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S.B. No. 1284

A BILL TO BE ENTITLED

AN ACT

1
2 relating to home loans and foreclosures on residential real
3 property.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 156.205(b), Finance Code, is amended to
6 read as follows:

7 (b) A mortgage broker must maintain net assets of at least
8 \$25,000 or a surety bond in the amount of at least \$100,000
9 [~~\$50,000~~]. The term of the surety bond must coincide with the term
10 of the license. The finance commission may adopt rules
11 establishing the terms and conditions of the surety bond and the
12 qualifications of the surety.

13 SECTION 2. Subchapter C, Chapter 156, Finance Code, is
14 amended by adding Section 156.216 to read as follows:

15 Sec. 156.216. LOAN STEERING PROHIBITED. (a) In this
16 section, "subprime home loan" has the meaning assigned by Section
17 343.301.

18 (b) A mortgage broker may not offer or recommend a subprime
19 home loan if there is a mortgage loan product known to the mortgage
20 broker that is available to the prospective borrower and is
21 projected to cost the prospective borrower less over the projected
22 term of the loan than the subprime home loan.

23 SECTION 3. Section 341.502(a), Finance Code, is amended to
24 read as follows:

1 (a) A contract for a loan under Chapter 342, a retail
2 installment transaction under Chapter 348, or a home equity loan or
3 other home loan regulated by the Office of Consumer Credit
4 Commissioner must be:

5 (1) written in plain language designed to be easily
6 understood by the average consumer; and

7 (2) printed in an easily readable font and type size.

8 SECTION 4. Subchapter B, Chapter 343, Finance Code, is
9 amended by adding Section 343.103 to read as follows:

10 Sec. 343.103. NOTICE REQUIRED BEFORE INTEREST RATE
11 ADJUSTMENT. (a) In this section, "adjustable rate home loan" means
12 a home loan that has an interest rate that is subject to change.

13 (b) This section applies only to an adjustable rate home
14 loan that has an interest rate that is fixed for a certain period.

15 (c) At least 120 days before the date of an increase in the
16 interest rate on an adjustable rate home loan to which this section
17 applies, the lender shall provide the borrower with a notice of the
18 rate increase.

19 SECTION 5. Section 343.104, Finance Code, is amended to
20 read as follows:

21 Sec. 343.104. FINANCING [~~RESTRICTIONS ON SINGLE PREMIUM~~]
22 CREDIT INSURANCE PROHIBITED. (a) A lender may not make a home loan
23 that finances, directly or indirectly, [offer] any individual or
24 group credit life, disability, or unemployment insurance. [on a
25 prepaid single premium basis in conjunction with a home loan unless
26 the following notice is provided to each applicant for the loan by
27 hand delivery or mail to the applicant not later than the third

1 ~~business day after the date the applicant's application for a home~~
2 ~~loan is received.~~

3 ~~[INSURANCE NOTICE TO APPLICANT~~

4 ~~[You may elect to purchase credit life, disability, or~~
5 ~~involuntary unemployment insurance in conjunction~~
6 ~~with this mortgage loan. If you elect to purchase this~~
7 ~~insurance coverage, you may pay for it either on a~~
8 ~~monthly premium basis or with a single premium payment~~
9 ~~at the time the lender closes this loan. If you choose~~
10 ~~the single premium payment, the cost of the premium~~
11 ~~will be financed at the interest rate provided for in~~
12 ~~the mortgage loan.~~

13 ~~[This insurance is NOT required as a condition of~~
14 ~~closing the mortgage loan and will be included with the~~
15 ~~loan only at your request.~~

16 ~~[You have the right to cancel this credit insurance~~
17 ~~once purchased. If you cancel it within 30 days of the~~
18 ~~date of your loan, you will receive either a full~~
19 ~~refund or a credit against your loan account. If you~~
20 ~~cancel this insurance at any other time, you will~~
21 ~~receive either a refund or credit against your loan~~
22 ~~account of any unearned premium. YOU MUST CANCEL~~
23 ~~WITHIN 30 DAYS OF THE DATE OF THE LOAN TO RECEIVE A FULL~~
24 ~~REFUND OR CREDIT.~~

25 ~~[To assist you in making an informed choice, the~~
26 ~~following estimates of premiums are being provided~~
27 ~~along with an example of the cost of financing. The~~

~~examples assume that the term of the insurance product is ____ years and that the interest rate is _____ percent (a rate that has recently been available for the type of loan you are seeking). PLEASE NOTE THAT THE ACTUAL LOAN TERMS YOU QUALIFY FOR MAY VARY FROM THIS EXAMPLE. "Total amount paid" is the amount that would be paid if you financed only the total insurance premium for a ____ year period and is equal to the amount you would have paid if you made all scheduled payments. This is NOT the total of payments on your loan.~~

~~[CREDIT LIFE INSURANCE: Estimated premium of \$_____~~

~~[DISABILITY INSURANCE: Estimated premium of \$_____~~

~~[INVOLUNTARY UNEMPLOYMENT INSURANCE: _____ Estimated premium of \$_____~~

~~[TOTAL INSURANCE PREMIUMS: \$_____~~

~~[TOTAL AMOUNT PAID: \$_____]~~

(b) For purposes of this section, individual or group credit life, disability, or unemployment insurance premiums calculated and paid on a monthly basis are not considered financed by the lender.

SECTION 6. Chapter 343, Finance Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. SUBPRIME HOME LOANS

Sec. 343.301. DEFINITION. (a) In this subchapter, "subprime home loan" means a home loan in which:

(1) the difference between the annual percentage rate

1 for the home loan at its inception and the yield on United States
2 Treasury securities having comparable periods of maturity to the
3 home loan is three percentage points or more if the loan is a
4 first-lien loan, or is more than five percentage points if the loan
5 is a second-lien loan; or

6 (2) the difference between the annual percentage rate
7 for the home loan at its inception and the annual yield on
8 conventional mortgages published by the Board of Governors of the
9 Federal Reserve System is 1.75 percentage points or more if the loan
10 is a first-lien loan, or is more than 3.75 percentage points if the
11 loan is a second-lien loan.

12 (b) For purposes of Subsection (a)(1), the same procedures
13 and calculation methods applicable to loans that are subject to
14 reporting requirements under the Home Mortgage Disclosure Act of
15 1975 (12 U.S.C. Section 2801 et seq.) shall be used to determine the
16 difference between the annual percentage rate of a subprime home
17 loan and the treasury yield.

18 Sec. 343.302. APPLICABILITY. This subchapter does not
19 apply to a bridge loan.

20 Sec. 343.303. PREPAYMENT PENALTIES PROHIBITED. A subprime
21 home loan may not contain a prepayment penalty.

22 Sec. 343.304. FLIPPING PROHIBITED. A lender may not make a
23 subprime home loan to a borrower who refinances an existing home
24 loan if the new loan does not have reasonable, tangible net benefit
25 to the borrower considering all of the circumstances, including the
26 terms of both the new and refinanced loans, the cost of the new
27 loan, and the borrower's circumstances.

1 Sec. 343.305. NEGATIVE AMORTIZATION PROHIBITED. (a) A
2 subprime home loan may not provide for a payment schedule with
3 regular periodic payments that cause the principal balance to
4 increase.

5 (b) This section does not prohibit negative amortization as
6 a consequence of a temporary forbearance or restructure sought by
7 the borrower.

8 SECTION 7. Section 51.002, Property Code, is amended by
9 adding Subsections (d-1) and (d-2) to read as follows:

10 (d-1) In addition to the notice provided by Subsection (d),
11 a mortgage servicer of the debt shall serve the debtor with a
12 written notice under this subsection. The notice must be affixed to
13 the notice of default provided under Subsection (d). The attorney
14 general shall prescribe the contents of the notice. The notice
15 must:

16 (1) be written in plain language in English and
17 Spanish;

18 (2) be entitled "Rights of Homeowners Facing
19 Foreclosure" or the Spanish equivalent of that title, as
20 applicable; and

21 (3) include:

22 (A) an explanation of foreclosure, including a
23 description of the various processes of foreclosure of a mortgage
24 lien on residential property as applicable to each type of mortgage
25 lien;

26 (B) a statement that state law requires that the
27 debtor in default under a residential mortgage lien be given at

1 least 20 days to cure the default;

2 (C) a description of the handling of payments
3 made after the time for cure has expired;

4 (D) a statement that the debtor and the public
5 must be given at least 21 days' notice of the foreclosure sale and
6 that a foreclosure sale may occur only on the first Tuesday of a
7 month;

8 (E) a description of the options available to the
9 debtor in default to prevent the foreclosure;

10 (F) a description of and contact information for
11 resources available to the debtor to assist in preventing the
12 foreclosure or in filing an action concerning the foreclosure
13 process or the lien being foreclosed, including contact information
14 for a housing counseling agency described by Section 51A.054;

15 (G) a statement that the debtor may designate a
16 housing counseling agency under Section 51A.054 to discuss options
17 for avoiding foreclosure on behalf of the debtor; and

18 (H) any additional information that the attorney
19 general determines appropriate.

20 (d-2) The attorney general shall update the notice
21 prescribed by Subsection (d-1) at least annually and maintain the
22 most current version of the notice on the attorney general's
23 Internet website.

24 SECTION 8. Chapter 51, Property Code, is amended by adding
25 Section 51.010 to read as follows:

26 Sec. 51.010. NOTICE REGARDING MAINTENANCE TO CERTAIN
27 MUNICIPALITIES AND COUNTIES. A person who purchases residential

1 (1) surrendered the property as evidenced by either a
2 letter confirming the surrender or delivery of the keys to the
3 property to the mortgage servicer;

4 (2) contracted with an organization, person, or other
5 entity whose primary business is advising people who have decided
6 to leave their homes on how to extend the foreclosure process and
7 avoid their contractual obligations to mortgagees or
8 beneficiaries; or

9 (3) filed for bankruptcy, and the proceedings have not
10 been finalized.

11 Sec. 51A.053. PREREQUISITES TO NOTICE OF SALE. (a) Before
12 filing a notice of sale under Section 51.002, a mortgage servicer
13 must comply with this subchapter.

14 (b) Compliance with this subchapter constitutes compliance
15 with Section 51.002(d) with respect to a notice of default for the
16 purposes of a sale of real property to which this chapter applies.

17 Sec. 51A.054. CONTACT WITH DEBTOR. (a) The mortgage
18 servicer shall contact the debtor in person or by telephone to
19 assess the debtor's financial situation and explore loan
20 restructuring options for the debtor to avoid foreclosure.

21 (b) The assessment of the debtor's financial situation and
22 discussion of loan restructuring options may occur during the
23 initial contact or at a subsequent meeting scheduled in accordance
24 with this section.

25 (c) If the mortgage servicer makes a good faith attempt to
26 contact the debtor in accordance with Section 51A.055 and is unable
27 to do so, the mortgage servicer may provide notice of default under

1 Section 51.002(d) in accordance with Section 51A.056.

2 (d) A mortgagee's loss mitigation personnel may participate
3 by telephone during any contact under this section.

4 (e) A debtor may designate a housing counseling agency
5 certified by the United States Department of Housing and Urban
6 Development, an attorney, or any other person to discuss with the
7 mortgagee or mortgage servicer on the debtor's behalf options for
8 the debtor to avoid foreclosure. Contact with a person under this
9 subsection must satisfy the requirements of this section for an
10 initial contact with a debtor. Any loan modification or workout
11 plan offered at the meeting by the mortgagee is subject to approval
12 by the debtor.

13 Sec. 51A.055. DUE DILIGENCE. (a) In the absence of contact
14 required by Section 51A.054, the mortgage servicer may file a
15 notice of default under Section 51.002 if the failure to contact the
16 debtor occurred despite the due diligence of the mortgage servicer.

17 (b) For the purposes of this section, "due diligence" means
18 that the mortgage servicer:

19 (1) first attempts to contact a debtor by sending a
20 first-class letter to the debtor's last known address;

21 (2) after the letter required by Subdivision (1) is
22 sent, attempts to contact the debtor by telephone at least three
23 times at different hours and on different days at the primary
24 telephone number on file with the mortgage servicer;

25 (3) if the debtor does not respond within two weeks
26 after the telephone requirements of Subdivision (2) have been met,
27 sends a certified letter, return receipt requested, to the debtor's

1 last known address; and

2 (4) provides a means for the debtor to contact the
3 mortgage servicer in a timely manner, including a toll-free
4 telephone number that will provide access to a live representative
5 during business hours.

6 Sec. 51A.056. NOTICE OF DEFAULT; NOTICE OF SALE. Except as
7 provided by this section, a notice of default under Section 51.002
8 must include a declaration from the mortgage servicer that:

9 (1) the mortgage servicer has:

10 (A) contacted the debtor in accordance with
11 Section 51A.054; or

12 (B) tried with due diligence to contact the
13 debtor in accordance with Section 51A.055; or

14 (2) the debtor has surrendered the property to the
15 mortgagee or mortgage servicer.

16 Sec. 51A.057. PROVIDE NOTICE OF DEFAULT TO CERTAIN
17 DESIGNATED HOUSING COUNSELING AGENCIES. If authorized by the
18 debtor, a mortgage servicer shall send a copy of any notice of
19 default under Section 51.002 to a housing counseling agency
20 designated by a debtor under Section 51A.054.

21 SECTION 10. The changes in law made by this Act to Section
22 341.502(a), Finance Code, apply only to a contract entered into on
23 or after the effective date of this Act.

24 SECTION 11. Section 343.104, Finance Code, as amended by
25 this Act, and Subchapter D, Chapter 343, Finance Code, as added by
26 this Act, apply only to a loan closed on or after the effective date
27 of this Act. A loan closed before the effective date of this Act is

1 governed by the law in effect on the date the loan was closed, and
2 the former law is continued in effect for that purpose.

3 SECTION 12. Not later than November 1, 2009, the attorney
4 general shall prescribe the form and content of the notice under
5 Section 51.002(d-1), Property Code, as added by this Act.

6 SECTION 13. Subchapter B, Chapter 51A, Property Code, as
7 added by this Act, applies only to sale of residential real property
8 where a notice of default or notice of sale under Section 51.002,
9 Property Code, is provided on or after the effective date of this
10 Act. A sale in which both the notice of default and the notice of
11 sale under Section 51.002, Property Code, are provided before the
12 effective date of this Act is governed by the law in effect
13 immediately before the effective date of this Act, and that law is
14 continued in effect for that purpose.

15 SECTION 14. (a) Except as provided by Subsections (b) and
16 (c), this Act takes effect September 1, 2009.

17 (b) Section 156.205(b), Finance Code, as amended by this
18 Act, takes effect March 1, 2010.

19 (c) Section 51.002(d-1), Property Code, as added by this
20 Act, takes effect November 1, 2009.