

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 505 Mortgages

SPONSOR(S): Civil Justice Subcommittee, Insurance & Banking Subcommittee, Bernard and McBurney

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Gault	Cooper
2) Civil Justice Subcommittee	14 Y, 0 N, As CS	Cary	Bond
3) Economic Affairs Committee	14 Y, 0 N	Gault	Tinker

SUMMARY ANALYSIS

A mortgagor may request and receive, within 14 days, information about the loan from the mortgagee. The bill allows a record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, to also request and receive this information.

To receive information about the mortgage, the bill requires a record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, to provide an instrument proving title or lawful authorization. The mortgagee must then provide the total unpaid balance on a per-day basis, but may also include additional information.

The bill provides that a mortgagee may release the mortgage information notwithstanding a confidentiality statute and that the mortgagee is discharged from liability as a result of a release of information in accordance with this bill.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill becomes effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Cancellation of Mortgages

Current law specifically allows the person who takes out a mortgage (the mortgagor) to request and receive from the holder of the mortgage (the mortgagee), within 14 days of the request, an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.¹ Generally, only the mortgagor is able to request and receive this information from the mortgagee.²

This bill amends s. 701.04, F.S., to extend the right to request and receive information on the unpaid balance to a record title owner of the property or any person lawfully authorized³ to act on behalf of the mortgagor or record title owner of the property.

As with current law, the bill requires the estoppel letter requested by the mortgagor to contain 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. The bill differs, however, because it adds requirements specific to a request from a record title owner of the property or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property. A record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, must provide an instrument with the request that proves the title or legal authorization. The mortgagee's returned document may contain all of the information provided to the mortgagor, but must at least contain the total unpaid balance on a per-day basis.

Privacy Laws

Under current law, if the mortgagee is a financial institution,⁴ the mortgagee may violate privacy laws and face penalties by releasing the mortgagor's mortgage information. The books and records of a financial institution are confidential and shall be made available for inspection and examination only in specifically enumerated circumstances or by specifically listed individuals or entities.⁵ The bill provides that the mortgage holder may provide the information required by this bill notwithstanding the confidentiality statute. This bill also provides that the mortgagee or servicer is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

B. SECTION DIRECTORY:

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

Section 2. Provides that the act will become effective upon becoming a law.

¹ Section 701.04, F.S.

² Access to a financial institution's books, for persons other than the mortgagor, is appropriate under certain circumstances under s. 655.059, F.S.

³ For example, in the administration of an estate, the personal representative could be someone legally authorized to act on behalf of the mortgagor or record title owner of the property.

⁴ 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.

⁵ Section 655.059, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Mortgagees may have to increase their time and costs to accommodate additional requests, though the number and cost of any additional requests as a result of the bill is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, nor reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill both *requires* mortgagees to provide all mortgage information to an individual authorized by the mortgagor and *allows* mortgagees to limit the amount of mortgage information provided to an individual authorized by the mortgagor.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Insurance & Banking Subcommittee unanimously adopted one strike-all amendment to HB 505. The strike-all made the following changes:

- Removed the phrase “owner of an interest in property encumbered by a mortgage” and replaced it with the phrase “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.” To account for this change, some technical changes were made as well.
- Added a section relieving financial institutions of liability for releasing certain mortgage information to the record title owner of the property or any person lawfully authorized to act on behalf of a mortgagor or record titled owner of the property.

On January 31, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. This amendment provides that the mortgage holder may provide the information requested notwithstanding the confidentiality statute applicable to banks and provides that the mortgagee or servicer acting in accordance with such a request is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the estoppel letter. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.