

2022 Regular Session

HOUSE BILL NO. 1064 (Substitute for House Bill No. 1023 by Representative Farnum)

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, relative to the disbursement of insurance

3 proceeds for damages to residential property; to provide for prompt endorsement; to

4 require prompt payment to borrower-payees in certain circumstances; to require

5 placement of settlement proceeds in a segregated account; to provide for

6 requirements for a residential mortgagee or mortgage servicer; to provide for the

7 payment of proceeds relative to additional living expenses and contents insurance;

8 to provide for notice by a mortgagee or mortgage servicer in certain circumstances;

9 to provide for the release of proceeds held by a mortgagee or mortgage servicer; to

10 provide for civil money penalties; to provide for the payment of interest accrued on

11 settlement proceeds; to provide for release of excess funds upon written request; to

12 provide for applicability; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 6:337 and 338 are hereby amended and reenacted to read as follows:

15 §337. Duty of secured party upon payment of insurance claim for damage to
16 mortgaged residential property

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

1 ~~"settlement proceeds," as defined in Subsection C of this Section, shall be placed in~~
2 ~~escrow and shall earn interest payable to the claimant in accordance with the~~
3 ~~provisions of Subsection C of this Section.~~ All of the following provisions shall
4 apply to a mortgagee or mortgage servicer servicing residential mortgage loans
5 secured by a property that contains one to four residential dwelling units in this state:

6 (1) The mortgagee or mortgage servicer shall promptly endorse a check,
7 draft, or other negotiable instrument for insurance settlement proceeds payable
8 jointly to the mortgagee or mortgage servicer and the borrower-payee by the
9 insurance company. However, the mortgagee or mortgage servicer is not required
10 to endorse such instrument if the borrower-payee refuses to endorse the instrument.

11 (2) Insurance settlement proceeds received by a mortgagee or mortgage
12 servicer that relate to compensation for damage to property or contents insurance
13 coverage in which the mortgagee or mortgage servicer has a mortgage or security
14 interest shall be promptly deposited into a segregated account of a federally insured
15 financial institution, unless the mortgagee or mortgage servicer returns such
16 insurance settlement proceeds to the borrower-payee or the check, draft, or
17 negotiable instrument is missing the borrower-payee's endorsement.

18 (3) Insurance settlement proceeds received by a mortgagee or mortgage
19 servicer that relate to contents insurance coverage in which the mortgagee or
20 mortgage servicer does not have a security interest in the contents shall be promptly
21 distributed to the borrower-payee via traceable delivery or electronic transfer.

22 (4) Insurance settlement proceeds received by a mortgagee or mortgage
23 servicer that relate to additional living expenses shall be promptly distributed to the
24 borrower-payee via traceable delivery or electronic transfer.

25 ~~B. When the damaged property is replaced or otherwise repaired to the~~
26 ~~satisfaction of the claimant and the person holding the mortgage on the property,~~
27 ~~then any remaining balance in the escrow account shall be paid to the claimant~~
28 ~~together with all interest that accrued while the funds were in escrow. The person~~
29 ~~holding the security interest in the property shall cooperate fully with the claimant~~

1 and the claimant's insurer in releasing funds in a timely manner to replace or repair
2 the damaged property. Notwithstanding the provisions of Subsection A of this
3 Section, the mortgagee or mortgage servicer is not required to remit the portion of
4 the insurance settlement proceeds relating to additional living expenses and contents
5 insurance if the mortgagee or mortgage servicer is not able to determine which part
6 of the proceeds relate to additional living expenses and contents insurance.

7 C. ~~As used in this Section, "settlement proceeds" means funds paid on an~~
8 ~~insurance claim for damage to residential immovable property as a result of~~
9 ~~Hurricane Katrina or Hurricane Rita, and where the funds equal twenty-five thousand~~
10 ~~dollars or more. These funds shall be held in escrow by the lender or loan servicer.~~
11 ~~Interest shall accrue on settlement proceeds after being held in escrow for more than~~
12 ~~thirty days. For purposes of this Subsection, compliance with Fannie Mae or Freddie~~
13 ~~Mac servicing guidelines for payment of interest on property damage claim funds~~
14 ~~held in escrow by the lender or loan servicer constitutes compliance with this~~
15 ~~Section.~~ This Section shall not prevent an insurance company from paying the
16 borrower-payee directly for additional living expenses or paying the borrower-payee
17 directly for contents insurance coverage if the mortgagee or mortgage servicer does
18 not have a mortgage or security interest in the contents.

19 D.(1) If a mortgagee or mortgage servicer holds all or part of the insurance
20 settlement proceeds pending completion of all or part of the repairs to the damaged
21 property, the mortgagee or mortgage servicer shall notify the borrower-payee of each
22 requirement with which the borrower-payee shall comply for the mortgagee or
23 mortgage servicer to release the insurance settlement proceeds. The notice required
24 by this Paragraph shall be provided not later than the tenth business day after the date
25 the mortgagee or mortgage servicer receives payment of the insurance settlement
26 proceeds.

27 (2) Not later than the tenth business day after the date a mortgagee or
28 mortgage servicer receives from the borrower-payee a request for release of all or

1 part of the insurance settlement proceeds held by the mortgagee or mortgage
2 servicer, the mortgagee or mortgage servicer shall do either of the following:

3 (a) If the mortgagee or mortgage servicer does not require a property
4 inspection be conducted and has received sufficient evidence of the borrower-payee's
5 compliance with the requirements specified by the mortgagee or mortgage servicer
6 pursuant to Paragraph (1) of this Subsection for release of the insurance settlement
7 proceeds, release to the borrower-payee, as requested, all or part of the proceeds.

8 (b) Provide notice to the borrower-payee that explains with specificity both
9 of the following:

10 (i) The reason for the mortgagee or mortgage servicer's refusal to release the
11 insurance settlement proceeds to the borrower-payee.

12 (ii) Each requirement with which the borrower-payee shall comply for the
13 mortgagee or mortgage servicer to release the insurance settlement proceeds.

14 (3)(a) Property inspections related to residential mortgage loans covered by
15 this Section shall be conducted not later than the fifteenth business day after receipt
16 by the mortgagee or mortgage servicer of both a request by the borrower-payee for
17 a property inspection and receipt of sufficient evidence of the borrower-payee's
18 compliance with the requirements specified by the mortgagee or mortgage servicer
19 pursuant to Paragraph (1) of this Subsection, provided that the borrower-payee is
20 cooperative and that the premises are accessible.

21 (b) A mortgagee or mortgage servicer may, at their discretion, allow property
22 inspections to be conducted in person, through photographic or video evidence
23 submitted by the borrower-payee, through a servicer-directed video call with the
24 borrower-payee, or by any other means to document the progress or completion of
25 repairs of the property.

26 (c) Photographic or video evidence shall also clearly identify the repairs that
27 are being documented and confirm the repairs were completed in accordance with
28 the repair plan. Any photographic or video evidence provided to a mortgagee or
29 mortgage servicer may not be accepted if it does not allow the mortgagee or

1 mortgage servicer to determine the repairs are from the location of the property
2 subject to the mortgage loan, does not authenticate when it was taken, or if it is
3 believed by the mortgagee or mortgage servicer to have been altered in any way.

4 (4)(a) The commissioner may impose civil money penalties of up to five
5 hundred dollars per day for each day that a mortgagee or mortgage servicer fails to
6 comply with the requirements of Paragraphs (1) or (2) of this Subsection. The
7 penalties provided by this Paragraph shall not exceed five thousand dollars per
8 violation.

9 (b) Penalties shall be due and payable upon notice of their assessment to the
10 mortgagee or mortgage servicer, unless such penalties are set aside after an
11 administrative hearing pursuant to the provisions of the Administrative Procedure
12 Act. The assessment of civil money penalties shall be final and definitive and
13 subject to enforcement by the commissioner through judicial proceedings.

14 E.(1) When the damaged property is replaced or otherwise repaired to the
15 satisfaction of the borrower-payee and the mortgagee or mortgage servicer, then any
16 remaining balance in the segregated account shall be paid to the borrower-payee
17 together with all interest that accrued while the funds were in the segregated account
18 in accordance with Paragraph (2) of this Subsection.

19 (2) Interest shall accrue on insurance settlement proceeds where the funds
20 equal twenty-five thousand dollars or more after being held by the mortgagee or
21 mortgage servicer in a segregated account for more than thirty days. For the
22 purposes of this Subsection, compliance with Fannie Mae or Freddie Mac servicing
23 guidelines for payment of interest on property damage claim funds held by the
24 mortgagee or mortgage servicer constitutes compliance with this Section.

25 F. The provisions of this Section shall be applicable to state chartered
26 federally insured financial institutions and their affiliates to the same extent that such
27 provisions are applicable to federally chartered financial institutions.

28 G. The provisions of this Section shall apply only to residential mortgage
29 loans secured by a property that contains one to four residential dwelling units.

1 However, the provisions of this Section shall not apply to a mortgagee or mortgage
2 servicer when the borrower-payee is in default on his mortgage loan, past due with
3 payments on his mortgage loan, or in foreclosure related to his mortgage loan.

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

5 A. If a ~~mortgage holder~~ mortgagee or mortgage servicer is presented with a
6 jointly payable insurance proceeds check, ~~or draft,~~ or other negotiable instrument for
7 residential immovable property damage ~~resulting from either Hurricane Katrina or~~
8 ~~Hurricane Rita, or both,~~ which contains the ~~mortgagor's~~ borrower-payee's
9 endorsement, and the ~~mortgage holder~~ mortgagee or mortgage servicer receives a
10 written request from the ~~borrower~~ borrower-payee to release excess funds, then ~~all~~
11 ~~mortgage holders~~ the mortgagee or mortgage servicer shall have ~~thirty~~ fifteen
12 business days after receiving such request and such check, ~~or draft,~~ or other
13 negotiable instrument to provide its endorsements and return all excess funds
14 provided for in Subsection B of this Section. The fifteen-business day timeline for
15 releasing excess funds provided by this Section shall not apply when the insurance
16 proceeds check, draft, or other negotiable instrument requires the endorsement of
17 multiple mortgagees or lien holders.

18 B. The ~~mortgage holder~~ mortgagee or mortgage holder holding funds in
19 ~~escrow~~ a segregated account shall return to the ~~mortgagor~~ borrower-payee all funds
20 considered to be excess funds. For purposes of this Section, the term "excess funds"
21 shall mean insurance funds in excess of both of the following:

22 (1) All loan balances of any ~~mortgage holder~~ mortgagee or mortgage servicer
23 named as payee on the insurance claim check, ~~or draft,~~ or other negotiable
24 instrument calculated as of the thirtieth day following receipt of the request and
25 check or draft as outlined in Subsection A of this Section; ~~and,~~

26 (2) Six months of future accrued interest as calculated pursuant to the terms
27 of the mortgage loans and calculated from the date of the payoff explained in
28 Paragraph ~~(B)(1) of this Section~~ (1) of this Subsection.

1 C.(1) The commissioner may impose civil money penalties of up to ~~one~~ five
 2 hundred ~~fifty~~ dollars per day of each day a ~~mortgage holder~~ subject to his jurisdiction
 3 mortgagee or mortgage servicer fails to comply with the requirements of Subsection
 4 B of this Section. The penalties provided in this Paragraph shall not exceed five
 5 thousand dollars per violation.

6 (2) Penalties shall be due and payable upon notice of their assessment to the
 7 ~~mortgage holder~~ mortgagee or mortgage servicer, unless set aside after
 8 administrative hearing pursuant to the provisions of the Administrative Procedure
 9 Act. The assessment of civil money penalties shall be final and definitive and
 10 subject to enforcement by the commissioner through judicial proceedings.

11 D. The provisions of this Section shall ~~be applicable to state-chartered~~
 12 ~~federally insured financial institutions and their affiliates to the same extent that such~~
 13 ~~provisions are applicable to federally chartered financial institutions~~ apply only to
 14 residential mortgage loans secured by a property that contains one to four residential
 15 dwelling units. However, the provisions of this Section shall not apply to a
 16 mortgagee or mortgage servicer when the borrower-payee is in default on his
 17 mortgage loan, past due with payments on his mortgage loan, or in foreclosure
 18 related to his mortgage loan.

19 E. ~~The commissioner shall have the power to enact and promulgate rules and~~
 20 ~~regulations as may be necessary or appropriate to implement the provisions of this~~
 21 ~~Section.~~

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 1064 Reengrossed

2022 Regular Session

Farnum

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

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.
- (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 deliver 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.

Present law requires interest to accrue on proceeds held in escrow for more than 30 days and allows for federal servicing guidelines to constitute compliance with present law.

Proposed law changes present law by only requiring 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.

(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.