

SUBJECT: Requiring disclosure of home mortgage information to a surviving spouse

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 5 ayes — Parker, Longoria, Capriglione, Flynn, Stephenson

0 nays

2 absent — Landgraf, Pickett

WITNESSES: For — Carlos Higgins, Texas Silver Haired Legislature; Thelma Clardy;
Nicole Thornton

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

On — (*Registered, but did not testify*: Caroline Jones, Texas Department
of Savings and Mortgage Lending)

DIGEST: CSHB 831 would require mortgage servicers to provide certain
information to surviving spouses of deceased mortgagors if the spouse
supplied certain documents.

A surviving spouse requesting information from a mortgage servicer
would have to prove his or her status as the surviving spouse by providing
the mortgage servicer with a death certificate of the mortgagor, an
affidavit of disinterested witnesses with language stating that the
surviving spouse was married to the mortgagor at the time of the
mortgagor's death, and an affidavit signed by the surviving spouse stating
that the spouse currently was residing in the underlying mortgaged
property as the primary residence.

The request also would be required to include a notice to the mortgage
servicer that stated the following in bold-faced, capital, or underlined
letters: "This request is made pursuant to Texas Finance Code section

343.103. Subsequent disclosure of information is not in conflict with the Gramm-Leach-Bliley Act under 15 U.S.C. section 6802(e)(8).”

A mortgage servicer of a home loan would be required to provide the surviving spouse of the mortgagor with information within 30 days after receiving a request from the spouse accompanied by the documents described above. The required information, which the mortgagor would have received in a standard monthly statement, would include:

- the current balance information, including the due dates and the amount of any installments;
- whether the loan was current and any amounts that were delinquent;
- any loan number; and
- the amount of any escrow deposit for taxes and insurance purposes.

CSHB 831 would specify that a mortgage servicer that provided information to a surviving spouse as required by this bill would not be liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 831 would create a process for surviving spouses to obtain important information about their spouses' mortgages. Currently, mortgage servicers require surviving spouses who are not listed on the mortgage to undergo some kind of judicial action, such as a formal probate or an heirship determination, before the mortgage servicer will give any information to the surviving spouse regarding the mortgage. These actions can be expensive, can take a long time to complete, and can be unnecessary. The bill would offer an alternative to allow surviving spouses to receive important information.

The bill would allow surviving spouses to receive only basic mortgage information and would not have any effect on determining heirs or assuming the mortgage. The surviving spouse, therefore, would not be

considered an “obligor” under Finance Code, sec. 349.003, and only an obligor would have standing to sue a mortgage servicer for failing to provide information under this bill.

CSHB 831 would not conflict with federal disclosure laws under 15 U.S.C., sec. 6802 because the bill would create a state law that mandated this disclosure. While the federal Consumer Protection Bureau is considering a new rule that might cover the issues addressed by this bill, there is no guarantee that any rule actually will be implemented. Even though a new rule was proposed, the waiting periods required for notice and comment could delay implementation. Surviving spouses need access to this information now.

**OPPONENTS
SAY:**

CSHB 831 may not be the best avenue to address this issue. While the bill would specify that mortgage servicers who complied with the bill would not be liable to the estate of the mortgagor, or to the heirs or beneficiaries, the bill would not protect mortgage servicers against being sued by the surviving spouse for refusing, in good faith, to disclose the requested information. Under Finance Code, sec. 349.003, a mortgage servicer could be liable if it failed to perform a requirement such as the one prescribed by this bill.

In 2014, the Consumer Financial Protection Bureau proposed a rule to address similar issues. The federal rule would be a more appropriate avenue to change financial disclosure requirements to ensure that state and federal law did not conflict. The rule also would be more appropriate than state law because many mortgage servicers operate in multiple states. Operating in multiple states is more difficult when a state’s law differs from federal rules.