

## **BILL ANALYSIS**

Senate Research Center

H.B. 213  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas State Affordable Housing Corporation estimates regarding the recent rate of foreclosure on Texas homes raise concerns about the causes for the foreclosures. While there are a variety of causes for the foreclosure rate, there is little question that fees, penalties, and associated charges by mortgage servicers are contributing factors. Almost every major mortgage loan holder, including trusts containing hundreds of securitized mortgage loans, uses a mortgage servicer to administer the loan whose duties include collecting monthly loan payments and crediting accounts. A mortgage servicer also handles escrow accounts, which are funds held by the servicer into which the borrower pays money to cover expenses such as property taxes and homeowner's insurance. Escrow payments typically are combined with monthly mortgage payments with the understanding that the servicer will pay the taxes and insurance as they become due during the year. If a borrower does not have an escrow account, the borrower is responsible for paying the taxes and insurance and budgeting accordingly.

Escrow accounts are covered under the Real Estate Settlement Procedures Act (RESPA), the primary federal law covering escrow accounts, and RESPA is enforced by the Department of Housing and Urban Development. However, there is concern about the extent and adequacy of the regulation of the practices of mortgage servicers in Texas when the loan is outside of the scope of federal regulation and exempt from RESPA provisions. H.B. 213 adopts provisions applicable only to a loan that is not a federally related mortgage loan and that is secured by a first lien on residential real property.

H.B. 213 amends current law relating to the duties of a mortgage servicer of certain residential mortgage loans.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5, Finance Code, by adding Chapter 397, as follows:

#### CHAPTER 397. RESIDENTIAL MORTGAGE SERVICERS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 397.001. DEFINITION. Defines, in this chapter, "mortgagee" and "mortgage servicer."

Sec. 397.002. APPLICABILITY. Provides that this chapter applies only to a loan secured by a first lien on residential real property that:

(1) is not a federally related mortgage loan, as defined by 12 U.S.C. Section 2602; and

(2) is serviced by a mortgage servicer other than the mortgagee of the loan.

[Reserves Sections 397.003-397.050 for expansion.]

## SUBCHAPTER B. DEBTOR REQUESTS FOR INFORMATION

Sec. 397.051. RECORDKEEPING. Requires a mortgage servicer to maintain written or electronic records of each written request for information regarding a dispute or error involving the debtor's account until the loan is paid in full, otherwise satisfied, or sold.

Sec. 397.052. PROVISION OF GENERAL INFORMATION ON REQUEST. (a) Requires a mortgage servicer to provide the following to a debtor in response to a debtor's written request:

(1) a copy of the original note or, if the original note is unavailable, an affidavit of lost note; and

(2) a statement that:

(A) identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the 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

(B) covers the two years preceding the receipt of the request or the period for which the servicer has serviced the loan, whichever is shorter.

(b) Requires the servicer, if the mortgage servicer claims that delinquent or outstanding sums were owed on the loan before the two-year period preceding the receipt of the request under Subsection (a) or before the servicer began servicing the loan, whichever is shorter, to provide an account history beginning with the earliest month for which the servicer claims outstanding sums were owed on the loan and ending on the date of the request for information. Provides that, for purposes of this subsection, the date of the request for information is presumed to be not later than the 30th day before the date the servicer receives the request.

(c) Requires a mortgage servicer to provide a statement under Subsection (a) on or before the 25th business day after the date the servicer receives a written request from the debtor that:

(1) includes or otherwise enables the servicer to identify the name and account of the debtor; and

(2) includes a statement that the account is or may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the debtor.

Sec. 397.053. PROVISION OF INFORMATION REGARDING DISPUTE OR ERROR. (a) Requires a mortgage servicer to provide a written statement to a debtor in response to a debtor's written request for information regarding a dispute or error involving the debtor's account that includes the following information, if requested:

(1) whether the account is current and an explanation of any default and the date the account went into default;

(2) 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 escrow

balance known to the servicer, and whether there are any escrow deficiencies or shortages known to the servicer;

(3) the identity, address, and other relevant information about the current holder, owner, or assignee of the loan; and

(4) the telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes.

(b) Requires a mortgage servicer to provide a statement under Subsection (a) on or before the 10th day after the date the servicer receives a written request from the debtor that:

(1) includes or otherwise enables the servicer to identify the name and account of the debtor; and

(2) includes a statement that the account is or may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the debtor.

[Reserves Sections 397.054-397.100 for expansion.]

#### SUBCHAPTER C. REMEDIES

Sec. 397.101. ENFORCEMENT GENERALLY. Authorizes the Department of Savings and Mortgage Lending, the attorney general, or any party to a loan to which this chapter applies to enforce this chapter.

Sec. 397.102. ACTION BY DEBTOR. Authorizes a debtor injured by a violation of this chapter, in addition to any other legal and equitable remedy available, to bring an action for recovery of actual damages, including reasonable attorney's fees.

SECTION 2. Effective date: September 1, 2011.