

RÉSUMÉ DIGEST

ACT 744 (HB 1064)

2022 Regular Session

Farnum

Prior law provided that if proceeds of an insurance check or draft in settlement of a property damage claim are jointly paid to the claimant and the holder of the mortgage, when such payment involves residential property, the settlement proceeds are to be placed in an interest-bearing account with interest accruing to the benefit of the claimant.

New law revises prior law by redesignating the citation and changing the following terms throughout prior law: Changes "claimant" to "borrower-payee". Changes "person holding the mortgage on the property" to "mortgagee or mortgage servicer". Changes "interest-bearing account" to "segregated account".

New law specifies that new and existing law provisions regarding settlement proceeds apply to properties in this state containing one to four residential dwellings. Requires a mortgagee or mortgage servicer to promptly endorse a settlement proceeds check, draft, or other negotiable instrument made jointly payable to the mortgagee or mortgage servicer and the borrower-payee. Further provides that a mortgagee or mortgage servicer is not required to endorse a check, draft, or negotiable instrument for jointly payable proceeds if the borrower-payee refuses to endorse the instrument.

New law requires settlement proceeds, related to contents insurance coverage and received by a mortgagee or mortgage servicer, in which the mortgagee or mortgage servicer has a security interest, to be promptly deposited into a segregated account of a federally insured financial institution unless the proceeds are returned to the borrower-payee or the instrument is missing the borrower-payee's endorsement. Further provides that 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.

New law requires settlement proceeds related to contents insurance coverage and received by a mortgagee or mortgage servicer to be promptly distributed to the borrower-payee if the mortgagee or servicer has no interest in the proceeds. Further requires settlement proceeds related to additional living expenses to be promptly distributed to the borrower-payee.

New law provides that a mortgagee or mortgage servicer is not required to remit the portion of the settlement proceeds related to additional living expenses and contents insurance coverage unless it is determined which part of the settlement is related to additional living expenses and contents insurance.

New law requires settlement proceeds to be delivered to the borrower-payee via traceable delivery or electronic transfer.

Prior law provided that once the property is replaced or repaired to the satisfaction of the claimant and the person holding the mortgage, any funds remaining in escrow are required to be paid to the claimant with any interest accrued while in escrow. New law changes applicable terminology and redesignates the citation.

Prior law further provided that the person holding the mortgage on the property was required to fully cooperate with the claimant and his insurer in releasing funds in a timely manner for the replacement or repair of the damaged property. New law deletes prior law.

New law requires the mortgagee or mortgage servicer, within 10 business days of its receipt of the settlement proceeds, to give notice to the borrower-payee of the requirements for release of the proceeds. Further requires the mortgagee or mortgage servicer to release all or part of the settlement proceeds to the borrower-payee if it has received sufficient evidence of the borrower-payee's compliance with the requirements.

New law provides that if a mortgagee or mortgage servicer does not release settlement proceeds as requested, it is required to explain the reason for the refusal and each requirement for which the borrower-payee must comply to receive the funds.

New law requires property inspections related to residential mortgage loans to be conducted within the 15th business day after the mortgagee's or mortgage servicer's receipt of both a

request by the borrower-payee for a property inspection and sufficient evidence of the borrower-payee's compliance with requirements.

New law authorizes property inspections to be conducted in person, through photographic or video evidence submitted by the borrower-payee, through servicer-directed video calls, or by other means to document the progress or completion of repairs. Further provides that photographic or video evidence may not be accepted if it does not allow determination of the repairs or authenticity of the time taken, or is believed to have been altered.

New law authorizes the commissioner of insurance (commissioner) to impose monetary penalties, not in excess of \$500 per day nor \$5,000 per violation, on a mortgagee or mortgage servicer that fails to comply with the process for distributing proceeds. Provides that penalties are due and payable upon notice unless the penalties are set aside after an administrative hearing. Further provides that penalties are final, definitive, and subject to enforcement by the commissioner.

New law requires interest to accrue on settlement proceeds greater than \$25,000 when held in a segregated account by the mortgagee or mortgage servicer for more than 30 days.

Prior law defined "settlement proceeds" as funds greater than \$25,000 paid on insurance claims for damage to residential immovable property as a result of Hurricanes Katrina or Rita and held in escrow by the lender or loan servicer. New law deletes prior law.

Prior law provided that compliance with Fannie Mae or Freddie Mac servicing guidelines for payment of interest on property damage claim funds held in escrow by the lender or loan servicer constitutes compliance. New law replaces terminology, redesignates the citation, and otherwise retains prior law.

Prior law provided that if a mortgage holder was presented with a jointly payable insurance proceeds check or draft, endorsed by the mortgagor and related to residential damage to immovable property resulting from Hurricanes Katrina or Rita, and the mortgage holder received a written request from the borrower to release excess funds, the mortgage holder had 30 days to return the excess funds.

New law deletes prior law and instead provides that if the mortgagee or mortgage servicer is presented with a jointly payable insurance proceeds check or draft related to residential damage to immovable property, and the mortgagee or mortgage servicer endorses the instrument but receives a written request from the borrower-payee to release the excess funds, the mortgagee or mortgage servicer has 15 business days to return the excess funds. Further provides that the timeframe of 15 business days does not apply when the proceeds instrument requires the endorsement of multiple mortgagees or lien holders.

Prior law required the mortgage holder holding funds in escrow to return all funds to the mortgagor considered to be excess funds. Further authorized the commissioner to promulgate rules. New law deletes prior law.

Existing law defines "excess funds" and authorizes the commissioner to impose civil penalties each day the mortgage holder fails to return excess funds. New law retains the definition of "excess funds" and the commissioner's authority in existing law, but increases the penalty limit from \$150 per day for violations to \$500 per day, not to exceed a total penalty of \$5,000 per violation.

New law provides that the provisions of new law and existing law do not impair the contractual rights of a mortgagee or mortgage servicer related to loan balances and accrued interest as provided for in existing law. Further provides that new law and existing law do not apply to a mortgagee or mortgage servicer when the borrower-payee is in default, past due, or in foreclosure on his mortgage loan.

Effective August 1, 2022.

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