

GREEN SHEET REDIGEST

HB 1064

2022 Regular Session

Farnum

FINANCIAL INSTITUTIONS: Provides relative to the deposit and disbursement of insurance proceeds

DIGEST

Present law requires that when payment of an insurance settlement is by check or draft in settlement of a property damage claim involving residential property in which another holds a mortgage on the property is paid jointly to the claimant and the holder of the mortgage, then such settlement proceeds are to be placed in an interest-bearing escrow account with the interest accruing to the benefit of the claimant.

Proposed law repeals present law.

Proposed law provides for the following requirements regarding mortgagees or mortgage servicers servicing residential mortgage loans secured by property containing one to four residential dwelling units:

- (1) That the mortgagee or mortgage servicer is required to promptly endorse the check, draft, or other negotiable instrument made payable jointly to the mortgagee or mortgage servicer and borrower-payee. Proposed law does not require a mortgagee or mortgage servicer to endorse such instrument if the borrower-payee refuses to endorse the instrument.
- (2) That such proceeds that relate to damage of property in which the mortgagee or mortgage servicer has a security interest are required to be deposited in a segregated account except when the mortgagee or mortgage servicer returns such proceeds to the borrower-payee or the borrower-payee has not endorsed the check, draft, or other negotiable instrument. The segregated account may at the discretion of the mortgagee or mortgage servicer be an individual deposit account or a master account containing subaccounts for each borrower-payee.
- (3) That any portion of proceeds which relate to contents insurance coverage and in which the mortgagee or mortgage servicer does not have a security interest is required to be promptly distributed to the borrower-payee by traceable delivery or electronic transfer.

Proposed law does not require a mortgagee or mortgage servicer to remit the portion of the insurance proceeds relative to additional living expenses and contents insurance to the borrower-payee if the mortgagee cannot determine which portion of the proceeds relates to such coverage.

Proposed law does not prevent an insurer from paying the borrower-payee directly for additional living expenses or contents insurance coverage if the mortgagee or mortgage servicer does not have a mortgage or security interest in the contents.

Proposed law requires a mortgagee or mortgage servicer to notify the borrower-payee when holding all or part of the settlement proceeds pending completion of all or part of the repairs to the damaged property. Notice shall include each requirement in which the borrower-payee is required to comply for release of funds. Such notice is required to be provided not later than 10 business days after the mortgagee receives payment of the proceeds.

Proposed law requires a mortgagee or mortgage servicer to do either of the following not later than the 10th business day following a borrower-payee's request for release of proceeds being held:

- (1) If the mortgagee or mortgage servicer does not require a property inspection, to release the proceeds to the borrower-payee as requested upon receipt of sufficient evidence of the borrower-payee's compliance with the requirements provided by the mortgagee or mortgage servicer.
- (2) Provide notice to the borrower-payee which sets for, with specificity, the reasons for the mortgagee or mortgage servicer's refusal to release the insurance settlement proceeds or each requirement with which the borrower-payee shall comply for the release of funds.

Proposed law provides that property inspections related to mortgage loans covered by proposed law shall be done at least 15 business days after receipt by the mortgagee or mortgage servicer of both a request for inspection and a receipt by the mortgagee of sufficient evidence of the borrower-payee's compliance with the mortgagee's requirements pursuant to proposed law, if the borrower-payee is cooperative and the property is accessible.

Proposed law authorizes a mortgagee or mortgage servicer, at their discretion, to allow property inspections be conducted in person, by photo or video evidence submitted by the borrower-payee, through a video call with the borrower-payee, or by other means documenting the progress or completion of repairs.

Proposed law requires photo or video evidence to clearly identify the repairs being documented and confirm the repairs were completed in accordance with the repair plan. Further, a mortgagee or mortgage servicer does not have to accept such evidence if it does not allow them to ascertain that the repairs are from the location of the property subject to the mortgage, authenticate when the evidence was captured, or if the mortgagee or mortgage servicer believes the evidence is altered.

Proposed law authorizes the commissioner to impose civil penalties of up to \$500 per day for each day the mortgagee or mortgage servicer fails to comply with the requirements of proposed law, not to exceed a total penalty of \$5,000 per violation. Such penalties shall be due and payable upon notice of their assessment unless the penalties are set aside after an administrative hearing pursuant to present law. Such penalties shall be final and subject to enforcement by the commissioner through judicial proceedings.

Proposed law retains the present law provision that the claimant be paid after satisfactory completion of the replacement or repair of the damaged property.

Present law defines "settlement proceeds".

Proposed law repeals present law.

Proposed law requires interest to accrue on proceeds which are greater than or equal to \$25,000 which has been held in a segregated account for more than 30 days.

Present law provides that present law shall apply to state chartered federally insured financial institutions and their affiliates to the same extent such provisions apply to federally chartered institutions.

Proposed law provides that the provisions of present law and proposed law regarding the disbursement of settlement proceeds shall apply only to residential mortgage loans secured by a property containing one to four residential dwelling units and shall not apply to a mortgagee or mortgage servicer when the borrower-payee is in default, behind in payment, or in foreclosure.

Present law provides that a mortgage holder who is presented with a jointly payable insurance proceeds by check or draft for residential immovable property damage resulting from Hurricanes Katrina or Rita, or both, is required to endorse and release excess funds from the insurance proceeds to the borrower within 30 days of written request for release of the excess funds by the borrower.

Proposed law changes present law, by repealing the requirement that the proceeds be from damage resulting from hurricanes Katrina or Rita and that the proceeds be paid within 30 days of written request for release. Proposed law adds the requirement that the funds be returned within 15 business days after receipt of such request for release.

Proposed law makes present law and proposed law applicable to proceeds paid by other negotiable instruments in addition to checks or drafts already accounted for in present law.

Proposed law provides that the 15-business day timeline for the release of excess funds in accordance with proposed law shall not apply to proceeds paid by check, draft, or other negotiable instrument requiring endorsement by multiple mortgagees or lien holders.

Present law defines "excess funds".

Proposed law retains present law.

Present law authorizes the commissioner to impose civil penalties of up to \$150 per day for each day the mortgage holder fails to comply with the requirements of present law.

Proposed law changes the penalty limit that can be imposed on a mortgagee or mortgage servicer from up to \$150 per day to up to \$500 per day, not to exceed a total penalty of \$5,000 per violation.

Proposed law provides that the provisions of present law and proposed law shall apply only to residential mortgage loans secured by property containing one to four residential dwelling units and shall not apply to a mortgagee or mortgage servicer when the borrower-payee is in default, behind in payment, or in foreclosure.

Proposed law provides that the provisions of proposed law shall not impair the contractual rights on all loan balances and accrued interest.

(Amends R.S. 6:337 and 338)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Limit the scope of present and proposed law to certain residential mortgage loans.
2. Make one requirement provided by proposed law regarding release of excess funds applicable only when the mortgagee or mortgage servicer does not require inspection.
3. Remove the criteria of what constitutes sufficient evidence and the requirement that such evidence be accepted at the mortgagee's discretion.
4. Add provisions which set certain requirements regarding property inspections conducted pursuant to proposed law.
5. Limit the total penalty amount that can be assessed per violation pursuant to proposed law.
6. Increase the time requirement with which the mortgagee or mortgage servicer must comply with a request to release excess funds.
7. Specify that the time requirement for the release of excess funds shall not be applicable in certain circumstances.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the reengrossed bill

1. Makes technical changes.
2. Provides that proposed law does not impair the contractual rights on all loan balances and accrued interest.
3. Authorizes the mortgagee or mortgage servicer to deposit funds into an individual deposit account or a master account containing subaccounts for each payee-borrower.