HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 353 Mortgage Payoff Letters
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Hinshelwood	Luczynski

SUMMARY ANALYSIS

A mortgage payoff letter may be requested, for example, by a mortgagor who is selling the property that is collateral for the mortgage loan, refinancing the mortgage loan, or paying off the mortgage loan. Florida law requires that a mortgage lender or servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter setting forth the unpaid balance of the loan secured by the mortgage. When a mortgage loan has been fully paid, the mortgage lender or servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county. Within 60 days after receiving full payment of the mortgage loan, the mortgage lender or servicer must send the borrower the recorded satisfaction.

Bill proponents have explained that some mortgage payoff letters include language reserving the mortgage servicer's or lender's right to change the amounts listed in the payoff letter and disclaiming the reliance of others on the information in the payoff letter. In the event that the mortgage lender or servicer determines after sending the mortgage payoff letter that the borrower owes additional money, bill proponents have said that some mortgage lenders or servicers return the funds received from the closing which were sent in reliance on the amount stated in the mortgage payoff letter. This results in the continued accrual of interest and potential fees during the pendency of resolving the discrepancy in amount owed. Further, prior to resolution of the discrepancy, there is not clear title to the property.

The bill:

- Reduces from 14 days to 10 days the timeframe within which a lender or servicer must send a requested mortgage payoff letter.
- Standardizes the contents of the mortgage payoff letter as to all of the authorized requestors.
- Prohibits the lender or servicer from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in a mortgage payoff letter; any attempt to do so is void and unenforceable.
- Allows the lender or servicer to send a corrected mortgage payoff letter that will supersede any prior payoff letter so long as the corrected payoff letter is received by the end of normal business hours at least one business day before payment is made in reliance on the payoff letter.
- Prohibits the lender or servicer from denying the accuracy of the mortgage payoff letter as against any person who relied upon it, but allows recovery of the sum owed from the borrower.
- Requires the lender or servicer to promptly apply payment received in reliance on the payoff letter.
- Specifies the process by which a mortgage payoff letter may be requested and sent.
- Requires the lender or servicer, within 60 days after the mortgage loan has been paid pursuant to the mortgage payoff letter, to execute, have duly entered in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging release of the mortgage (i.e., a satisfaction of mortgage or a release of mortgage).

The bill has no fiscal impact on state and local governments and an indeterminate fiscal impact on the private sector.

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A mortgage payoff letter[1] may be requested, for example, by a mortgagor[2] who is selling the property that is collateral for the mortgage loan, refinancing the mortgage loan, or paying off the mortgage loan. Florida law requires that a mortgage lender or servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter setting forth the unpaid balance of the loan secured by the mortgage.[3] The request may be made by a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property.[4]

Florida law specifies the information that must be contained in the mortgage payoff letter, depending on who requests the letter:[5]

- If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the mortgage payoff letter must include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.
- If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request, the mortgage payoff letter may include the itemization of information required above, but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.

When the amount of money due on any mortgage loan has been fully paid, the mortgage lender or servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county.[6] Within 60 days after receiving full payment of the mortgage loan, the person required to acknowledge satisfaction of the mortgage must send or cause to be sent the recorded satisfaction to the person who has made the full payment.[7] In the case of a civil action arising out of this requirement, the prevailing party is entitled to attorney fees and costs.

Bill proponents have explained that some mortgage payoff letters include language reserving the mortgage servicer's or lender's right to change the amounts listed in the payoff letter and disclaiming the reliance of others on the information in the payoff letter. In the event that the mortgage lender or servicer determines after sending the mortgage payoff letter that the borrower owes additional money, bill proponents have said that some mortgage lenders or servicers return the funds received from the closing which were sent in reliance on the amount stated in the mortgage payoff letter. This results in the continued accrual of interest and potential fees during the pendency of resolving the discrepancy in amount owed. Further, prior to resolution of the discrepancy, there is not clear title to the property.

Effect of the Bill

The bill reduces from 14 days to 10 days the timeframe within which a mortgage lender or servicer must send a requested mortgage payoff letter setting forth the unpaid balance of the mortgage loan. If

[1] Referred to as an "estoppel letter" in Florida statutes. *See* ss. 701.04 and 701.041, F.S.

[2] Mortgagor means "[s]omeone who mortgages property; the mortgage-debtor, or borrower." Black's Law Dictionary (11th ed. 2019).

[3] S. 701.04(1), F.S.

[4] *Id.*

[5] *Id.*

[6] S. 701.04(2), F.S.

[7] *Id.*

the request for a mortgage payoff letter is made by a person other than the mortgagor,[8] the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgage lender or servicer must notify the mortgagor of the request.

The bill standardizes the information that must be contained in the mortgage payoff letter, regardless of whether the requestor is the mortgagor, a record title owner, or a person lawfully authorized to act on behalf of the mortgagor or record title owner. The letter must at a minimum include:

- The unpaid balance of the loan secured by the mortgage as of the date specified in the letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and
- Interest accruing on a per-day basis for the unpaid balance, if applicable.

The bill prohibits the mortgage lender or servicer from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in a mortgage payoff letter, and any attempt to do so is void and unenforceable. However, this prohibition does not apply to mortgages for which a notice of lis pendens[9] in a foreclosure action or a suggestion of bankruptcy[10] has been properly filed and recorded.

If the mortgage lender or servicer determines that any of the information in the mortgage payoff letter was inaccurate, the mortgage lender or servicer may send a corrected mortgage payoff letter. The corrected mortgage payoff letter will supersede any prior mortgage payoff letter so long as the corrected payoff letter is received by the end of normal business hours at least one business day before payment is made in reliance on the mortgage payoff letter.

If any of the information in the mortgage payoff letter was inaccurate and there was not a timely corrected payoff letter, the bill prohibits the mortgage lender or servicer from denying the accuracy of the mortgage payoff letter as against any person who relied upon it. However, this does not affect the mortgage lender's right to recover any sum not included in the mortgage payoff letter, nor does it limit any claim or defense to recovery that the borrower may have.

If a payment is received at the location and in the manner specified by the mortgage lender or servicer, the mortgage lender or servicer must accept and may not return any payment received in reliance on the mortgage payoff letter, and the mortgage lender or servicer must promptly apply such payment to the unpaid balance of the mortgage loan. This will prevent accrual of interest and potential fees while the mortgage lender or servicer and the borrower work through any discrepancy as to the amount owed.

The bill specifies the process for requesting a mortgage payoff letter. A written request for a mortgage payoff letter must be sent to the mortgage lender or servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgage lender or servicer for such purpose, or through an automated system provided by the mortgage lender or servicer for requesting a mortgage payoff letter. The request is considered received:

a. Five days after the request sent by first-class mail is deposited with the United States Postal Service;

b. The day the request is delivered by a common carrier delivery service; or

c. The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgage lender or servicer for requesting a mortgage payoff letter.

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[8] Definition of "mortgagor", *supra* note 2.

[9] A notice of lis pendens is "[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome. Black's Law Dictionary (11th ed. 2019). *See also* s. 48.23, F.S., relating to lis pendens.

[10] "Suggestion of bankruptcy is a document filed with a court to put it on notice that the defendant in a pending lawsuit has filed a bankruptcy case. A party can file a suggestion of bankruptcy whenever a party believes that the bankruptcy or automatic stay provision of bankruptcy code has an effect on a state court case." US Legal, https://definitions.uslegal.com/s/suggestion-of-bankruptcy/ (last visited Jan. 23, 2022).

If any of the foregoing dates is a Saturday, Sunday, or legal holiday, the request for a mortgage payoff letter is considered received on the next business day.

The bill also specifies the process by which a mortgage payoff letter may be sent. The mortgage lender or servicer must send a mortgage payoff letter by first-class mail, by common carrier delivery service, or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgage lender or servicer for this purpose. However, the mortgage lender or servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgage lender or servicer ends on a Saturday, Sunday, or legal holiday, the mortgage payoff letter is considered timely if it is sent by the close of business on the next business day.

The bill requires the mortgage lender or servicer, within 60 days after the mortgage loan has been fully paid or paid pursuant to the mortgage payoff letter, to execute, have duly entered in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging release of the mortgage (i.e., a satisfaction of mortgage or a release of mortgage). The prevailing party in a civil action brought against the mortgage lender or servicer to enforce this requirement is entitled to reasonable attorney fees and costs. The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the mortgage loan. In the event of a discrepancy in the amount owed on the mortgage loan, this provision will ensure clear title to the property while maintaining the mortgage lender's or servicer's ability to recover sums properly owed under the mortgage loan.

The bill conforms the definition of "estoppel letter" in s. 701.041, F.S., to the estoppel letter requirements in s. 701.04, F.S.

The bill provides an effective date of October 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 701.04, F.S., relating to cancellation of mortgages, liens, and judgments.

Section 2. Amends s. 701.041, F.S., relating to title insurer; mortgage release certificate.

Section 3. Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate impact on the private sector. The bill may lead to smoother real estate closings to the extent that mortgage lenders or servicers provide more accurate information in mortgage payoff letters. In the event of a discrepancy in the amount owed on the mortgage loan, the bill will prevent accrual of interest and potential fees while the mortgage lender or servicer and the borrower work through the issue. Additionally, the bill will ensure clear title to the property while maintaining the mortgage lender's or servicer's ability to recover sums properly owed under the mortgage loan.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES