

CHAPTER 814

H.B. No. 1947

AN ACT

relating to modification, extension, amendment, restatement, and rescheduling of terms and conditions of a secondary mortgage loan and to certain charges for insurance on such a loan.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 5.02, Title 79, Revised Statutes (Article 5069-5.02, Vernon's Texas Civil Statutes), is amended by adding Section (8) to read as follows:

(8) Notwithstanding any other provision of this Chapter, a borrower and a lender may enter into a written agreement under which the terms and conditions of a loan contract under this Chapter are modified, extended, amended, restated, or rescheduled. The agreement must contain the date of the agreement and the name and address of each borrower and the lender, and must be signed by the parties. A copy of the agreement shall be delivered to the borrower.

SECTION 2. Section (7), Article 5.02, Title 79, Revised Statutes (Article 5069-5.02, Vernon's Texas Civil Statutes), is amended to read as follows:

(7) In addition to the authorized charges provided in the Chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. A secondary mortgage loan lender or an assignee of a secondary mortgage loan may collect on or before the closing of a loan, or include in the principal of the secondary mortgage loan, the following:

(A) reasonable fees for title examination and preparation of an abstract of title by an attorney not an employee of the lender, or a title company or property search company authorized to do business in this State; or premiums or fees for title insurance or title search for the benefit of the mortgagee, and, at mortgagor's option, title insurance or title search for the benefit of the mortgagor;

(B) reasonable fees charged to the lender by an attorney, provided the attorney is not a salaried employee of the lender, for preparation of the loan documents in connection with the mortgage loan, if the fees are evidenced by a statement for services rendered addressed to the lender;

(C) charges prescribed by law that are or will be paid to public officials for determining the existence of and for perfecting, releasing, and satisfying a security interest;

(D) reasonable fees for an appraisal of real property offered as security for the loan prepared by a certified appraiser who is not an employee of the lender;

(E) reasonable cost of any credit report;

(F) reasonable fees for a survey of real property offered as security for the loan prepared by a registered surveyor who is not a salaried employee of the lender; and

(G) the premiums received in connection with the sale of credit life insurance, credit accident and health insurance, and *insurance which protects the mortgagee in the event of default by the mortgagor* [~~mortgage guaranty insurance~~], the benefits of which go in whole or in part to reduce or extinguish the loan balance. Premiums for property insurance written in conformity with Section (2) of Article 5.03 of this Title may be added to the loan contract.

In addition, the contract for a secondary mortgage loan may provide for:

(A) reasonable fees or charges paid to the trustee in connection with a deed of trust or similar instrument executed in connection with the secondary mortgage loan, including but not limited to fees for enforcing the lien, posting for sale, selling, or releasing the property secured by the deed of trust;

(B) reasonable fees paid to an attorney who is not an employee of the creditor in the collection of a delinquent secondary mortgage loan and any court costs and fees incurred in the collection of, or foreclosure of, any lien created by the loan;

(C) a fee of Fifteen Dollars or less for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft offered in full or partial payment of a secondary mortgage loan.

SECTION 3. Section (9), Article 5.03, Title 79, Revised Statutes, (Article 5069-5.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(9) Should any additional charge be made for insurance other than that authorized in this *Chapter* [~~Article~~], the lender shall have no right to collect any charge for insurance or any interest on such charge and all charges collected for insurance and interest collected thereon shall be refunded to the borrower or credited to his account, provided that an overcharge which results from an accidental or bona fide error may be corrected

as provided in Article 8.01 of Chapter 8 of this Subtitle. The provision is supplemental to and not exclusive of all other remedies and penalties provided in this Subtitle.

SECTION 4. This Act takes effect September 1, 1987.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 20, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1947 on May 30, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1947 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1947 on June 1, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.