

## **NOTICE OF PRE-COMMENT DRAFT AND REQUEST FOR COMMENTS**

### **Home Loan Payoff Statements Rule Review**

Please take notice that, on behalf of the Finance Commission of Texas (the “Commission”), the Texas Department of Savings and Mortgage Lending (“SML”) is considering (i) an amendment to the requirements of 7 Tex. Admin Code § 155.2(b)(3), and (ii) an amendment to the form/image/graphic found at 7 Tex. Admin. Code § 155.2(c)(6).

#### **Background and Purpose**

SML, the Texas Department of Banking (“DOB”), and the Texas Office of the Consumer Credit Commissioner (“OCCC” and together, the “Agencies”), pursuant to Texas Government Code, § 2001.039, have been conducting a rule review of 7 Tex. Admin. Code chapter 155, which concerns home loan payoff statements (the “Payoff Statement Rules”).

The Agencies held a stakeholder meeting and webinar regarding the rule review on September 9, 2019. Prior to and at that meeting, the Agencies received five informal written precomments, none of which proposed making any changes to the Payoff Statement Rules.

During the review, the Agencies determined that the reasons for initially adopting the Payoff Statement Rules continue to exist, as the statute requiring the Payoff Statement Rules still exists.

The Agencies further determined that a minor formatting amendment to the form/image/graphic found at 7 Tex. Admin. Code § 155.2(c)(6) (the “Payoff Statement Form”) should be proposed. The amendment was intended to make the version of the Payoff Statement Form found in the Texas Register more user friendly and consistent with the version of the Payoff Statement Form found on the Department of Savings and Mortgage Lending’s website.

The Agencies then distributed a draft of the proposed amended Payoff Statement Form to the Office of the Governor, which had no comments.

The proposed amendment to the Payoff Statement Form was published in the January 3, 2020 issue of the Texas Register (45 Tex. Reg. 33) for public comment.

During the public comment period, the Agencies received one written comment on the proposal from Texas Land Title Association (the “Commenter”). The Commenter suggested that the Payoff Statement Form and the Payoff Statement Rule should be modified to require the Payoff Statement Form to list the number of the home loan in question, if available, or, if not available, the original amount of the home loan in question. The Commenter explained the reasons for this proposal as follows:

Often times, there will be multiple loans on a single piece of property with the same lender. In this event, it is not readily apparent based on the [current Payoff Statement Form] which loan is the proper loan (or lien) to pay off. By adding a place for this information to the [Payoff Statement Form], mistakes can more easily be avoided, and the time required for these transactions reduced. The ultimate result is more protection for the consumer by helping decrease the opportunity for a mistake regarding the payoff of their liens and the hardships that can result from such a mistake.

The Agencies are presently inclined to recommend that the Commission modify the Payoff Statement Form and the Payoff Statement Rule as suggested by the Commenter for the reasons stated by the Commenter. Pre-comment drafts of the Payoff Statement Form and Payoff Statement Rule (the “Precomment Drafts”) incorporating these modifications are provided below.

The Agencies appreciate the thoughtful input provided by stakeholders throughout this process and believe that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals. As the Agencies initially received precomments that did not advocate for changes to the Payoff Statement

Form and the Payoff Statement Rule, but then received the Commenter's input as discussed above, the Agencies determined that re-publication of these proposed changes would be prudent, and also beneficial to all involved stakeholders.

The Agencies in particular invite comments from stakeholders who believe there will, or will not be, costs associated with the proposed amended form.

Further, the Agencies would appreciate comments from stakeholders regarding delaying the implementation date of an updated form. Particularly, the Agencies seek comments regarding any objections to a delay, if such a delay is necessary or desired, and if necessary or desired, how long would be workable. Additionally, the Agencies welcome comments regarding whether delaying the implementation of the proposed amended forms would result in cost savings or other benefits to form preparers or have significant detrimental effects upon form recipients.

### **Submission of Comments**

Comments on the Precomment Drafts should be submitted in writing to Iain A. Berry, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov).

***Comments on the Precomment Drafts should be received by 5:00 p.m. on Friday, March 20, 2020.***

**Payoff Statement Form Rules**  
**2/25/2020 Precomment Draft**

*Title 7, Texas Administrative Code*  
*Part 8, Joint Financial Regulatory Agencies*  
*Chapter 155, Payoff Statements*  
*§ 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
- (3) Sufficient information to identify the loan for which the payoff information is provided, **including:**

**(A) the loan number, if available;**

**(B) the original amount of the loan, if the loan number is not available.**

(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.

# 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: \_\_\_\_\_

NEXT PAYMENT DUE DATE: \_\_\_/\_\_\_/\_\_\_

COLLATERAL: \_\_\_\_\_

LOAN TYPE: \_\_\_\_\_

ORIGINAL LOAN NUMBER: \_\_\_\_\_

## AMOUNT DUE

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS \_\_\_/\_\_\_/\_\_\_\_\_. 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:	\$	_____
Interest through ___/___/_____	\$	_____
Less Reductions in amount due	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
<b>TOTAL AMOUNT DUE:</b>	\$	_____

## WHERE TO SUBMIT PAYOFF FUNDS

**WIRE TRANSFER**

Beneficiary Name: \_\_\_\_\_  
Beneficiary/Receiving Bank: \_\_\_\_\_  
Beneficiary Bank ABA: \_\_\_\_\_  
Beneficiary Bank Account: \_\_\_\_\_  
Special Information to Beneficiary: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OVERNIGHT MAIL**

Attention: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 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.**

**REQUEST TO RESPOND TO A REQUEST MADE UNDER THE STATUTE.**  
**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**

**OPTIONAL SECTIONS**

**ORIGINAL LOAN AMOUNT:**

This is an Adjustable Rate Mortgage. Under the terms of this loan the next Change Date for the interest rate charged is \_\_\_/\_\_\_/\_\_\_\_\_. 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 \_\_\_/\_\_\_/\_\_\_\_\_ will be subject to an additional \$ \_\_\_\_\_ of interest per day." FUNDS MUST BE RECEIVED BY \_\_\_\_\_ 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 \_\_\_/\_\_\_/\_\_\_\_\_. If payment is not received within \_\_\_\_\_ days of the current payment due date, a late charge of \$ \_\_\_\_\_ will be assessed. Please add that amount to the payoff total.

**Escrow Disbursement Amounts & Dates:**

Description(s):	Amount(s) Held:	Next Disbursement Date(s):
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

**Release of Lien Processing:**