequent defaults on these loans. When borrowers default, mortgage servicers often pay the remaining balance to protect their interest in the property by keeping the property tax lender from foreclosing on the property.

This bill would protect property owners from the property tax lenders that use predatory lending practices. Some claim that property tax lenders can offer the best option to property owners because an agreement with the mortgage servicer to pay the property taxes drastically could increase the property owner's monthly payments; however, property tax lenders charge high interest rates, making their monthly payments substantial. Another option that is better than a contract with a property tax lender for property owners is to enter into an agreement with the taxing entity to repay the taxes at a lower rate.

Even if the property owner's monthly payments increased because their mortgage servicer paid the property taxes, it would benefit the property owner in the long run. Under the deed of trust, if a mortgage servicer loans money for property taxes, the future monthly mortgage payments must be paid into an escrow account. The property owner has to pay for the mortgage, the amount borrowed to cover the taxes, and an amount to cover the next year's taxes. This would increase monthly payments, but it would provide a structured process to ensure the property owner would not be delinquent on future property taxes, which would benefit both the owner and the mortgage servicer.

HB 1936 would not impose a duty on property tax lenders — the only duty imposed would be on property owners. The bill would not encourage mortgage servicers to interfere with potential contracts between property owners and property tax lenders. In fact, property tax lenders would be the ones interfering with the mortgage contract if they were to pay the property owner's property taxes. The bill would not favor one business over another. Instead, it would favor giving consumers options. By requiring the property owner to give notice to the mortgage servicers, HB 1936 would allow owners to get more information about the options available to pay their property taxes.

Critics of the bill argue that the notice is unnecessary because mortgage servicers can collect information themselves about which clients are delinquent in their taxes, but data mining is not the business of mortgage servicers. Property tax lenders engage in data mining because that is how they learn about potential new clients.

OPPONENTS SAY:

HB 1936 could affect a property owner's best chance to restructure their property tax payments. When mortgage servicers lend money to pay property taxes, the property owner must start making monthly payments into escrow. The amounts due each month can double or even triple. This can turn short-term financial trouble into an extended financial crisis. Property tax lenders can lend money with a low monthly payment plan that property owners can afford in addition to their monthly mortgage payment. This bill would protect the first lienholder, not the property owner. Property tax lenders offer important services to help property owners keep people in their homes.

The bill would invite mortgage servicers to interrupt negotiations between property owners and property tax lenders. Mortgage servicers sometimes discourage property owners from using property tax lending services by incorrectly characterizing their services as predatory. The property tax lending industry is heavily regulated, especially regarding what information can be used in advertisements. This heavy regulation ensures consumer protection. The bill would give mortgage servicers 10 days to interfere with a contract between a property owner and a property tax lender. Many property owners do not contact property tax lenders until they are within 10 days of the taxes being due. The 10-day notice required by the bill is 10 days that the property owner would not have. After the taxes are due, fees begin to accrue and the amount of debt increases.

The bill would give preferential treatment to one business over another by allowing mortgage servicers to profit unfairly from the work of property tax lenders. Mortgage servicers can conduct the same kind of data mining that property tax lenders conduct to discover which customers need help with their property taxes. The notice requirement is unnecessary because the information is already available to mortgage servicers.