



From: Devyn F. Wills, Associate General Counsel
Date: August 12, 2019
Subject: Payoff Statements Rule Review – Joint Financial Regulatory Agencies

Re: Quadrennial Review of 7 Texas Administrative Code Chapter 155 and Proposed Amendments to Payoff Statement Forms

What: Stakeholders Meeting
When: September 9, 2019, 1:30 p.m. until not later than 2:30 p.m.
Where: Third Floor Hearing Room, Finance Commission Building, 2601 North Lamar Boulevard, Austin, Texas
RSVP: smlinfo@sml.texas.gov by August 30, 2019

The three Finance Commission Agencies, at the request of the Department of Savings and Mortgage Lending (DSML), are currently conducting the quadrennial review of 7 Texas Administrative Code Chapter 155. Currently, there are minor differences between the version on the Department of Savings and Mortgage Lending's website: (https://www.sml.texas.gov/residentialmortgageloanservicer/documents/rmls_forms/section_155_2_c_6_payoff_form.pdf) and the version on the Texas Register: (<https://texreg.sos.state.tx.us/fids/201105692-1.pdf>). The Agencies are considering, as best as possible, replacing the version on the Texas Register with the version on DSML's website.

The agencies have the following questions of our stakeholders:

1. Which version of the form are you currently using?
2. Whether other changes to the forms, or the rules found in 7 Texas Administrative Code Chapter 155 are appropriate, and if so, what are they?
3. What costs would you experience if the version on the Texas Register was replaced with the one on DSML's website?

The Agencies believe a stakeholders meeting on the above subjects is appropriate. We welcome your input and hope you or your designee can attend. Please note that stakeholders from all three Finance Commission Agencies are being invited to this meeting.

Stakeholders are invited to attend the meeting in person at the Finance Commission Building, or to listen and participate through an online webinar. To listen or participate online, please follow the instructions available at:

<https://attendee.gotowebinar.com/register/2498370094953350668>

Tex. Fin. Code Sec. 343.106. Payoff Statements.

(a) In this section, "mortgagee," "mortgage servicer," and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(b) The finance commission shall adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide those payoff statements.

(c) In adopting rules under Subsection (b), the finance commission shall require a mortgage servicer who receives a request for a payoff statement with respect to a home loan from a title insurance company to deliver the requested payoff statement on the prescribed form within a time specified by finance commission rule, which must allow the mortgage servicer at least seven business days after the date the request is received to deliver the payoff statement.

(d) The standard payoff statement form prescribed by the finance commission under Subsection (b) must require that a completed form:

- (1) state the proposed closing date for the sale and conveyance of the real property securing the home loan or for any other transaction that would involve the payoff of the home loan, as specified by the title insurance company's request; and
- (2) provide a payoff amount that is valid through that date.

(e) Except as provided by Subsection (f) or (g), if the mortgage servicer provides a completed payoff statement form that meets the requirements of this section and rules adopted under this section in response to a request for a payoff statement, the mortgage servicer or mortgagee may not, on or before the proposed closing date, demand that a mortgagor pay an amount in excess of the payoff amount specified in the payoff statement.

(f) If a mortgage servicer or mortgagee discovers that a payoff statement is incorrect, the mortgage servicer or mortgagee may correct and deliver the statement on or before the second business day before the specified proposed closing date. The corrected payoff statement must be delivered to the requestor by:

- (1) certified mail with return receipt requested; and
- (2) electronic means, if the requestor provides the mortgage servicer with a means to deliver the corrected statement electronically.

(g) If a mortgage servicer submits an incorrect payoff statement to a title insurance company that results in the mortgage servicer requesting an amount that is less than the correct payoff amount, the mortgage servicer or mortgagee does not deliver a corrected payoff statement in accordance with Subsection (f), and the mortgage servicer receives payment in the amount specified in the payoff statement, the difference between the amount included in the payoff statement and the correct payoff amount:

- (1) remains a liability of the former mortgagor owed to the mortgagee; and

(2) if the payoff statement is in connection with:

(A) the sale of the real property:

(i) the deed of trust or other contract lien securing an interest in the property is released;

(ii) within a reasonable time after receipt of payment by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer, as applicable, shall deliver to the title company a release of the deed of trust or other contract lien securing an interest in the property; and

(iii) any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment; or

(B) a refinance by the mortgagor of the existing home loan:

(i) the lien securing the existing home loan becomes subordinate to the lien securing the new home loan; and

(ii) any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment.

Sec. 343.001. Definitions.

In this chapter:

(1) "Bridge loan" means temporary or short-term financing requiring payment of only interest until the entire unpaid balance is due.

(2) "Home loan" means 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.

(3) "Restructure" means a change in the payment schedule or other terms of a home loan as a result of the borrower's default.

- TX - Texas Administrative Code
- 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
- (3) 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.

§ 155.3. Time of Delivery of Payoff Statement

A mortgage servicer shall deliver a payoff statement required under § 155.2 of this title (relating to Payoff Statement Form) to the title company by the eighth business day after the date the request is received unless federal law requires a shorter response time.

PAYOFF STATEMENT FORM

Name of Mortgage Servicer Name of Representative Street or E-mail Address City, State, Zip Code	REQUEST DATE: 01/01/01 SENT BY: <input type="radio"/> Mail <input type="radio"/> E-mail <input type="radio"/> Fax
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LOAN INFORMATION

MORTGAGOR: Primary Borrower	NEXT PAYMENT DUE DATE: 01/01/01
COLLATERAL: Property Address or Legal Description	Loan Type: <u>optional</u>

AMOUNT DUE

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS 01/01/01. 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 thro	\$ 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

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 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 will be subject to an additional \$ Per Diem Amount of interest per day."} FUNDS MUST BE RECEIVED BY 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 Next Due Date . If payment is not received within Number of Days of the current payment due date, a late charge of \$ Amount will be assessed. Please add that amount to the payoff total.

Escrow Disbursement Amounts & Dates:

Escrow Description	\$ Amount Held	Next Disbursement Date
Escrow Description	\$ Amount Held	Next Disbursement Date
Escrow Description	\$ Amount Held	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.)}

PAYOFF STATEMENT FORM

Name of Mortgage Servicer	REQUEST DATE:
Name of Representative	
Street or E-mail Address	SENT BY: <input type="checkbox"/> Mail <input type="checkbox"/> E-mail
City, State, Zip Code	<input type="checkbox"/> Facsimile

MORTGAGOR: {Primary Borrower}	NEXT PAYMENT DUE DATE:
COLLATERAL: {Property Address or Legal Description}	Loan Type: {optional}

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}

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

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

LEGAL NOTICES

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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)}