

2022 Regular Session

HOUSE BILL NO. 1023

BY REPRESENTATIVES FARNUM, BOURRIAQUE, WILFORD CARTER, DAVIS,
GEYMANN, ROMERO, AND TARVER AND SENATOR STINE

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

1 AN ACT

2 To amend and reenact R.S. 6:337 and 338(A) and (B) and to enact R.S. 6:339, relative to
3 insurance proceeds paid for damages to residential property; to provide for prompt
4 endorsement; to require payment directly to claimants in certain circumstances; to require
5 placement of settlement proceeds in an interest-bearing account for the benefit of the
6 claimant; to provide for disbursement of funds; to provide for the determination of the
7 relationship of proceeds to the property; to require release of funds upon inspection in certain
8 circumstances; to provide for release of excess funds upon written request; to require a
9 mortgage lender to create a disbursement plan; to provide for disbursement plan criteria; to
10 provide for definitions; to provide for applicability; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 6:337 and 338(A) and (B) are hereby amended and reenacted and
13 R.S. 6:339 is hereby enacted to read as follows:

14 §337. Duty of secured party upon payment of insurance claim for damage to
15 mortgaged residential property; release of funds

16 A.(1) If payment in settlement of a damage claim on residential property in
17 which another person holds a mortgage is by check or draft, of an insurer, made
18 payable jointly to the claimant and the person holding the mortgage, then the person
19 holding the mortgage shall promptly endorse such check or draft.

1 (2) ~~such~~ Such "settlement proceeds", as defined in Subsection ~~C~~ D of this
2 Section, which relate to compensation for damage to property or contents in which
3 the person holding the mortgage has a security interest shall be promptly placed in
4 an escrow account in accordance with the provisions of Subsection C of this Section
5 and shall earn interest payable to the claimant in accordance with the provisions of
6 Subsection ~~C~~ D of this Section.

7 (3) Insurance proceeds received by the person holding the mortgage that
8 relate to additional living expenses or attorney fees shall be promptly distributed to
9 the insured in accordance with the disbursement plan provided by R.S. 6:339. If the
10 person holding the mortgage cannot determine which part of the proceeds relates to
11 additional living expenses, contents insurance, or attorney fees, the insured shall
12 provide to the person holding the mortgage the insurance estimate provided by the
13 insurer which includes an itemized list of the settlement proceeds to be paid out by
14 the insurer, and the person holding the mortgage shall use such estimate to determine
15 which part of the proceeds relates to additional living expenses and contents
16 insurance.

17 (4) Nothing in this Subsection shall be construed to prohibit or prevent an
18 insurer from paying the insured directly for additional living expenses or paying the
19 insured directly for contents insurance coverage if the person holding the mortgage
20 does not have a security interest in the contents.

21 B.(1) ~~When the damaged property is replaced or otherwise repaired to the~~
22 ~~satisfaction of the claimant and the person holding the mortgage on the property,~~
23 ~~then any remaining balance in the escrow account shall be paid to the claimant~~
24 ~~together with all interest that accrued while the funds were in escrow. The person~~
25 holding the security interest in the property shall cooperate fully with the claimant
26 and the claimant's insurer in releasing funds, in accordance with the disbursement
27 plan provided by R.S. 6:339, in a timely manner within five business days by
28 traceable delivery to replace or repair the damaged property.

1 (2) This Subsection shall not apply to claimants or property in default,
2 behind in payment, or in foreclosure.

3 C. The mortgage holder shall disburse settlement proceeds in accordance the
4 disbursement plan provided by R.S. 6:339, and release of the settlement funds shall
5 adhere to the following requirements:

6 (1) If the balance on the mortgage loan is less than or equal to fifty percent
7 of the original mortgage amount, the person holding the mortgage shall immediately
8 release the insurance settlement proceeds to the claimant.

9 (2) If the balance on the mortgage loan is greater than fifty percent but less
10 than seventy-five percent of the original mortgage amount, the person holding the
11 mortgage shall immediately release fifty percent of the insurance settlement proceeds
12 to the claimant and the remaining fifty percent of the proceeds shall be deposited into
13 an escrow account upon receipt and shall cooperate fully with the claimant and the
14 claimant's insurer in disbursing the funds.

15 (3) The person holding the mortgage shall release to the claimant upon
16 inspection the funds on deposit in an amount that is proportional to the percentage
17 of work that has been completed, and such inspection shall be completed within five
18 business days by the person holding the mortgage through either of the following:

19 (i) A site visit.

20 (ii) Submission via email of photo or video evidence showing repair
21 progress.

22 E.D. As used in this Section, the following terms have the following
23 meanings:

24 (a) "Attorney fees" means fees incurred before judgment and after judgment
25 if the judgment based on the number of hours reasonably expended on the dispute
26 multiplied by a reasonable hourly rate.

27 (b) "Living expenses" means funds paid on an insurance claim for expenses
28 incurred by the claimant as a result of the claimant being unable to live in a residence

1 due to a covered loss. Such funds may be paid separately from or in combination
2 with other settlement proceeds.

3 (c) ~~"settlement proceeds"~~ "Settlement proceeds" means funds paid on an
4 insurance claim for damage to residential immovable property, living expenses, or
5 attorney fees ~~as a result of Hurricane Katrina or Hurricane Rita~~, and where the funds
6 equal twenty-five thousand dollars or more.

7 ~~E.(a) These funds~~ The settlement proceeds shall be held in escrow by the
8 lender or loan servicer in accordance with the provisions of Subsection C of this
9 Section. Interest and interest shall accrue ~~on settlement proceeds~~ after being held in
10 escrow for more than thirty days.

11 (b) For purposes of this Subsection, compliance with Fannie Mae or Freddie
12 Mac servicing guidelines for payment of interest on property damage claim funds
13 held in escrow by the lender or loan servicer constitutes compliance with this
14 Section.

15 ~~D. F.~~ F. The provisions of this Section shall be applicable to state chartered
16 federally insured financial institutions and their affiliates to the same extent that such
17 provisions are applicable to federally chartered financial institutions.

18 G. Nothing in this Section shall be construed to limit or prohibit a person
19 holding a mortgage from offering a claimant more favorable terms or solutions than
20 those required by this Section.

21 §338. Insurance settlement proceeds; return of excess funds; enforcement

22 A. If a mortgage holder is presented with a jointly payable insurance
23 proceeds check or draft for residential immovable property damage ~~resulting from~~
24 ~~either Hurricane Katrina or Hurricane Rita, or both~~, which contains the mortgagor's
25 endorsement, and the mortgage holder receives a written request from the borrower
26 to release excess funds, then all mortgage holders shall have ~~thirty days~~ three days
27 after receiving such request and such check or draft to provide their endorsements
28 and return all excess funds provided for in Subsection B of this Section by traceable
29 delivery.

- 1 (4) A provision providing that no settlement proceeds will be used to make
- 2 payment toward the principal, interest, or fees associated with the mortgage, unless
- 3 the claimant requests such in writing.
- 4 (5) A process through which the claimant can appeal a decision of the
- 5 mortgage holder that is preventing or delaying the claimant from making repairs to
- 6 the property in a timely manner.
- 7 (6) A provision which states that the mortgage holder accepts and admits
- 8 liability for any damages caused by the mortgage holder's failure to disburse
- 9 settlement proceeds, if the mortgage holder withholds the settlement proceeds in bad
- 10 faith.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1023 Original

2022 Regular Session

Farnum

Abstract: Provides for regulations regarding the deposit and disbursement of insurance proceeds following damage to residential property when a mortgage holder has a security interest in the damaged property.

Present law requires that when payment of an insurance check 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 retains present law and adds that the mortgage holder is required to promptly endorse the check or draft and the proceeds to be deposited in an interest-bearing escrow account are required to be related to compensation for property damage for which the mortgage holder has an interest.

Proposed law requires proceeds relating to additional living expenses or attorney fees be promptly distributed to the insured pursuant to the disbursement plan provided by proposed law.

Proposed law requires the insured to provide the mortgage holder with the itemized insurance estimate for use by the mortgage holder when the mortgage holder cannot determine what portion of the proceeds relates to property in which the mortgage holder has a security interest and what portion of the proceeds relates to living expenses, contents insurance, or attorney fees.

Proposed law provides that the provisions of present law and proposed law shall not be construed to prohibit or prevent an insurer from directly paying the insured for living expenses or contents coverage for the portion of proceeds not related to property in which the mortgage holder has a security interest.

Present law requires the mortgage holder to cooperate fully with the claimant and his insurer in releasing funds in a timely manner for such replacement or repair of the damaged property.

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

Proposed law retains the present law requirement that the mortgage holder cooperate fully with the claimant and his insurer in releasing the funds, but adds that the funds are required to be released according to the disbursement plan in accordance with proposed law within five business days by traceable delivery to replace or repair the damaged property.

Proposed law provides that the provisions of present law and proposed law regarding the disbursement of settlement proceeds shall not apply to claimants or property in default, behind in payment, or in foreclosure.

Proposed law requires a mortgage holder to disburse settlement proceeds according to the disbursement plan the mortgage holder is required to create in accordance with proposed law and further requires the funds to be released in accordance with the following requirements:

- (1) The mortgage holder is required to immediately release the settlement proceeds to the claimant when the balance on the mortgage is less than or equal to 50% of the original mortgage amount.
- (2) The mortgage holder is required to immediately release 50% of the settlement proceeds to the claimant and deposit the remaining 50% in an escrow account upon receipt when disbursing the funds when the balance on the mortgage is more than 50% but less than 75% of the original mortgage amount.
- (3) The mortgage holder is required to release to the claimant, upon inspection, the funds on deposit in an amount that is proportional to the percentage of work that has been completed and requires that the inspection be completed by a site visit or email submission of photo or video evidence showing repair progress within five business days.

Proposed law defines "attorney fees" and "living expenses".

Present law defines "settlement proceeds".

Proposed law changes the definition of "settlement proceeds" to include living expenses and attorney fees and repeals the present law provision that settlement proceeds apply only to funds paid as a result of Hurricanes Katrina or Rita.

Proposed law provides that the provisions of present law and proposed law shall not be construed to prohibit a mortgage holder from offering more favorable terms or conditions than those provided by present law and proposed law to a claimant.

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 retains present law, but repeals the requirement that the proceeds be from damage resulting from Hurricanes Katrina or Rita and adds the requirement that the funds be returned by traceable delivery.

Present law defines "excess funds".

Proposed law retains present law.

Proposed law provides that a mortgage lender doing business in this state shall have a plan outlining the process for disbursement of settlement proceeds received from an insurer as a result of a claim on property for which the mortgagee holds a mortgage.

Proposed law provides that a copy of the insurance claim proceeds disbursement plan shall be signed by a mortgagor as part of the mortgage application. Proposed law further provides that a copy of the plan shall be provided to the mortgagor upon request for such.

Proposed law provides that a plan for disbursement of settlement proceeds required pursuant to proposed law shall include the following:

- (1) A provision providing for the transfer of any interest earned on settlement proceeds while in the possession of the mortgage holder.
- (2) A process for contacting the mortgage holder regarding an insurance claim. Providing the claimant with contact information that requires him to interact with an automated system does not constitute compliance with this provision.
- (3) A provision providing that the portion of settlement proceeds relating to compensation for damage to property or contents in which the mortgage holder has a security interest will be used for the repair of the damaged property.
- (4) A provision providing that settlement proceeds will not be used to make payment toward the principal, interest, or fees associated with the mortgage, unless the claimant requests such in writing.
- (5) A process through which the claimant can appeal a decision of the mortgage holder that is preventing or delaying the claimant from making repairs to the property in a timely manner.
- (6) A provision wherein the mortgage holder accepts and admits liability for any damages caused by the mortgage holder's failure to disburse settlement proceeds, if the mortgage holder withholds the proceeds in bad faith.

(Amends R.S. 6:337 and 338(A) and (B); Adds R.S. 6:339)