

Sub. H.B. 38  
I\_133\_0449-2

**Topic:** Notice to debtor

\_\_\_\_\_ moved to amend as follows:

In line 2 of the title, after "1322.29" insert ", 1349.72" 1

In line 3 of the title, delete "sections" and insert 2  
"section" 3

In line 4, of the title, delete "and 1349.72" 4

In line 8, after "1322.29" insert ", 1349.72" 5

After line 561, insert: 6

"**Sec. 1349.72.** (A) ~~Before~~ Not less than thirty days prior to 7  
a person ~~collecting~~ filing a foreclosure action to collect on a 8  
debt secured by residential real property ~~collects or attempts to~~ 9  
~~collect any part of the debt,~~ the person shall first send a 10  
written notice as described in division (B) of this section via 11  
United States mail to the residential address of the debtor, if 12  
both of the following apply: 13

(1) The debt is ~~a second~~ secured by a mortgage or junior lien 14  
on the debtor's residential real property that is not in the first 15  
mortgage position. 16

(2) The debt has either been accelerated or is in default in 17  
accordance with the terms set forth in the promissory note. 18

(B) The written notice may be included on, or accompany, any other communication, and shall be printed in at least twelve-point type and ~~state~~ include the following:

(1) The name and contact information of the person collecting the debt;

(2) ~~The~~ A statement of the amount of the debt;

(3) A statement that the debtor has a right to engage an attorney;

(4) A statement that the debtor may qualify for debt relief under Chapter 7 or 13 of the United States Bankruptcy Code, 11 U.S.C. Chapter 7 or 13, as amended;

(5) A statement that a debtor that qualifies under Chapter 13 of the United States Bankruptcy Code may be able to protect their residential real property from foreclosure.

(C) Upon written request of the debtor, the owner of the debt shall provide a copy of the note and the loan history to the debtor.

(D)(1) As used in this division:

(a) ~~bona~~ Bona fide error" means an unintentional clerical, calculation, computer malfunction or programming, or printing error.

(b) "Restitution" means either of the following:

(i) A waiver of all fees, costs, or expenses proximately associated with the failure to provide the notice to the debtor;  
or

(ii) Actual damages.

(2) Any owner of debt subject to divisions (A), (B), and (C)

of this section shall not be held civilly liable in any action, if  
all of the following are met:

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(a) The owner of the debt shows by a preponderance of  
evidence that the compliance failure was not intentional and  
resulted from a bona fide error notwithstanding the maintenance of  
procedures reasonably adapted to avoid any such error.

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(b) Within sixty days after discovering the error, and prior  
to the initiation of any action, the owner of the debt notifies  
the debtor of the error and the manner in which the owner of the  
debt intends to make full restitution to the debtor.

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(c) The owner of the debt promptly makes reasonable  
restitution to the debtor.

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(3) If, in the event of a compliance failure, the owner of  
the debt does not meet the conditions set forth in division (D)(2)  
of this section, a debtor injured by the error has a cause of  
action to recover damages. Such an action shall not, however, be  
maintained as a class action."

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In line 748, after "1322.29" insert ", 1349.72"

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In line 750, delete "sections" and insert "section"; delete  
"and 1349.72"

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In line 751, delete "are" and insert "is"

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The motion was \_\_\_\_\_ agreed to.