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## DIGEST

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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)