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DIGEST

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SB 446 Reengrossed

2022 Regular Session

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Present law provides that if settlement proceeds of an insurance check or draft in settlement of a property damage claim are paid jointly 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.

Proposed law replaces the term "claimant" with "borrower-payee" and replaces the phrase "person holding the mortgage on the property" with "mortgagee or mortgage servicer".

Proposed law specifies that present and proposed law provisions regarding insurance settlement proceeds apply to properties in this state containing 1 to 4 residential dwellings.

Proposed law requires a mortgagee or mortgage servicer to promptly endorse a check, draft, or other negotiable instrument for insurance settlement proceeds payable jointly 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 such jointly payable proceeds if the borrower-payee refuses to endorse the instrument.

Proposed law requires insurance settlement proceeds, related to damage of property or contents insurance coverage, received by a mortgagee or mortgage servicer, 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 insurance settlement proceeds are returned to the borrower-payee or the instrument is missing the borrower-payee's endorsement.

Proposed law requires that insurance settlement proceeds, related to contents insurance coverage, received by a mortgagee or mortgage servicer, which the mortgagee or mortgage servicer has no security interest, be promptly distributed to the borrower-payee.

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

Proposed law requires that insurance settlement proceeds received by a mortgagee or mortgage servicer that are related to additional living expenses be promptly distributed to the borrower-payee.

Proposed law provides that a mortgagee or mortgage servicer is not required to remit the portion of the insurance 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.

Proposed law authorizes an insurance company to directly pay the borrower-payee for additional living expenses or contents insurance coverage if the mortgagee or mortgage servicer has no security interest in the contents.

Proposed law requires the mortgagee or mortgage servicer to give notice, within 10 business days of receiving the insurance settlement proceeds, to the borrower-payee of the requirements for the release 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.

Proposed law provides that if a mortgagee or mortgage servicer does not release insurance 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.

Proposed 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.

Proposed law authorizes property inspections to be conducted in person, or through photographic or video evidence submitted by the borrower-payee or 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.

Proposed law authorizes the commissioner to impose monetary penalties, not in excess of \$500 per day nor \$5,000 per violation, on a mortgagee or 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.

Present law provides that once the property is replaced or repaired to the satisfaction of the claimant and the person holding the mortgage, then any funds remaining in escrow are required to be paid to the claimant with any interest accrued while in escrow. Present law further provides that the holder of the mortgage on the property is required 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 replaces applicable terminology and deletes the requirement for the mortgagee or mortgage servicer to cooperate fully with the borrower-payee and his insurer in releasing funds in a timely manner for replacements or repairs. Otherwise retains present law.

Present law defines "settlement proceeds" as funds of \$25,000 or more 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. Proposed law deletes present law.

Proposed law requires for interest to accrue on insurance settlement proceeds that are \$25,000 or more, after being held by the mortgagee or mortgage servicer in a segregated account for more than 30 days.

Present law provides 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. Proposed law replaces terminology and retains present law.

Present law provides that if a mortgage holder is presented with a jointly payable insurance proceeds check or draft, endorsed by the mortgagor and related to residential damage to immovable property resulting from Hurricane Katrina or Hurricane Rita, or both, and the mortgage holder receives a written request from the borrower to release excess funds, the mortgage holder has 30 days to return the excess funds.

Proposed law removes references to Hurricanes Katrina and Rita and changes the payment timeframe from 30 days to 15 business days. Further provides that the 15th-business day timeframe does not apply when the proceeds instrument requires the endorsement of multiple mortgagees or lien holders.

Present law defines "excess funds" and requires the mortgage holder holding funds in escrow to return all funds considered to be excess funds. Proposed law replaces terminology and otherwise retains present law.

Present and proposed law do not apply to a mortgagee or servicer when the borrower-payee is in default, past due, or in foreclosure on his mortgage loan.

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

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Makes technical change.

Senate Floor Amendments to engrossed bill

1. Requires the mortgagee or mortgage servicer to give notice, within 20 days of receiving the insurance settlement proceeds, to the borrower-payee of the requirements for the release the proceeds.
2. Requires the mortgagee or mortgage servicer to release all or part of the insurance settlement proceeds within 20 days of receiving a request by the borrower-payee if sufficient evidence of complying with requirements has been received by the mortgagee or mortgage servicer.
3. Requires if the insurance settlements proceeds are not released as requested, the mortgagee or mortgage servicer must explain the reason for the refusal to release the funds and each requirement the borrower-payee must comply with to receive the funds.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the reengrossed bill:

1. Make technical changes and specify that present and proposed law provisions relative to insurance settlement proceeds apply to properties in this state containing 1 to 4 residential dwellings. Further require settlement proceeds to be distributed to the borrower-payee via traceable delivery or electronic transfer.
2. Change the timeframe from within 20 days to within 10 business days relative to a mortgagee's or mortgage servicer's required notice to the borrower-payee of the requirements for the release of proceeds. Further require the release of all or part of the proceeds to the borrower-payee if the mortgagee or mortgage servicer receives sufficient evidence of the borrower-payee's compliance.
3. Add provisions relative to property inspections to be conducted within the 15th business day under certain conditions. Authorize property inspections to be conducted in person, through photographic or video evidence submitted by the borrower-payee, servicer-directed video calls, or by other means to document the progress or completion of repairs. Further add 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.
4. Authorize the commissioner to impose and enforce monetary penalties, not in excess of \$500 per day nor \$5,000 per violation, on a mortgagee or servicer that fails to comply with the process for distributing proceeds. Provide that penalties are due and payable upon notice, unless the penalties are set aside after an administrative hearing. Further provide that penalties are final and definitive.
5. Change the timeframe from 30 days to 15 business days relative to the time in which a mortgagee or mortgage servicer presented with a jointly payable check is required to return excess funds to a borrower-payee. Further provide that the 15th-business day timeframe does not apply when the proceeds instrument requires the endorsement of multiple mortgagees or lien holders.
6. Add that present and proposed law do not apply to a mortgagee or servicer when the borrower-payee is in default, past due, or in foreclosure on his mortgage.