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To: Clients and Friends

From: David F. Dulock

Subject: New Payoff Statement Rules Adopted by Texas Finance Commission

In the December 30, 2011 issue of the Texas Register (Vol. 36, No. 52) the Finance Commission of Texas ("Commission") adopts the following Payoff Statement Rules (new 7 TAC Chapter 155) pursuant to the requirements of Section 343.106, Texas Finance Code, enacted by House Bill 558 in the 2011 regular session of the Texas Legislature (see our prior memorandums on House Bill 558 and the Commission's proposed payoff statement rules dated August 15, 2011, and November 4, 2011, respectively). The Rules are effective January 8, 2012, except as noted on page 2 hereof:

Title 7. Banking And Securities
Part 8, Joint Financial Regulatory Agencies
Chapter 155 Payoff Statements

SUBCHAPTER A. Registration

§155.1—Definitions

'Home loans' has the same meaning as that found in Texas Finance Code §343.001.

§155.2—Payoff Statement Form

(a) Requests made pursuant to this chapter shall be in writing and submitted to a mortgage servicer by mail, electronic mail or facsimile. If the mortgage servicer has designated a specific physical address; electronic mail address; and/or a specific representative to receive requests made pursuant to this chapter, then requests shall be submitted in accordance with such designation. Requests for a payoff statement made pursuant to this chapter shall, at a minimum, include the following:

- (1) Name of the mortgagor;
(2) Physical address of the underlying collateral of the loan, or a legal description of the property; and
(3) Proposed closing date of the loan.

(b) Upon receipt of a valid request made under subsection (a) of this section, a mortgage servicer shall provide, in writing, by mail or electronic mail, the payoff statement information for the home loan specified in the request which must be provided on the prescribed payoff statement form, Figure: 7 TAC §155.2(c)(6), or in a substantially similar format which contains all elements not indicated as optional on the prescribed payoff statement form. The statement must include the following information:

- (1) The proposed closing date for the sale or other transaction, as provided in the request made pursuant to this chapter;
(2) The payoff amount that is valid through the proposed closing date; and
(2) Sufficient information to identify the loan for which the payoff information is provided.

(c) If applicable, the payoff statement may contain:

- (1) Adjustable rate mortgage information;
- (2) Per diem amount;
- (3) Late charge information;
- (4) Escrow disbursement information;
- (5) A statement regarding which party is responsible for the release of lien; and
- (6) Other information necessary to provide a clear and concise payoff statement.

Figure: 7 TAC §155.2(c)(6) [**Payoff Statement Form Attached**]

“§155.3—Time of Delivery of Payoff Statement

A mortgage servicer shall deliver a payoff statement required under §155.2 to the title company by the eighth business day after the date the request is received unless federal law requires a shorter response time.”

For purposes of the above payoff statement rules the following definitions are important:

- “Home loan” is defined by Section 343.001, Finance Code, as “a loan that is: (A) made to one or more individuals for personal, family, or household purposes; and (B) secured in whole or part by: (i) a manufactured home, as defined by Section 347.002, used or to be used as the borrower’s principal residence; or (ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be **used as the borrower’s principal residence.**” (emphasis added)
- “Mortgage servicer” is defined by Section 51.0001, Property Code, as “the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. **A mortgagee may be the mortgage servicer.**” (emphasis added)

In summary, the above payoff statement rules: (1) apply only to a loan secured by the borrower’s principal residence; (2) require that a request for a payoff statement come from a title insurance company to a mortgage servicer and be made pursuant to §155.2(a); and (3) as to a mortgage servicer, are effective the 90th day after the date the Commission adopts the rules, which **effective date is March 29, 2012.**

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PAYOFF STATEMENT FORM

Name of Mortgage Servicer
Name of Representative
Street or E-mail Address
City, State, Zip Code

REQUEST DATE:

SENT BY: Mail E-mail
 Facsimile

LOAN INFORMATION

MORTGAGOR: {Primary Borrower}

NEXT PAYMENT DUE DATE:

COLLATERAL: {Property Address or Legal Description}

Loan Type: {optional}

AMOUNT DUE

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS {INSERT CLOSING DATE}. If this obligation is not paid in full by this date, then you should obtain from us an updated payoff amount before closing.

Total Principal, Interest, and other amounts due under the Note/Security Instrument:

Unpaid Principal Balance:	\$ {INSERT AMOUNT}
Interest through {insert good through date}	\$ {INSERT AMOUNT}
Less Reductions in amount due	\$ {INSERT AMOUNT}
{INSERT DESCRIPTION}	\$ {INSERT AMOUNT}
TOTAL AMOUNT DUE:	\$ {INSERT AMOUNT}

WHERE TO SUBMIT PAYOFF FUNDS

WIRE TRANSFER

Beneficiary Name:
Beneficiary/Receiving Bank:
Beneficiary Bank ABA:
Beneficiary Bank Account:
Special Information to Beneficiary:
{Inc. ODI Text Information required}

OVERNIGHT MAIL

{Attention}
{Name of Company}
{Street Address}
{City, State, Zip Code}

LEGAL NOTICES

TEXAS FINANCE CODE § 343.106 REQUIRES PAYOFF STATEMENT CONTAIN CLOSING DATE AND DATE THROUGH WHICH PAYOFF AMOUNT IS VALID. THESE REQUIREMENTS CANNOT BE DELETED FROM PAYOFF STATEMENT.

ANY AMOUNT HELD IN ESCROW AT CLOSING WILL BE SETTLED IN ACCORDANCE WITH APPLICABLE FEDERAL LAW.

TEXAS FINANCE CODE § 343.106 REQUIRES THE IMPLEMENTING RULE TO ALLOW MORTGAGE SERVICERS AT LEAST SEVEN (7) BUSINESS DAYS FROM THE DATE OF RECEIPT OF PAYOFF REQUEST TO RESPOND TO A REQUEST MADE UNDER THE STATUTE.

OPTIONAL SECTIONS

{This is an Adjustable Rate Mortgage. Under the terms of this loan the next Change Date for the interest rate charged is {Insert Next Rate Change Date}. We will only issue a payoff good through the next Change Date. If the closing date is past the next Change Date an updated Payoff Statement from us will be required.}

{If loan has quotable per diem interest, then "Funds received after {insert good through date} will be subject to an additional \${Insert Per Diem Amount} of interest per day."} FUNDS MUST BE RECEIVED BY {INSERT POSTING CUT OFF TIME} FOR SAME-DAY PROCESSING. PAYOFFS ARE NOT POSTED ON WEEKENDS OR HOLIDAYS. INTEREST WILL BE ADDED TO THE ACCOUNT FOR THESE DAYS.

NOTE: This Note/Security Instrument is due for payment on {Insert Next Due Date}. If payment is not received within {Insert number of days} of the current payment due date, a late charge of \${insert amount} will be assessed. Please add that amount to the payoff total.

Escrow Disbursement Amounts & Dates:

{Insert Description}	\${Insert Amount Held}	{Insert Next Disbursement Date}
{Insert Description}	\${Insert Amount Held}	{Insert Next Disbursement Date}
{Insert Description}	\${Insert Amount Held}	{Insert Next Disbursement Date}

Release of Lien Processing:

{Provide the Servicer's practice regarding releases (i.e. The Servicer will prepare the release of lien; the title company must prepare the release of lien. The release is mailed to the county, borrower, or Title Company for recording)}