

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 1064

2022 Regular Session

Farnum

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

Synopsis of Senate Amendments

1. Authorizes the mortgagee or mortgage servicer to deposit funds into an individual deposit account or a master account containing subaccounts for each borrower-payee.
2. Deletes proposed law that allows an insurance company to pay the borrower-payee directly for additional living expenses or contents insurance coverage if the mortgagee or mortgage servicer does not have mortgage or security interest in the contents.
3. Makes provisions of present and proposed law applicable to state chartered federally insured financial institutions.
4. Deletes the present law requirement that mortgage holders holding funds in escrow must return to the mortgagee all funds considered to be excess funds.
5. Deletes the present law authority of the commissioner to promulgate rules. Instead provides that the provisions of present and proposed law do not impair the contractual rights of a mortgagee or mortgage servicer related to loan balances and accrued interest as provided for in present law.
6. Makes technical changes.

Digest of Bill as Finally Passed by Senate

Present law provides that if 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 retains present law, redesignates the citation, and changes the following terms throughout present and proposed 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".

Proposed law specifies that present and proposed law provisions regarding 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 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.

Proposed 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.

Proposed law 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.

Proposed 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.

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

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

Proposed 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.

Present law provides 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. Proposed law changes applicable terminology, redesignates the citation, and otherwise retains present law.

Present law further provides that the person holding the mortgage on the property is 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. Proposed law deletes present law.

Proposed 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.

Proposed 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.

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, 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.

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.

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

Present law defines "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. Proposed law deletes present law.

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, redesignates the citation, 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 to the mortgagor considered to be excess funds. Proposed law deletes the present law requirement and otherwise retains the definition.

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 from \$150 to \$500 per day, not to exceed a total penalty of \$5,000 per violation. Otherwise retains present law.

Present and proposed 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.

Present law authorizes the commissioner to promulgate rules. Proposed law deletes present law.

Proposed law provides that the provisions of present and proposed law do not impair the contractual rights of a mortgagee or mortgage servicer related to loan balances and accrued interest as provided for in present law.

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