

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1050

INTRODUCER: Senator Bogdanoff

SUBJECT: Mortgages

DATE: February 4, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Pre-meeting
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Current law allows mortgagors to request and receive, within 14 days, information about their loan, such as the payoff, from the mortgagee. The bill would require mortgagees to provide subsequent owners of real property with mortgage payoff information. To receive information about the mortgage, the bill requires an owner of an interest in the encumbered property to provide an instrument proving that ownership interest to the mortgagee. The mortgagee must then provide the unpaid balance, but may include more information.

This bill substantially amends the following sections of the Florida Statutes: 701.04.

II. Present Situation:

Chapter 701 allows the person who has a mortgage (the mortgagor) to obtain from the mortgage holder (the mortgagee) information about the unpaid balance of the loan secured by the mortgage within 14 days of a written request.¹ The information requested is returned in a document known as an estoppel letter. Generally, only the mortgagor is able to receive this information from the mortgagee.

The statute does not require the mortgagee to provide that information to any other owner of the encumbered property. For example, a person could become an owner of an interest in the property by any number of ways, including but not limited to, an heir or devisee through probate, homestead laws, a surviving spouse that was not on the note, or a junior lienholder that has foreclosed on the property against the mortgagor.

¹ Section 701.04, F.S.

Privacy Laws

According to advocates of the bill, some mortgagees are not furnishing the mortgage information citing the privacy requirements of the federal Gramm-Leach-Bliley Act. The federal Gramm-Leach-Bliley Act, 15 USC, Subchapter I, Section 6801-6809, addresses privacy requirements and disclosure or nonpublic personal information. Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title. The act contains an exception to the prohibition of disclosure restrictions as contained in Section 6802(e)(8) of this act to comply with state laws.

Pursuant to s. 655.059, F.S., the records of a financial institution² are confidential and are made available for inspection and examination only in specifically enumerated circumstances or by specifically listed individuals or entities. Under current law, if the mortgagee is a financial institution, the mortgagee may violate privacy laws and face penalties by releasing the mortgagor's mortgage information.

III. Effect of Proposed Changes:

Section 1 amends s. 701.04(1), F.S., to require a holder of a mortgage, or the servicer of the mortgage, to release limited payoff information as to the encumbered property so that an owner can obtain the information necessary to pay the mortgagee or servicer the unpaid balance and obtain a satisfaction of the mortgage. Such information must be provided within 14 days after receipt of a written request.

If the requestor is not the mortgagor, the estoppel letter does not need to contain an itemization of the unpaid balance of the loan secured by the mortgage, but must include a per-day amount for the unpaid balance. An owner of an interest in property encumbered by a mortgage must include, along with the request, a copy of the instrument showing an ownership interest in the property.

Section 2 provides that this act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² Section 655.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow an owner of an interest to pay off a mortgage and clear title to the property.

Holders of mortgages may incur some indeterminate costs to accommodate additional requests.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.